

FISCAL NOTE
Requested by Legislative Council
04/12/2017

Amendment to: SB 2313

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$50,000	\$0	\$50,000	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 1 creates a wind energy reclamation program similar to the pipeline reclamation program created by SB 2271 during the 64th Legislative Assembly.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill creates a wind energy restoration and reclamation oversight program. The oversight program has two primary functions: 1) to provide technical education, support, and outreach to property owners on wind property reclamation and 2) to contract with ombudsmen to provide technical support and follow up on wind property issues.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The agriculture commissioner will have expenditures to oversee the wind energy restoration and reclamation oversight program. A separate line item was created in the agriculture commissioner's budget for the 15-17 biennium for the pipeline reclamation program. Expenditures from the additional wind energy line item will primarily be payments to contract ombudsmen to resolve reclamation complaints and development of outreach and educational information and materials.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill does not contain any appropriation language for the new wind energy reclamation program. There is no appropriation for this program in the agriculture commissioner's budget (HB 1009) or any other bill at the time this fiscal note is drafted.

Name: Junkert/Baumiller

Agency: Department of Agriculture

Telephone: 328-4745/328-1960

Date Prepared: 02/20/2017

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2017 SENATE ENERGY AND NATURAL RESOURCES

SB 2313

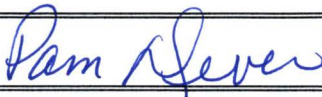
2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2313
2/9/2017
Job # 28144

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to application requirements for certificates for site & corridor compatibility for energy conversion facilities; relating to the creation & duration of wind energy easements, the decommissioning of commercial wind energy conversion facilities, & exclusion area for wind energy conversion facilities.

Minutes:

Attch#1=SenUnruh; Attch#2 & Attch#3=Thomas Reichert ; Attch#4-#5=brought by Thomas Reichert; Attch#6-#7=Carla Artaud; Attch#8=Keith Kessler; Attch#9 – Attch#10=John Olson; Attch#11=Melissa Hochmuth; Attch#12= Robert Harms; Attch#13=Carol Goodman; Attch#14=Jerry Bellilla; Attch#15=Warren Enyart; Attch#16=Randy Christmann;

Roll taken; All committee members present.

Chairwoman Unruh: Let's open SB 2313. We will take testimony in support. I will hand gavel to Vice Chair Kreun since I am the sponsor of SB2313.

Chairwoman Unruh: I am Jessica Unruh, Dis.33. Beulah, ND (see Attch#1) We are known as Coal Country. We are known for all types of energy production. We have nearly 250 wind turbines in my district. We are in the top three wind producers in ND. It is proof that my district sees the value of an all of the above energy policy. We welcome responsible development of these resources. We have seen firsthand for 30 plus years what responsible energy development and production looks like when industry works hand in hand with landowners.

Tom Reichert, Concerned Citizens of Stark County: (5.33) (see Attch#2 and handed out Attch 3- (Seitz and Martis), Attch 4, and Attch 5) I am here in support.

Sen. Armstrong: We have been through this in Stark County. We had one denied and one accepted. Can you explain the human element of this?

Tom: It is very contentious. You have people who participate, and some people very close by who do not participate. I can only speak to Stark Co. There are 159 turbines in the big wind farm. Of the participating landowners, less than 50 % live on their land. You find a lot of landowners who are absentee, and they don't live close or in the wind farm; some not even live in ND. They want it because of the money. People like Jon Wert who live there and they

do not want the intrusion, they have to put up with it. Then you have setbacks of 2000 ft. from a home. Hettinger Co. is more like 1500 ft. from a dwelling. It is very intrusive. Creates tension between people. (17.35)

Sen. Cook: I hear that there are thousands of abandon wind turbines. Do you have supporting evidence of that?

Tom: I do not have it with me. I could send it to you later. In the beginning there was not goo legislation. That is why we are here today.

Vice Chair Kreun: You stated that county commissioners do not have capacity nor will to make informed decisions to protect property rights. Ae they making themselves informed and getting educated?

Tom: I can only speak about Stark County and Hettinger County. I was involved in the process and watched it. Not well informed because when you go to meetings and listen to them. They do not know much about what is happening to them and what it is going to be like. (19.40) He gave an e.g. of Hettinger Co. meeting. Three-hour discussion and not one question from County Commission. They voted and approved it. Not one question! We need to give more direction and responsibility to the PSC to regulate this. Just like the Industrial Commission when it comes to oil and gas. The PSC can educate themselves. (21.15)

Carla Artaud, CCSC member: (see Attch#6) I also have testimony from Lea Dorner, who could not be here today. (see Attch#7). Please look at these amendments. This bill is great.

Keith Kessler, Glen Ullin, ND (27.15) I am a participating landowner in a wind farm. I am a 4th generation cattle rancher and part-time construction worker. I would like to see a greater distance for the setback. 2 times the height of the turbine, should be changed. I think take out participating and put any land owner whether participating or non-participating. (had pictures Attch#8) My son has a house 300 ft. from property line. There is a wind turbine that is 1125 from the front door. When big wind comes, 66 decibels last night, and 50 is allowed. Higher the wind, the greater the noise. I will give you a bit of history during construction and leasing of the land. People say I did not have to sign the lease; but we need the money. We wanted to get together beforehand in the neighborhood, but some were not around. Way before we signed the easement, they came around and told us we that they would come talk to us and we would have input, where towers would go, where roads would go, etc. When it came to it, I went to public meeting and had questions. The mediator said my questions did not pertain to this meeting. Well, to me then why have the public meeting then. We will meet afterwards they said. Then they said not enough time. A major heartburn for me. They changed our fence, and we lost ground and gave to neighbors. Those issues were never addressed. They told us the fence would go back the way it was; well that hasn't happened. I asked at the public meeting about reseeding the grass. They said they would, and that didn't happen. I can go one and on. They sent a letter saying they want to be a good neighbor and partner in all of this. They are not being a good partner. Good neighbors work together. If they want something from you, they call three to four times a day. They have your number. During my son's graduation, I got a call from a neighbor that my cows were out. They took out some pasture fence, so cow got out because they didn't put a temporary fence. This stuff happened five different times. We go back to if the PSC can regulate. We need to get rules and regulation in place with all areas; reclamation, setbacks, construction, etc. This has been a commercial operation since Jan. 2015, and we are still dealing with reclamation issues.

