

2009 SENATE NATURAL RESOURCES

SB 2245

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 30, 2009

Recorder Job Number: 8218

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the hearing on SB 2245, Relating to the development of wind power.

**Senator Jim Pomeroy** introduced the bill (see attached testimony #1).

Senator Hogue would the beginning of construction be sufficient or would the tower have to be completed before the five year period begins?

Senator Pomeroy in the bill I am proposing the construction would have to be done and the tower would have to be up and running.

**Representative Lee Myxter** appeared to show support of the bill.

**Senator Erbele** I have been involved with the wind energy from the beginning and we have encountered some problems. There were companies doing the leasing other than the companies who were actually doing the construction. They had signed leases for ten years and they couldn't get out of them when the actual wind developer from another company. Last session we developed a bill that stated that the development had to take place within five years or the lease would be void. The contract is for the tower actually being on your land. There is also a lease process that the companies go through prior to that.

**John Olson**, Ottertail Power Company, We haven't heard of any problems with this in our company. The only concern I have is if there is perspective or retroactive application. I don't know if it is going to affect some of the wind development that is on the way.

**Senator Lyson** if we have several different companies leasing in an area, who is going to be putting up the towers?

**John Olson** when we lease land we are the ones who will put up the towers.

**Senator Erbele** if the construction is taking place a power purchase agreement would have been signed and the contractual agreement for the 25 year lease would be in place. The tower wouldn't need to be complete because you would already have your 25 year contract in place. The 5 year thing deals with the pending process which is under the lease. If it is not completed within the 5 years you can get out of your lease.

**John Olson** I think that is fair.

**Senator Triplett** asked Senator Erbele, you are suggesting that having the power purchase agreement signed is the key to making sure it gets completed?

**Senator Erbele** once you have the contract signed I don't see where you would have a problem whether they build the tower or not, as long as they are honoring the contract and you are getting paid.

**Todd Kranda**, representing Missouri River Energy Services, spoke in opposition. The concern we have is that there are certain activities that are out of their control when they develop wind towers. It may be over burden to comply with construction of the tower and having it up and completed. Turbine manufactures are behind in delivery and have extreme problems back orders because of the demand. It is possible that the tower may not be completed because of the delay. So I caution you on the complete construction of this project. There might need to be an exception if there are certain delay factors that are out of control of the developer.

**Senator Lyson** closed the hearing on SB 2245.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 30, 2009

Recorder Job Number: 8221

Committee Clerk Signature 

Minutes:

**Senator Lyson** opened the discussion on SB 2245.

**Senator Pomeroy** The lawyer who gave testimony is contacting some people to see how they would view this bill and if there should be any amendments added.

**Senator Hogue** I think this is a good bill. Five years is plenty of time to complete construction.

I think there should be some clarity to whether it should be substantial completion or full completion of construction. It is unfair to the land owners and communities for companies to go out there and sign up the leases and then not do anything with them.

**Senator Erbele** we need to be really clear when we are talking in terms of contracts and leases. A contract is when there is a purchase of power agreement and that enables the land owner to receive payments even if they don't build a tower.

**Senator Hogue** they operate very similar to the oil and gas lease. The initial 5 year term allows the developer to tie property up so he/she can group it up with others. It is good for North Dakota land owners and good for encouraging more development.

**Senator Triplett** if the key is the signing of the power of purchase agreement ,to get the money flowing to the people, maybe we should substitute it and not worry about what level of construction they are at.

**Senator Lyson** asked Senator Erbele and Senator Pomeroy to get together with some others and come up with some better language. The discussion on SB 2245 was closed.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

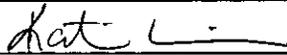
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8828

Committee Clerk Signature



Minutes:

**Senator Lyson** opened up the discussion on SB 2245, relating to the development of wind power.

**Senator Schneider** does option 1 change anything in the current law?

Senator Pomeroy the word construction is not in the original bill.

**Senator Triplett** someone commented saying the real issue is whether the land owner is getting the money. If we somehow incorporated language regarding a purchase power agreement having been signed so the landowner is receiving money and then the land owner shouldn't really care if the tower was being built or not.

**Senator Lyson** That was my understanding also.

**Senator Erbele** I think the key to the whole thing is whether you have a contract in place. If you have a contract in place your lease is activated.

**Senator Erbele** the lease is just holding the land for development. Wind option agreement is void and terminates if the contract agreement to produce energy from wind power has not occurred on the property within five years. Would that work??

