

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:40 a.m. on February 5, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Whitney Damron, City of Topeka
Bill Shriver, Butler County Commissioner
Arlan Stackley, Butler County resident
Allie Devine, Kansas Livestock Association
Will Carpenter, Butler County Commissioner
Randy Doll, Butler County Commissioner
David Murfin, Flint Hills landowner
Patrick Hughes, Leon
Ron Klataske, Audubon of Kansas
Greg May, USD 205 School Board (Leon)
Leslie Kaufman, Kansas Farm Bureau
James F. Kutey, FPL Energy (Florida)
Todd Heitschmidt, Wichita County resident
Kyle Wetzel, K. Wetzel & Company, Inc.
Judie Withers, Wallace County resident
Jennifer States, J.W. Prairie Wind Power LLC
Mike Apprill, Resoruce Management Aquila, Inc.
Joann Hablutzal, Sierra Club
Tom Fair, RES North America LLC
John E. Stover, Jewell County Resident
Kirk G. Lowell, CloudCorp

Others attending: See attached list.

Whitney Damron, representing the City of Topeka, stood to inform the Committee that there would be a change in the bill which he requested to be introduced at the February 4 meeting. He reminded the Committee that he discussed the authorization of a sales tax increase for the City of Topeka to be used to finance the rebuilding of the Topeka Boulevard bridge. The City Council met later in the day and determined that a countywide sales tax would be a better option. The Revisor of Statutes will draft the bill to reflect the requested change.

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SB 85–Property taxation; eliminating wind energy resources property exemptions

Senator Corbin, the sponsor of **SB 85**, noted that the bill was introduced due to concerns expressed in his senatorial district relating to the great influx of applications for wind generated energy. The main concerns his constituents have regard the aesthetic value of the Flint Hills and the fact that the total property tax exemption given a few years ago came through the Utilities Committee. He noted that the bill provides an opportunity to re-evaluate the exemption just as all other tax exemptions will be reviewed by the House Taxation Committee.

Bill Shriver, Butler County Commissioner, testified in support of **SB 85**, noting that approximately eight wind power companies have shown an interest in his county. Although wind power companies are exempt from taxes, their proposals have offered annual gifts to the county and local school districts in amounts from \$200,000 to \$400,000. Mr. Shriver pointed out that a wind farm provides jobs, generates royalty payments, and, in addition, large quantities of goods and services are purchased during construction. To provide a level playing field for wind power companies and to ensure a certain tax base for the county, he proposed a phase in tax with the first year or two abated, then escalating to year ten. (Attachment 1)

Arlan Stackley, a life-long resident of Butler County, testified in support of **SB 85**. He shared information he had gathered regarding the amount of tax revenue collected from wind energy production by other states, pointing out that volunteer tax contributions by wind generating companies in Kansas are considerably lower than the amount of tax revenue currently collected by other states. In addition, he noted that renewable energy companies receive a federal tax credit. He questioned the necessity of Kansas giving wind energy companies additional tax relief. (Attachment 2)

Allie Devine, Kansas Livestock Association (KLA), stated that KLA is very interested in the future development of wind energy in Kansas and has hosted several meetings to educate members and other landowners about wind operations. KLA supports of the concept of repeal in **SB 85**; however, KLA recommends an initial exemption and a graduated increase in local property taxes over a period of time. (Attachment 3)

Will Carpenter, a Butler County Commissioner, testified in support of **SB 85**, noting that the issue does not involve a debate as to whether or not wind farms should be allowed in Butler County. Although there has not been a consensus among Butler County Commissioners concerning what level of taxation is fair and just, the Commission agrees that a change in the tax code is necessary. (Attachment 4)

Randy Doll, a Butler County Commissioner, testified in support of **SB 85**. He informed the Committee that, on a close vote, Butler County recently approved a conditional use permit for the construction of a large wind farm plant. In his opinion, wind farm companies do not have viable business operations if a tax credit is the sole issue on whether or not they locate in a county. Mr. Doll supports both wind farm development and taxation of wind farms. He believes that taxation is not unreasonable because the wind farms will use the roads, infrastructure, and other services provided by the local government. (Attachment 5)

David Murfin, who owns range land next to a proposed utility scale wind turbine complex in the Flint Hills,

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testified in support of **SB 85**. He commented that the current tax exemption provides an incentive for the destruction of the state's cultural and environmental resources, thus, hurting people like himself who want to preserve the beauty of the tall grass prairie. He emphasized that the beauty Flint Hills will be lost to urbanization and industrialization in the next few years if the State of Kansas continues to grant a tax incentive to destroy the land. In addition, he pointed out that this particular property tax exemption does not affect the people of Kansas as a whole but rather affects only the owners of the land surrounding the wind turbine complexes who must fund local units of government without the assistance of tax revenue from thousands of acres which have been removed from the tax base. (Attachment 6)