Chairwoman Unruh: Any more in support? Seeing none, we will begin the opposition.

John Olson, NextEra Energy: We oppose the bill. I gave you an outline of our major points. (see Atch#9) I think you would find that this room is 60 decibels without the fan going. There are easy apps and way to figure decibels. This is an important criterion when judging setbacks. Our main concerns turning the rule making authority over to the legislature. You meet every other year. You are not as nimble as an agency that can adjust regulations when needed. There is a lot of opportunity in agencies that are affects by rules, whatever the jurisdiction is or whatever the subject matter may be. Agencies can have expertise at their disposal. They can hire experts, and get comments from many interest groups, stakeholders, and associations, etc. I welcome the citizen input we have had here today. Very important that we hear from them. This is the same opportunity they would be afforded before the PSC in a hearing or rule making venue. We are talking about couple of major areas. These have always been reserved for the PSC. That is on setbacks and decommissioning. The PSC is currently in rulemaking process for decommissioning. Hearing scheduled for Feb. 27, 2017. We are going through that process. I have been representing NextEra for a long time, since they were one of the first wind farms. They tried to listen to landowner concerns and tried to accommodate them. They have invested heavily in ND. The PSC is the proper venue to have these discussions. Some people think we should stop wind development. But others feel if we do not do it, the wind developers will go elsewhere. (42.16) Please look at this comparison I just handed out. (see Atch#10)

Sen. Schaible: Is the standard at 50 decibels or less, correct?

John: I don't know. I am not an expert on the rules.

Melissa Hochmuth, NextEra Energy Resources, Project Director/Wind development: (see Atch#11). We have been in ND for 10 years and capital investment of over \$2.4B dollars. (50.05)

Sen. Armstrong: How many permanent jobs can you start counting with the Brady Farms?

Melissa: About 17.

Sen. Schaible: Do you know the decibel requirements ate are set in our current contracts that we have?

Melissa: PSC currently regulates decibels at a level of 50 decibels at a point 100 ft. from dwelling.

Sen. Schaible: We have heard that some places it is a lot higher. What is recourse for that?

Melissa: We do studies at each location in the beginning of project. We submit that information to PSC. Submit the complaint to PSC to study the concern. If there are any questions, we go out and check the level in question. The PSC is the enforcement venue for certification.

Sen. Schaible: If we have a turbine that is higher than 50, what is the answer you give to that landowner?

Melissa: The PSC would address that. They are best suited for that complaint. Have not been any complaints in that project that I am aware of.

Sen. Cook: Is it possible for the noise level of turbine to increase/ change over time? Say there get out of balance.

Melissa: Maintenance of the turbines, is happening when a landowner says something, like it sounds different. We go check then.

Sen. Cook: What do the full-time employees do in ND?

Melissa: Most are wind technicians. Some are site managers, and some business managers. 80% of our employees are from ND. 75 live in ND.

Sen. Cook: Where does the \$3M property tax come from.

Melissa: A property tax that depends on the age of the wind farm. A property tax that is imposed based on the capacity of the generation of the project.

Robert Harms, Tradewind Energy, Inc.: (see Attch#12). We are opposed to bill. He also handed testimony (see Attch#13) from Carol Goodman, Cavalier County. (1.00.36)

Sen. Cook: What happened about townships, did not hear about them? Do they have authority.

Bob: Not sure. Williams County we had township officers that were involved in the public discussion.

Chairwoman Unruh: Let's take 5-minute break. (1.02-1.09) Back to order committee.

Jerry Bellikka, Director of Government Relations, USA and Canada for Capital Power: (see Attch#14). If this passes we may have to go elsewhere. We want to be in ND. ND is a great fit. Please No Not Pass. This is not a coal versus wind issue. We use both. We see fitting with ND traditional coal generation and mix with wind and fit nicely in grid. (1.14.50)

Sen. Armstrong: It seems that economic impact is the reason that we should not reasonably regulate at the legislative level. I argue that our other two energy producing, whether coal or oil, create substantially more economic impact in ND and we spend many, many hours in these rooms talking about reasonable regulation. I understand that the PSC is the person to make the rules. But I do not see why the legislature does not have a place in making broad regulatory decisions about ND energy. I have trouble with that.

Jerry: I wouldn't argue that the legislature does not have a role in regulation. The key is 'reasonable' regulation. I read 5 times the heights, would sterilize lots of the land between neighbors. Government has a role in broad regulation. You are getting into what the PSC already does in this bill. The setbacks proposed are unreasonable.

Sen. Roers: Can you tell us what is 5 times that height?

Jerry: Say 500 feet. 2500 feet. So if you own a section of land, and you do not want the turbine in the middle of your land, you are out of luck.

Warren Enyart, Finley, ND, M-Power, LLC & Rolette Power Development (1.26.59-1.30) (see Attch#15). Please do not pass.

Tom Carlson: EDF Renewable Energy: (1.26.21-1.28.00) We are operator and developer of a number of renewable projects. We are currently developing our first project our Mira court Wind which is 150 megawatts. McIntosh and Dickie Counties. It is projected to contribute over \$1M in local community's tax revenue plus payments to landowners. It is our first in ND, we are very happy to contribute to the tax base and we want to be here long term. We want to be good neighbors. We are opposed to SB 2313. We very much take the concerns of the issues and work with citizen and PSC. The PSC is the venue for getting the rules right. The PSC has more time to deal with specifics. EDF has over 30 years of experience. We have invested over \$1B in the US market.