**Senator Hogue** I am not sure if they enter into the purchase power agreements before they are actually getting close to completing those projects. The second option offered here I feel is

comparable to an oil and gas lease. Where they have a five year lease and they have do not have any intention of drilling, so they go back to the land owner and ask to put another lease on top of the existing five year lease. Other parts of this bill would have to be amended because the bill says it is void if you don't have development after five years. I don't think option 2 would be good. You would have to make other changes to the law. My suggestion would be to say on line 9, that a wind option agreement is void and terminates if substantial completion of construction of a tower. We have language in other parts of our code where we talk about substantial completion of a project as being necessary for people to get tax incentives. I just picked this part out of the code to make clear that if someone was to run into a supply problem and they haven't officially completed the tower that would solve the problem. My concern with the purchase of power agreement is that it comes sometime after construction.

**Senator Erbele** I think they need to know who is going to be the buyer of power before they will sign. So it is done before the construction.

**Senator Lyson** So what does the contract say, is there any money involved at that point?

**Senator Erbele** at that point the landowner has signed a contract to let them build on his land. At that point he is agreeing to what the payment is per year and for how many years that will run. Once that happens, it may take two or three years until everything gets built. He will get paid because he has that agreement. It is different than the term of the lease.

**Senator Pomeroy** I was made aware of this problem by a land owner in Dickey. I started to ask around to other people and it is a problem we have in North Dakota.

**Senator Hogue** we should define the language we decide to use so that both parties, the landowner and the potential developer, know exactly when their five years is beginning. With

substantial completion at least everyone knows that if they are not done within the five years, they know they had better be pretty close to being done or the lease is going to laps.

**Senator Erbele** Can we hold this until tomorrow and I will talk with the lobbyists who are working with the wind firms?

**Senator Lyson** there are spectators out there who are trying to buy up all these leases and re-sell them to the companies who will actually do the construction so they can make money off the lease.

**Senator Erbele** the wind blows everywhere. It is not a confined resource. We had a problem with firms leasing up a lot of land and trying to sell to other companies for more money. The company who is going to do the construction can go over to the next quarter and buy the lease from the landowner for cheaper.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9467

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the discussion on SB 2298.

**Senator Erbele** the amendment just tries to clarify Senator Pomeroy's bill. I had John Olson who works for Ottetail Power Company give some input in the amendment also.

**Senator Freborg** what kind of time line would we be looking at? In what order and what time do things have to take place from that point on?

**Senator Erbele** at that point it doesn't really matter because they are in a contractual agreement. If they signed the contract it will be paid for. The five year limitation is for the lease part of it. If nothing happens within the five years the lease is terminated.

**Senator Pomeroy** moves to adopt the amendment.

**Senator Erbele** seconds the motion.

A voice vote was taken and the motion passed.

**Senator Pomeroy** moves a Do Pass as amended.

**Senator Schneider** seconds the motion.

The bill received a Do Pass as amended on a vote of 6 to 0.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 10, remove "construction of a tower" and overstrike "to produce energy from wind power has not occurred on the property"

Page 1, overstrike line 11

Page 1, line 12, overstrike "commences" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Page 1, line 19, remove "construction of a tower" and overstrike "to produce energy from wind power"

Page 1, line 20, overstrike "associated with the easement has", remove "not", and overstrike "occurred within five years after the easement is created" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Page 2, line 2, remove "construction of a tower" and overstrike "to produce energy from wind power"

Page 2, line 3, overstrike "has not occurred on the leasehold within five years after the lease commences" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Renumber accordingly

Date: Feb 13, 2009

Roll Call Vote #: 2245 #1

## 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Pomeroy Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman			Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 6 No 0

Absent Sen Hogue

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice vote was taken on Amendment only.*

Date: Feb 13, 2009

Roll Call Vote #: 2245

# 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Pomeroy Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman			Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 6 No 0

Absent Sen. Hogue

Floor Assignment Sen. Erbele

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2245: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "construction of a tower" and overstrike "to produce energy from wind power has not occurred on the property"

Page 1, overstrike line 11

Page 1, line 12, overstrike "commences" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Page 1, line 19, remove "construction of a tower" and overstrike "to produce energy from wind power"

Page 1, line 20, overstrike "associated with the easement has", remove "not", and overstrike "occurred within five years after the easement is created" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Page 2, line 2, remove "construction of a tower" and overstrike "to produce energy from wind power"

Page 2, line 3, overstrike "has not occurred on the leasehold within five years after the lease commences" and insert immediately thereafter "the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension"

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2245

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 101315

Committee Clerk Signature

*Nancy S. Gerhardt*

Minutes:

Chairman Porter – Open the hearing on SB 2245.

Rep. Myxter – This is a bill sponsored by Senator Jim Pomeroy. It has to do with wind power.

The senate has pretty much changed it.