Patrick Hughes, a resident of Leon, testified in support of **SB 85**. He discussed two questions: (1) What is it that as a state we want to encourage in our energy policy? and (2) What is it that the current property tax exemption encourages? He suggested that, if existing wind turbine technologies are competitive, they should be able to thrive without the property tax exemption, given the series of other incentives for their implementation. Furthermore, he contended that the state pays a permanent price when encouraging the implementation of wind turbine complexes which may or may not in the long run prove superior to other competing technologies such as solar and biomass. As to the claim that repealing the exemption will drive turbine complexes to other states, Mr. Hughes observed that the wind in Kansas will still blow if and when wind power truly becomes competitive. (Attachment 7)

Ron Klataske, Audubon of Kansas, testified in support of **SB 85**. In his opinion, the industrial scale wind power industry is not in need of Kansas taxpayer subsidies because the federal government has provided large sums in grants and contracts, millions of dollars for research, and an extraordinary tax write off. In addition, he contended that it is not appropriate to provide venture capitalists and companies with tax incentives when they are destroying ecological, cultural, and scenic values important to the state. (Attachment 8)

Greg May, a member of the USD 205 School Board in the Leon-Bluestem School District, testified in support of **SB 85**. He noted that two separate companies have petitioned the Butler County Commission to place wind energy facilities in an area within his school district. He contended that the taxation law exempting these companies from the tax base is misguided public policy for the sake of promoting wind energy and, in large part, it is bad government for the taxpaying patrons of his district. In his view, the patrons of his school district are being asked to underwrite the viability of the companies. He considers this unfair, especially when the school district is facing possible reductions in teachers and staff and elimination of extracurricular activities. He maintained that the bill is good public policy because it establishes the same tax policy for wind energy companies which applies to every other business, farm, or ranch in his district. (Attachment 9)

Leslie Kaufman, Kansas Farm Bureau, presented a public policy statement relating **SB 85** which Bureau members recently adopted. Members are concerned with wind generation facilities being totally exempted for all time from property tax and urge the Legislature to develop a plan which includes a graduated tax schedule as an incentive to encourage wind generation in Kansas. (Attachment 10)

Senator Corbin called the Committee's attention to written testimony in support of **SB 85** submitted by Dale Osborn with Distributed Generation Systems, Inc., (Attachment 11) and Stanley A. Skaer, Greenwood County Commissioner (Attachment 12).

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James Kutey, representing FPL Energy of Florida, testified in opposition to **SB 85**. At the outset, he noted that he is the Business Manager for the Gray County Wind Energy project and four other FPL Energy wind facilities across the country. He pointed out that Kansas has been named the top state for wind resource potential; however, Kansas currently lags behind Iowa and Minnesota in the amount of wind energy it produces. He noted that, while other states are looking for ways to reduce taxes and provide incentives to attract wind energy development, **SB 85** would increase the cost of doing business in Kansas. He discussed the economic impact on Kansas citizens if wind development in the state is halted. He went on to explain that the bill would result in an increase in the cost of wholesale power by 20-25 percent for a wind project the size of the Gray County project. He emphasized that FPL could not sell the output power if these increased energy costs were to be realized; therefore, the project would not be built. In conclusion, Mr. Kutey said the bill sends an inconsistent signal to FPL after having committed significant capital in 2001 to the Gray County Project following the 1999 property tax exemption for renewable technologies. (Attachment 13)

Todd Heitschmidt, a resident of Wichita County, testified in opposition to **SB 85**. Noting that Wichita County recently announced plans for the first wind energy development project, he expressed his support for wind energy as a viable component to the future of county. He observed that reimposing the tax defeats economic development at a time when the economy is already suffering. He maintained that the elimination of the property tax exemption on wind energy will diminish Kansas' competitive edge over Colorado. In addition, he pointed out that the rental income to landowners in his area will be a welcome relief to the current slump in the agricultural economy. In his opinion, the issue at hand is not the property tax exemption for wind energy but rather the possibility of wind energy development in the Flint Hills area. He urged the Committee, "Do not penalized the rest of the state for the interests of a few in the Flint Hills area." (Attachment 14)

Kyle Wetz, President of K. Wetzels & Company, testified in opposition to **SB 85**. He clarified that his company is not a developer of wind farms, and he has no personal financial stake in the tax exemption for wind farms. However, he is personally concerned that Kansas continues to have progressive policies which promote the development of renewable energy in the state. He followed with an outline of six reasons he opposes the bill. In conclusion, he noted that, as Chairman of the state's Renewable Energy Working Group, he has worked during the past eight months to find consensus on this controversial issue. In his opinion, some persons are not seeking consensus. Instead, they are attempting to stop wind farms in the Flint Hills through elimination of the tax exemption. He suggested that those who want to stop Flint Hills wind farms should introduce legislation to that effect and leave the property tax exemption alone. (Attachment 15)