Chairwoman Unruh: What does EDF stand for?

Tom: Electricity De France. Headquarters in San Diego, CA. I am based in MN

Chairwoman Unruh: Do you see an approach that we as a committee that would be good in your view as a developer?

Tom: Great question. We have not had a lot of time to go through this bill. I will at look at and talk to fellow developers. If we can come together on this legislative venue, that would be great. The PSC are looking at these on Feb. 27, and we are submitting concerns to the PSC ourselves. (1.31.52)

Shane Goettle, MDU Resources/NextEra: (1.32.00-133.48) We oppose the bill because we prefer the flexibility that the PSC has on siting. There are other things when dealing with setback that have not been mentioned here today. Topographies and other barriers have not been discussed. The PSC has a better position to regulate and adjust as the conditions warrant. The PSC can engage in ongoing discussion, since the legislature meets every two years. It was suggested that a third party come into the process to provide the bond. MDU would resist this. Our balance sheet and financial standing, including the partners that we work with, are sufficient to stand behind any project. It is unclear what this bill would have on existing projects and the repowering of these projects.

Chairwoman Unruh: Would MDU qualify for the A rating that is in this bill?

Shane: I don't know off hand. Combination of companies to meet these criteria.

Sen. Roers: Can you expand on repowering?

Shane: We have not experience a whole lot of that yet in ND. Our projects are still new. The footprint is there, but you may need to replace or refurbishing. Making more of that footprint as technologies come into picture. I am not the expert.

Sen. Armstrong: Wind is renewable. When we talk about bonds, is the solvency of the company. If not a full partied bond, how do we create a situation that protects 25 years down the road? What if company no longer exists? It protects on the business side.

Shane: Not all companies are created equal.

Sen. Armstrong: If the company can't pay for it, we will have to.

Jeremy Rham, Ottertail Power Co.: Here are opposed. We believe that the PSC already has administrative rules to leverage and administer. We do not believe sections 2 and 3 are needed. PSC has done an outstanding job.

David Day: 5th generation rancher and live in southern Burleigh County: I am a participating landowner and will be in a wind farm. I would like to address the township level. I have been a township commissioner over 20 years. We have done diligence in investigating and got questions answered before the project was passed. One neighbor did not want to participate. We have protected all the rights of our landowners. Even the non-participants have said the setbacks are O.K. We have two townships; Morton and Calferd. The county would like the townships to take care of all the permitting process. We will oversee and make sure it is right. But they prefer to have all the local townships do their own work and take care of wind farms themselves. Emmons County has on their own and they take care of it as that level. The 5 years or 30 days, is already in our lease. We have a very extensive lease. One of our landowners was a land agent for Basin Electric for many years. He said he had never seen such a long lease and so conscience. (1.41.49)

Sen. Cook: Could you share a copy of the lease. Is the wind farm controversial in the two townships?

David: You have some that do not want or look at it. We are 25 miles from Bismarck.

Sen. Roers: How many people are participating in this wind farm?

David: 18-19 participating landowner. We have some pretty big landowners. 3500 acres at a time. We have a big footprint. Most all in that footprint are signed up. Some are so rich; they don't need the money. A big boom for our school district. 80 turbines put \$700 plus into the school district that really needs the money. (1.43.43)

Damon Mills: I am a life time Burleigh County landowner and I oppose this bill. Wind farms pit neighbor against neighbor.

Chairwoman Unruh: Any further against SB 2313? Any agencies here?

Randy Christmann: PSC: (see Atch#16) (1.45.00-1.56.44) Here to provide information for your committee.

some parts I like in the bill, some I do not. Went on to explain. Not so easy to change our rules.

Sen. Armstrong: In your administrative rules, do they apply to existing or future ones?

Randy: Some of each, but we make clear which are which. (Continues to explain testimony).

Sen. Armstrong: I cannot believe there is not rule for setbacks. Counties do not feel they get enough direction from the PSC. It goes around in a circle because PSC then says they do not get enough direction from us. Is there a purpose for us to develop a flow chart of responsibility as to who handles what in these situations? Who is in charge when we had the gentlemen saying the company changed his fence line. Who is in charge of that activity?

Randy: The flow chart is not necessary; we do a good job in the constraints we have. I do not see wind farms being approved without local support. If we choose to approve one that did not have local support, they can appeal if they want. Never comes up because of tax revenue coming in.

Sen. Armstrong: Say there is a fence down and cows get out, or changing fence. Who is in charge?

Randy: If we can connect it to our siting approval or certification authority, and landowner brought a complaint to us, it is PSC. If not, they can take to the court.

Chairwoman Unruh: We heard a lot of concerns about decibel levels. Folks did not feel they had a place to give their concerns. Is the court system the only place to go for them?

Randy: Decibels levels and proving who is causing the noise problem, is like having to prove who you got your cold from. You download an App on I pad and go outside. IT will be bouncing all over and it will be under 40 decibels. At times it will be 60 – 70 decibels. Birds chirping, it may be 80-90 decibels. From 40 to 50 decibels is not a 20% increase, it is doubling the noise. Every 10 decibels are doubling. Information I did not know before I was in the PSC.

Chairwoman Unruh: Is there a specific process for the people to go through with the PSC?

Randy: People can give a formal complaint to us. Often they are just worked out. Companies get due process. May get a formal hearing. Our decision is appealable to district court.

Sen. Armstrong: What is the burden of proof at those hearings? For the decibel levels.

Randy: I do not know. Never been one.

Sen. Schaible :(2.05.26) The depth of the reclamation. Is that for new farms in the future?

Randy: For the cables, etc. The bill takes it to 4 feet. We are currently at 2 feet, and we do not propose to change that. Only projects that are sited after July 1, 2017.