John Olson – Otter Tail Power Co. – We had proposed the amendment that got onto the bill, first of all came in as a completion of construction. It is a little confusing with the language so that had to be further defined. In essence the amendment you have before you is what was finally adopted. This amendment really requires in wind option agreements, wind easements and wind energy leases that they be terminated unless there is a certificate of site compatibility or conditional use permit issued by the PSC and a transmission interconnection request is in process and not under suspension. That really accomplishes what we want to accomplish, and that is the wind option agreements not be out there looming around forever and ever and ever. This gets those things started. We didn't know what the ramifications would be to the existing wind option agreements or wind agreements out in the field right now. That would solve any of the problems there might have been out in the country side with those wind easements or wind option agreements. That's basically what it does. This will provide certainty to the landowner for development of those wind towers. Questions?

Chairman Porter – Any further testimony in support of SB 2245? Is there any opposition of SB 2245? We will close the hearing on SB 2245.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2245

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 101318

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Lets take out SB 2245.

Rep. Myxter – I move Do Pass.

Chairman Porter – We have a motion for a Do Pass from Rep. Myxter on SB 2245. Is there a

2<sup>nd</sup>?

Rep. Pinkerton – 2<sup>nd</sup>.

Chairman Porter – 2<sup>nd</sup> from Rep. Pinkerton. Discussion? Seeing none the clerk will call the roll on SB 2245.

Yes 12 No 0 Absent 1 Carrier Rep. Kelsh

Date: 3-5-09  
 Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2245**

**House Natural Resources Committee**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Myxter Seconded By Pinkerton

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunskor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal			Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Kel

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2245: Natural Resources Committee (Rep. Porter, Chairman) recommends DO PASS**  
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2245 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2245

# Development of Wind Power

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Good morning Chairman Lyson and the Natural Resources Committee. This bill changes "development" to "construction of a tower".

My wife has a relative who has two wind towers on his land. They were constructed 6 years ago as a part of a 25 year contract. He gets \$3,500 a year plus a 3% cost of living increase each year.

He then signed a contract for additional towers on more land that is in two counties. On this agreement he received \$2,000 as an initial startup but has received nothing since. This contract has been in effect over 2 years and no work has been done. This company has been building towers in other states but has not come back to do anything on these towers. Nor have they given any assurance when they plan to construct on this sight.

Since this time I have heard other reports of contracts that have been signed and no construction has been done for up to 9 years. The companies respond (if at all) that they are "developing" but have not completed that process. This bill replaces "development" with "construction of a tower" within 5 years, thereby hastening the completion and being online. I certainly am in favor of wind towers for energy. However, I don't believe this change would reduce the building of towers. In fact, it could provide more.

I have checked with the Attorney General to determine when the bill would



take effect and that information will be provided.

I will be willing to answer any questions.

Senator Jim Pomeroy



**Pomeroy, Jim R.**

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**From:** Todd Kranda [kranda@kelschlaw.com]  
**Sent:** Monday, February 02, 2009 4:02 PM  
**To:** Pomeroy, Jim R.  
**Cc:** Lyson, Stanley W.; Hogue, David J.; Erbele, Robert S.; Freborg, Layton W.; Schneider, Mac J.; Triplett, Constance T.  
**Subject:** SB 2245 possible amendments to consider by Natural Resources committee

Senator Pomeroy –

I am sending this to you as the prime sponsor of SB 2245. I had mentioned to you following the hearing that was held on SB 2245 in the Natural Resources Committee that I would check to see if there was any possible amendment that might help fix up the bill as currently drafted in order to address the concerns I mentioned regarding an unforeseen delay caused by the lack of wind tower infrastructure or a possible back order with such items as turbines gear boxes etc that may cause a delay despite the good faith effort of the developer. The concern was that there are certain situations that might cause a delay with the complete construction of a tower that are out of the control of the developer which should not lead to the automatic voiding of the agreement.

Please consider either of these two options as possible amendments for SB 2245.

Option one: instead of “construction of a tower”, possibly insert “no development of the potential to produce energy from wind power associated with the easement (lease/option)” has occurred in five years. (FYI - this is SD’s language)

Option two: add to each section of the bill: “Any wind option (easement/lease) may be extended beyond the five year time period by agreement between the parties.”

Thanks and please let me know if you have any questions. Also, I have forwarded a copy of this email to the rest of the Senate Natural Resources Committee members to ask that they consider these possible amendments or anything else that your committee might come up with that addresses the concern expressed when the Natural Resources committee discusses SB 2245.

Todd D. Kranda  
Missouri River Energy Services

c: Chairman Lyson  
Vice Chairman Hogue  
Senator Erbele  
Senator Freborg  
Senator Schneider  
Senator Triplett

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KELSCH KELSCH RUFF & KRANDA

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