Judie Withers, a Wallace County landowner, testified in opposition to **SB 85**. She explained that Wallace County is near Goodland, one of the windiest cities in Kansas. She went on to note Wallace County has been severely hit by the current drought, forcing many cattle producers to sell out or reduce their herds. There are no jobs to take them through this period. She reasoned, if wind energy is developed in the area, there will be many temporary jobs available during the construction period and several permanent jobs in the future. She also opposes the bill because changing the rules in the middle of the game will drive wind energy developers away from Kansas to Colorado where the Legislature is currently taking steps to develop a renewable energy portfolio. (Attachment 16)

Jennifer States, J.W. Prairie Wind Power LLC of Lawrence, testified in opposition to **SB 85**. She discussed

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the following rural economic benefits of wind energy development in Kansas counties: (1) payment of in lieu of taxes, (2) lease payments to landowners, (3) creation of jobs, (4) increased income for local businesses, (5) potential of tourism development due to the turbines, and (6) a renewable energy source that produces no pollutants. She contended that the property tax exemption for wind farms will ensure that wind energy will continue to be competitive with other sources of energy. She followed with an itemization of reasons she believes the repeal of the exemption will hurt the Kansas economy instead of help it. In her opinion, a repeal could result in the loss of future projects in Kansas and the economic benefits that could be enjoyed by Kansas' rural communities. (Attachment 17)

Mike Apprill, Resource Management Aquila, Inc., testified in opposition to **SB 85**. He explained that Aquila has a long-term purchase power contract with Gray County Wind Energy. He is concerned that over half of the cost of property taxes to be assessed to Gray County Wind Energy will, in turn, be passed on to Aquila due to the language in the purchase power agreement. He feels that it is inappropriate to impose this added cost on Aquila's customers more than two years after the contract was signed. Mr. Apprill also believes that the bill will significantly discourage the development of new wind projects in Kansas, thus eliminating a unique opportunity to be a significant exporter of wind energy. (Attachment 18)

Joann Hablutzel, representing the Sierra Club, testified in opposition to **SB 85**, noting that the bill purports to assist counties in receiving property tax from wind farms, but it will actually guarantee that they receive no money at all because wind developers will not invest in Kansas if they have to pay full property tax. She reasoned that developers can simply go to a state that is promoting wind energy, not killing it. They will develop wind farms in those states and then sell to markets that need the power. (Attachment 19)

Tom Fair, RES North America LLC, testified in opposition to **SB 85**. He explained that RES became interested in doing business in Kansas after researching Kansas' tremendous untapped potential for wind energy development and after finding that Kansas tax law provides an exemption from property taxes for renewable energy resources or technologies. Relying on the property tax exemption over the past two years, RES has spent a considerable amount of effort and money to develop wind energy sites and projects in western Kansas. However, **SB 85** places a dark cloud over RES which can spoil plans for continuing investment in business in Kansas. He pointed out that a greater tax burden on wind farms only raises the cost of energy they produce. He argued that singling out wind for removal from the list of renewable energy technologies that receive a tax exemption is discriminatory. (Attachment 20)

John Stover, a Jewel County landowner, testified in opposition to **SB 85**. He noted that wind farms offer citizens of the drought ridden western half of Kansas an opportunity for income from a new industry. He noted that wind energy is clean, and if developed to its full potential, it could provide a substantial amount of the state's energy needs. In his opinion, removal of the tax exemption for wind farms will discourage much needed development in western Kansas. (Attachment 21)

Kirk Lowell, CloudCorp of Concordia, testified in opposition to **SB 85**. He explained that, on July 24, 2000, CloudCorp began working on a project with a wind energy developer who was lured to the state by the exemption. He noted that local citizens strongly support the location of a wind energy farm in the county. To date, wind data collection and related analysis for the proposed project has cost the developer approximately

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\$40,000. On January 31, 2003, the developer informed CloudCorp that Cloud County has proved to be a good site for wind potential although a buyer for energy from the site had not yet been found. Mr. Lowell believes that a repeal of the wind energy exemption will more than likely kill Cloud County's opportunity for wind development, thus creating an unnecessary economic hardship to the citizens of Cloud County. (Attachment 22)

There being no further time, Senator Corbin announced that the hearing on **SB 85** would be continued to Tuesday, February 11, at which time the remaining conferees in opposition will be given an opportunity to present their testimony.

Copies of written testimony in opposition to **SB 85** submitted by W. Wiley McFarland, Gray County Commissioner, (Attachment 23) and J. Stanley Walker, Lincoln County Economic Development Foundation, (Attachment 24) were distributed to the Committee.

The meeting was adjourned at 12:15 p.m.

The next meeting is scheduled for February 11, 2003.