Sen. Schaible: Why?

Randy: They were built under a set of rules and there is a lot of concrete.

Sen. Schaible : So we have a reclamation fund?

Randy: What the current rules are is a requirement that after the operation is in place for 10 years, then we may require financial assurances the first wind farms are just getting to that point. Our goal is for new facilities, to change that so that the financial assurances would be in place before beginning construction. Very important.

Sen. Roers: This setback that you recommended, puts it at 1400 feet from home or business. Some suggest that it should be 2400 or 2500 ft., basically ½ mile. Is that a bit excessive?

Randy:(2.07.05) I am not speaking on behalf of PSC when I answer this, but myself. I would not like something twice the size of the capital that moves all day and flashes lights all night, 1400 feet from my ranch house. I personally think that is a bit short. It not that you own a section of land and you are not exactly in the middle, that at a ½ miles you cannot get one built. It means that your neighbor might have to share in some of the revenues from looking at it and having the value of their property diminished. They can always sign off. We are planning on changing that in our rules package.

Chairwoman Unruh: Any more agencies? Hearing on SB 1213 is closed.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2313
2/10/2017
Job #28213

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Committee work Atch#1=Sen Schaible

Chairwoman Unruh: Let's take up SB 2313. The regulator bill. The PSC had some good testimony guiding us in right direction. Who would like to work on amendments?

Sen. Cook: Some things in this bill need to come out. If Sen. Armstrong volunteers with me, I will attempt.

Sen. Armstrong: I would like to dive into the bonding part of this bill. And the processes they use when people have a complaint. What is the burden of proof? I will help Sen. Cook.

Chairwoman Unruh: I did not hear of any process for complaints and I think we should look into that. If committee members have questions or concerns, please ask these two.

Sen. Armstrong: My intent would be to have more directive language towards the PSC to develop a complaint process. Not need to reinvent the wheel.

Sen. Roers: Please keep in mind the landowner rights. I felt like they were overlooked.

Chairwoman Unruh: I agree.

Sen. Schaible: I agree with some of that. I do not think we need to micro manage what PSC does. But we need to set some minimum guidelines that they can expand one with their rules. They struggle with this because we give them no guidelines. I passed out a sheet of what other states are doing. (see Atch#1) We need to create a minimum standard.

Sen. Roers: We heard yesterday some measured from the property line and center of the road; both. We do not need both. Be consistent with whatever road or property line.

Sen. Cook: I ask Sen. Schaible, on a township road or a county road, the property line is the center of the road?

Sen. Schaible: Yes.

Chairwoman Unruh: The right of way can extend up to 150 feet outside of the center of the roadway. We need to watch that language.

Sen. Schaible: We have heard, even under rules now, fences were moved and overlapping or trespass, etc. We need standards. And yes, it will cause a larger footprint or less access. You are not going to fix the decibel issues after they are built. If we do minimum standards, then they will have some teeth to say what is what and gives guidance.

Sen. Armstrong: I found it so interesting that they do not have a policy on setbacks. That should not be county by county decision. I struggle with trespass zoning. Property rights need to be equal. There is a balance that need to be struck. (8.13)

Chairwoman Unruh: Thank you. Discussion is closed.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB2313
2/16/2017
28480

- Subcommittee
 Conference Committee

Committee Clerk Signature

Pam Dever

Explanation or reason for introduction of bill/resolution: Relating to application requirements for certificates for site and corridor compatibility for energy conversion facilities; relating to the creation and duration of wind energy easements, the decommissioning of commercial wind energy conversion facilities =, and exclusion area for wind energy conversion facilities.

Minutes:

Committee work

Chairwoman Unruh: Let's look at SB2313:

Sen. Armstrong: In talking about the amendments, it seems that the original bill no longer exists. Talked about the amendments. Century Code remains the same as it is now. Section 2, we are changing 4.01 is the Ag Dept. chapter. In 1, 2, and 4 where they say director, it should say, Commissioner. Creating the same Ombudsman program that we have for pipelines and allowing the Ag Commissioner to do the same thing. The Ag Commissioner has a program that is working very well for pipelines. The Section 3 amendment I would like Chairwoman Unruh to explain.

Chairwoman Unruh: The reporting requirement that was in 2314. It removes the Sunset Clause that was in there.

Sen. Armstrong: Page 5 is the big deal. This is the change to current policy. One and 1/10 times the height of the turbine from a non-participating landowner, and 3 times the height of a turbine from any quarter section of land containing an opposed residence must be considered. This is the same distance we get from a property line for a highway or county road, which is 1.1, so if it falls down, it won't fall on the other property. The 3 times of a quarter section of occupied residence is just protection for landowner that are non-participating. (3.01) Section 4, is a change, would apply until after Dec 31, 2017. Non is retroactive, only going forward.

Sen. Roers: Can you expand the 3 times the height of the turbine if from any quarter. What does that mean.

Sen. Armstrong: If there is a home on a quarter section of land where ever the boundary of that quarter section is compared to that turbine, you need to be 3 times away.

Sen. Roers: Not necessarily 1500 feet from the house. It is from the quarter section to which the house is located on.?

Sen. Armstrong: Yes, and that is the change. It is the property line. (4.00) Not the residence.

Sen. Cook: If the home is located on the corner of the quarter section, that if 3 times is the standard, that the turbine could get built closer to the home under this bill, then what it was before? Is it not 1400 feet? If 450 feet is height of turbine, that would be 1350 feet.

Chairwoman Unruh: More than likely the home would be offset from the property line at least a little way. It is a valid point.

Sen. Armstrong: I have spent lots of time in rural ND. I can't think of a situation where a home is directly on a property line. Technically, that is correct.

Chairwoman Unruh: I think we may have a problem on section 2, strikes language that we should leave in Century Code, sub 1 of section 2 needs to be restored instead of stricken.

Sen. Armstrong: We are removing anything from Code, just removing it from the bill.

Chairwoman Unruh: I need to read. Morgan will look at. Section 4 is where we need to look at. With the new language there. We have experts in the room. Can anyone give us feedback on the new language?

John Olson: I represent NextEra: Melissa Hochmuth is here; an expert on sound, Robert O'Neil; and expert on Health and Safety, Dr. Chris Olson.

Melissa: (9.25-11.50) Project Director for NextEra Energy Resources: I deal with the wind project in ND. We appreciate the opportunity to work with you all and the amendments do resolve with our concerns. A bit more work to be done on the section you are discussing now. We have not had a lot of time to study to see what the setback 1.1 times the height of the turbine and then from quarter section of the residence on 3 times the height of the turbine. If that does apply to a home that is of a non-participating landowner. If the interpretation is non-participating, that is good. But we would like to analyze that concept on project that we have planned. An exclusion of any property line of 3 time the height of the turbine does in many cases restrict out ability to build projects. Causes the project to be much larger, if it can be built at all. 3 times a setback of the turbine height from the property line, really offers no greater health and safety benefit for the landowners. It takes away local control from communities that want a wind farm. This bill would trump what the state says.

Sen. Armstrong: This should all apply to non-participating landowners. With 100% accuracy, that my non-participating landowner in Stark County would be much more in support of this bill then in any current local control. I spend a lot of time driving through the Brady Wind Farm. I know lots of people who are participating and non-participating landowners.

Sen. Roers : (23.46) How long would it take you to do your study.

Melissa: We have an analyst group that look at it. We could push to get information by tomorrow.

Vice Chair Kreun : There have been concerns of people that have health issues, the flicker? Is that distance, the 1500 feet, a proper distance? You have people with epilepsy.

Dr. Chris Olson: I live outside of Toronto, Canada: I hold a PhD in environmental Health and University Professor and practicing for 20 years. The flicker is not a health based issue. It is a nuisance or annoyance issue. The PSC answers to this. We have studied would the flicker cause epileptic seizures. The wind turbines do not spin fast enough that the shadow that is cast, is more of a matter of lazy and does not trigger seizures.

Sen. Roers: Can you address the light flashing? I heard that there may be a new system that the light goes off but if there is a plane in the area, it goes on. Any comment. I heard it is implemented now, but also heard it is not.

Dr. Olson: I have heard of it, but Melissa is best to answer that.

Chairwoman Unruh: I have heard that topic.

Dr. Olson: You have seen the red lights flashing when you drive down the highway. Whether you have a 1.1 times setback or 3 times from property line, it will not change the individuals experience. You see then for quite a distance. Not affect the visual of that.

Chairwoman Unruh: I appreciate the experts in the room. We need to remember the other group of folk that were here for the hearing, that are not in this room today. Their voices need to be remembered and heard as well. I have a correction. Section 2 has been removed from the title, that is why it was overstricken in the rest of the bill.

Sen. Armstrong: On page 5, line 12, it should say "of a non-participating landowner". If you are participating, you are already dealing with someone. The protections are part of your lease agreement. (21.33)

Vice Chair Kreun: If we are looking at 3 time the height of the turbine, from a quarter section, is that the difficult portion.

Dr. Olson: That is the exact problem that we have her with the bill. Some wind developers need to look at the projects and determine what the distances should be. Sen. Armstrong may be correct.

Vice Chair Kreun: Is there a defining distance that makes this work better or not?

Dr. Olson: We would prefer that the PSC deal with this by rule and get input from landowners. If we were to recommend would be a distance from the property line that we could all live with.

Vice Chair Kreun: (26.05) A lot of the non-participating people want some assurances as well. Where can that be? When they buy a piece of property, they bought under one condition and then later the wind farm comes in and the neighbor comes in with another idea of what they want to do with it.

Chairwoman Unruh: I have a question for Dr. Olson. If our language causes a problem with our new language, would it not be the option to try and get that lease so that the people would be participating. Would it not provide a tool in your tool box?

Dr. Olson: A good point. Wind development companies have always tried to work with landowner and non-participating owners, too. We are not here to dismiss their concerns. The 3 times is pretty arbitrary at this point and may well affect the ability of wind development companies to put farms in.

Sen. Cook: (29.20) Why is 3 times the height of the turbine a problem. I am correct when I say that the current policy is 1400 feet from a residence. They could get bigger. When a wind developer gets permit rights for 50 or 100 megawatt farm, have they ever had trouble fitting it all? Have they come back and had to build a smaller wind farm?

Melissa: If the house is near the property line of a quarter section, then the 1400 and 3 times, is very similar distance. If the home is one the other side of the quarter section, then a setback of 3 time the opposite side then, would extend that an additional 1500 feet into that neighboring landowner's property.

Sen. Armstrong: That was the point.

Chairwoman Unruh: We have some amendments before us. We will not be accepting any more testimony before the podium.

Sen. Armstrong: Walked through the changes again. (32.36-33.29)

Sen. Roers: I ask we vote in the morning.

Sen. Cook: I asked David Day for a copy of this lease as an official record. This is not his but a generic lease that is offered to everybody. Clear for the record, that this is irrelevant.

Sen. Armstrong: The people I talked to are upset what is no longer in the bill. Just want committee to know that.

Sen. Roers: Can I expand on Sen. Armstrong comments. Then why did you use this language? To the quarter section. It creates the ambiguous area. The house could be placed on the top side, or bottom. Why don't we address the house?

Sen. Armstrong: In most cases the protection would be greater with this as the section land versus the residence. We could go 5 times where the house is. Most houses are off set inside their property lines.

Chairwoman Unruh: (36.10) The landowner I talked to said the most important part of this bill was the setback from the non-participating landowner. We have taken some of the other piece out of this, we also given on lines 10 and 11, reduced to 1.1 times and given a bit of what the landowners were requesting with the 3 times the offset from the property lines. If we remove the quarter section with the occupied residence, we will be giving them absolutely nothing that they asked for. Then we may not even pass this bill. (37.23)

Sen. Oban: I am wondering, if we make this many accommodations for non-participating landowners, in any other development. I know that wind has much different than oil or coal. Do we make these kinds of accommodation for non-participating who are impacted in all energy development?

Sen. Armstrong: There is a setback in oil and gas. I will find the Code for you.

Sen. Oban: If you can let me know if that is Code or administrative rules. Thank you.

Chairwoman Unruh: We are closed. We have heavy lifting in the morning.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB2313
2/17/2017
Job# 28505

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to application requirements for certificates for site and corridor compatibility for energy conversion facilities; relating to the creation and duration of wind energy easements, the decommissioning of commercial wind energy conversion facilities, and exclusion areas for wind energy conversion facilities.

Minutes:

Committee work Atch#1,#2=Sen Roers,

Chairwoman Unruh: Look at SB 2313.

Sen. Roers: I had an amendment drafted on some of the things we have been talking about. I did some research last night to come up with this. (see Atch #1, #2,) I drove to a farm north of New Salem. I stepped off every 100 feet until I got to 1500 feet. At 1000 feet, there is not much sound. As you stand at the base of the tower, the sound is like a grain bin fan, at 1500 feet you could not hear anything. I think about the landowner's position, I think they have rights and should be heard. The map I gave you, this does not affect any quarter sections of land. I think it the 1500 feet is excessive because you could not hear anything at 1500 feet. I propose that we go back to 3 times the height of the turbine from the residence of a non-participating landowner. On line 15, give a non-participating landowner the opportunity to go back to the commissions and ask for additional consideration, if they feel they are not heard. (2.55)

Sen. Armstrong: I think this is what they are doing right now. Except it is 1400 feet from there. They already have the ability to go before the PSC. The people I represent would say this amendment does not do anything. (3.45)

Sen. Roers: This does not change much from what we have in place now, but they assessment process that is today takes 1500 feet from the entire section. So if you look at a home on one corner of the section, it literally could be a 4000-foot dimension in the other direction. (4.37)

Sen. Armstrong: I understand the amendment but can't support it. My people say the property line is significant.

Chairwoman Unruh: I talked to landowner groups. They were upset the way I drafted the bill. They worried about the property line piece was their number one concern. I will support the amendment from yesterday.

Sen. Oban: Sen. Armstrong did get me the Century Code with regard to setbacks. Nowhere in Code did it reference anything other than an occupied dwelling. Does not mention anything about a non-participating neighbor. I am all for protections being in place for as many people as possible, but not any more or less stringent on one energy source than another. Even though I know the impacts are different. That is why I will be supporting Sen. Roers amendment. (6.23)

Sen. Armstrong: This is an apple and orange comparison. Subsurface rights have equal protection that have been litigated 200 years of case law. Right of capture. You are limited to where you can go to capture the minerals you have a legal right to mine. Wind is not a mineral.

Sen. Oban: It is a resource, and the resource that we are developing.

Sen. Schaible: We only looked at amendments yesterday. In the o5 version amendment yesterday we were talking quarter section, right. I support the 05 version. You have to do something before its built. These non-participating need to be looked at before things are done.

Sen. Roers: If I used section, that was incorrect. These are all quarter sections I was talking about. The affected are quarter sections.

Sen. Roers: I move these amendments. **Sen. Oban:** I second.

Chairwoman Unruh: 17. 0390.03006 amendment to SB2313. Take the roll:

YES 3 NO 4 -0- absent

Motion Failed

Sen. Armstrong: I move the 17. 0390.03005 amendment as further amended.

Sen. Schaible: I second.

Chairwoman Unruh: Any discussion? Take the role. YES 5 NO 2 -0-absent

Amendment passes.

Chairwoman Unruh: We have SB2313 as amended.

Sen. Armstrong: I move a do pass as amended. **Vice Chair Kreun:** I second.

Chairwoman Unruh: Any discussion? Call the roll: YES 5 NO 2 -0-absent

SB 2313 PASSED as amended

Chairwoman Unruh will carry the bill.

February 16, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

Page 1, line 1, replace "subdivision to subsection 1 of section 49-22-08" with "section to chapter 4-01"

Page 1, line 2, remove "application requirements for certificates of site and"

Page 1, line 3, replace "corridor compatibility for energy conversion facilities; and" with "a wind energy restoration and reclamation oversight program;"

Page 1, line 4, replace "49-02-27" with "49-02-34"

Page 1, line 5, remove "the decommissioning of commercial wind energy"

Page 1, line 6, replace "conversion facilities" with "annual reports on meeting renewable and recycled energy objectives"

Page 1, line 6, after the second "facilities" insert "; and to provide for application"

Page 1, after line 7 insert:

"**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Wind energy restoration and reclamation oversight program.

1. The agriculture commissioner shall establish a program that provides technical assistance and support to property owners on wind property restoration and followup support to property owners on wind property reclamation.
2. The agriculture commissioner may contract for ombudsmen for purposes of being a resource for technical assistance and followup on wind property issues. The ombudsmen may not investigate or assist in any easement negotiations.
3. The program may provide technical education, support, and outreach on wind-related matters in coordination with other entities.
4. The agriculture commissioner may contract with local individuals, deemed trustworthy by property owners, to be ombudsmen. The agriculture commissioner is not subject to chapter 54-44.4 when contracting for the services of ombudsmen."

Page 1, line 14, replace "decommissioning" with "full reclamation"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 31

Page 3, replace lines 1 through 13 with:

"**SECTION 3. AMENDMENT.** Section 49-02-34 of the North Dakota Century Code is amended and reenacted as follows:

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency."

Page 3, line 29, remove "The following geographical areas must be excluded in the consideration of a site for a"

Page 3, remove line 30

Page 3, line 31, remove "a."

Page 3, line 31, remove the underscored colon

Page 4, remove lines 1 through 9

Page 4, line 10, replace "(6) Two" with "one and one-tenth"

Page 4, line 11, after "landowner" insert "and three times the height of the turbine from an occupied residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area"

Page 4, line 15 after the underscored period insert "If a nonparticipating landowner indicates the setback may not be sufficient, the commission shall consider whether the setback is sufficient and may in the issuance of a certificate of site compatibility direct the setback be revised."

Page 4, replace lines 18 through 25 with:

"SECTION 5. APPLICATION. Section 4 of this Act applies only to projects that have applied for a certificate of site compatibility after December 31, 2017."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

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CA
2/17/17
2 of 2

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

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Renumber accordingly

Date: 2/17/17
 Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2313**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17. 0390.0300b

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Roers Seconded By Sen. Oban

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh		/	Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong		/			
Sen. Dwight Cook		/			
Sen. Jim Roers	/				
Sen. Don Schaible		/			

Total (Yes) 3 No 4

Absent 0-

Floor Assignment _____

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

failed

Date: 2/17/17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES SB 2313
BILL/RESOLUTION NO.

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0039.0300T

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider further amend

Motion Made By Sen Armstrong Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun		/			
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers		/			
Sen. Don Schaible	/				

Total (Yes) 5 No 2

Absent -0-

Floor Assignment _____

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

amend. passes

Date: 2/17/17
 Roll Call Vote #: 3

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2313**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen Armstrong Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban		/
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers		/			
Sen. Don Schaible	/				

Total (Yes) 5 No 2

Absent -0-

Floor Assignment Sen. Unruh

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

passes as amended

REPORT OF STANDING COMMITTEE

SB 2313: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2313 was placed on the Sixth order on the calendar.

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Re-number accordingly

2017 HOUSE ENERGY AND NATURAL RESOURCES

SB 2313

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2313

3/9/2017

28989

Subcommittee

Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to a wind energy restoration and reclamation oversight; relating to the creation and duration of wind energy easements, annual reports on meeting renewable and recycle energy objectives, and exclusion areas for wind energy conversion facilities; and to provide for application

Minutes:

Attachment #1- 8

Chairman Porter: Called the committee to order on SB 2313 and the clerk read the short title.

Sen. Jessica Unruh: presented Attachment #1.

5:00

We've heard from people that had leases as well as from people who did not have leases and lived within the wind farm. After many conversations the committee came up with this 3x's the height of the wind turbine from the quarter section. If you live in the middle and haven't signed off on a project like this, it will impact your daily life. If you're driving up and down the field in your combine, it's probably going to make you mad. It doesn't actually have as big of an impact as when you're in your house and going about your daily life. We felt it was more important to have a larger setback from those residences and parcels of property where you do more of your daily routine. Both sides were upset by the time we finished the bill. I think we came up with a happy medium. Since we had both sides upset, I think we have good policy here.

Rep. Heinert: Is there a definition in code of the height of the turbine?

Sen. Unruh: We had some discussion on whether it should include the height of the blades. I believe the way it is used here and it is used in the admin code and does not include the height of the blades with the height of the turbine. I think it's simply the post.

Rep. Heinert: Do you know the height of the turbine and with the blade at the highest point?

Sen. Unruh: That varies with different sizes of turbines. Some larger turbines are in the 400' tall range. When you add that blade on it can add up to 150'.

Rep. Keiser: I like your idea. It was introduced similarly 2 sessions ago. That bill also included a small partial payment to those adjacent landowners. The reality is if I'm the landowner, that establishes the relationship for a wind tower farm, it's conceivable that I might move to AZ and leave the problem for all my neighbors. It does impact the adjacent landowners lives. Has there been any discussion for those people that live with every day?

Unruh: That wasn't something that was discussed in this bill. It was something I thought about producing as legislation this session. It's a valid point and discussion for us to be having on whether or not the entire area that's impacted within the designated farm area, whether those landowners should have leases with the companies. Valid point and good discussion for us to be having.

Rep. Roers Jones: It's hard for me to visualize this especially the 3x's the height of the turbine. It seems like this could have a very limiting effect on a person who wants to contract with one of these wind power companies where on their own property they have the right to place wind turbines. Would it be better to have the wind companies dealing with the nonparticipating landowners in some for to compensate them for any inconvenience they might face rather than legislating where to put these wind towers.

Sen. Unruh: We do have in code specific setbacks for other types of energy from occupied residences. So it is not out of line or purview of what the legislature normally decides for an energy industry to decide what those setbacks should be from occupied residences. We felt very strongly the House and Senate committees have a duty to take a look at this and examine it. Another point to make, currently the PSC has not approve the siting of a tower within 1400 feet of an occupied residence up to this point. That has not been codified, not administrative code, not in the Century Code. I think it should be more than just a conversation between the company and a landowner who is not participating, because we've heard those conversations are not working. If someone doesn't have a lease, even some that do have leases with wind companies, have made suggestions on where they would like placed. Sometimes projects are moving so fast, because there's federal credits and tax advantages they're trying to take advantage of. Projects are moving so quickly even after landowners have signed leases. I think providing a protection in the ND Century Code specifically for these nonparticipating landowners is very important.

Chairman Porter: Further questions? One of the concerns that comes up as these projects get closer to higher density areas where land values are not necessarily appraised at ag prices because they're too close to major cities, then without a setback or higher setback restriction you can severally diminish the ability of that landowner to sell their property for further development, or sell off into a mini ranch theory. Inside of your discussions, does this fix some of that. Chairman Porter presented Attachment #2.

Sen. Unruh: I believe that it does. I'm not sure this does enough. I think it does have an impact on adjacent landowners.

15:30

Randy Christmann, Chairman of PSC. I am here kind of neutrally although there's one section I'm not thrilled about and most I'm happy with. Section 1 is not urgent. Section 2, as a thought. It doesn't apply to the PSC roll in these. When it comes to wind easements ending, it would end at the end of the easement unless development to produce energy from wind power has occurred. I would recommend the committee give guidance on what does development to produce power mean. Does it mean they are in production, does it mean they've pounded in a stake, or kick over a shovel of dirt? Section 3 I do think is good. We set up these reports. I'm in favor of Section 3. Sen. Unruh said wisely, Section 4 is the heart of the bill and why so many are concerned. This is part of the wind farm hearings in my 4 years that are becoming more and more contentious. Some wind farm projects have come to us and have no objections because they have spread the wealth around. And the neighbors who don't have wind turbines, also seem to be happy with it. Some get their locations and we hear strong objections. There's nothing in administrative rules, except a tradition, that the commission allowed any turbines within 1400' of existing residences. The developers have recognized that. There's a 1.1 x's the height away from a state or federal highway right of way. Same from a railroad right of way, from a 115 or higher transmission line, then 1.1 x's the height plus 75' from the center line of county and township roads. Those are in place. When we do that its 1.1 x's times the height to the top of the blade. Hub height is about 260' high, about the same as the capital. The tip height is around 450', that's what we're talking about when we say 1.1 x's the height. My understanding of setbacks from residences, it's not a locked in law thing where they can't build that close. These setbacks would make those participating landowners. It'd be a matter of spreading the wealth. I do want to emphasize to you, if you make changes, we've discussed these occupied residences for years. We have one complaining because there's one too close to their occupied residence. Well it wasn't occupied when we built it. If you go south as a snow bird, is your place unoccupied now if you're gone a few months? I wouldn't think so. If you buy a farmstead and going to build your dream home out there but do it from your existing residence in town, is that an occupied residence? If you're going to pass this bill, explore a definition of an occupied residence. Line 16 -17, when you talk about variances, neighboring landowners can give a variance on these, this would suggest it's the other neighbor with the wind rights and needs more fine tuning if you choose to pass the bill.

Chairman Porter: 1.1 times on the tip of the blade, is that enforce on section lines, even if it's not an improved section line?

Christmann: I believe so, that it would be 1.1 times.

Rep. Heinert: How is this going to affect local county policy and/or zoning board? Policy that is established when policies in their jurisdictions?

Christmann: It wouldn't apply to things already developed. It would be another factor they'd take into consideration if built into law so they just couldn't build any closer to that so the locals couldn't approve anything less than that.

Rep. Heinert: to be totally, if a county established a rule that was more footage than what this would call for, this would supersede the counties?

Christmann: We usually do not supersede the counties. I'm speaking without an attorney here. I do believe the counties can have zoning requirements that are stricter than law. An example, Stark County has a 2000' requirement from a residence. When we did siting hearings in Stark we would not have allowed one closer than 2000'.

Chairman Porter: I think the Stark County example is right on but the county has to have set up and established a zoning ordinances inside of the county or inside of the townships. I think townships have created zoning boards down in the SE part of the state, with zoning laws at the township level stricter than the state of ND. When they're sited, they are adhered to.

Rep. Keiser: Walk us through current rule with Section 4 in terms of setback heights. What's the current rule, what's the difference and similarities?

Christmann: Top of the tip of the blade, current rule 1.1 times the height from the right of way of federal or state highway, 1.1 times height plus 75' from the center line of a county or township maintained roadway; 1.1 times the height from a railroad right of way; 1.1 times the height from a 115 or higher kv transmission line; 1.1 times the height of the turbine from the property line of a nonparticipating land owner.

Rep. Keiser: (mic was not on) that's the rule. What would this do to change that?

Christmann: My understanding is it would change the last one and if the last one were nonparticipating landowner with no residence, it wouldn't change anything. However, if they had a residence on that quarter of land, it would have to be 3 times the height from a property line.

Rep. Roers Jones: Your process you are using. You're notifying residents in what surrounding area when siting a turbine?

Christmann: We put a notification in county newspapers. We would have no way to know who all the landowners are to notify people individually. It's a public notice requirement.

Rep. Roers Jones: How specific is the notice as to the areas being considered for siting?

Christmann: There's a map. People have to watch them pretty closely. Typically, there's been a zoning meeting, they've heard from neighbors, developers out there acquiring easements.

Rep. Roers Jones: When you have someone coming to a siting hearing objecting to the location, how often are you able to resolve that in favor of those nonparticipating landowners? Generally what kind of setbacks? Sen. Unruh said generally the PSC has not approved siting within 1400' of an occupied residence but that's not codified right now. How often do you have resolutions would you say where the nonparticipating people are satisfied versus dissatisfied?

Christmann. In most cases the nonparticipants go away dissatisfied. There have been some where there's no complaints, where neighboring landowners have been taken care of. While

they may not be in the site, they clearly seem to be participating for some reason. We've had cases where they're surrounded and they're not happy, but the law is what it is.

Rep. Roers Jones: Are you noticing in the process this is becoming more the case that developers are working with nonparticipating or is it just certain developers.

Christmann: Just certain developers. Objections are getting stronger. People are becoming more and more aware.

Rep. Roers Jones: My concern is the process and limitations put on people's ability to contract but the situation with occupied residence and what is occupied versus unoccupied. Have you had a lot of people coming to the nuisance and them complaining about it? The tower is already there and then they come after the fact and expecting compensation.

Christmann: We've had many where people have said I wanted to develop there. There's nothing we can do about that. There's one where the turbine is way too close to their home, looked on the map and sure enough it is and wondered how that happened. So far the investigation is there was no home there when it was built. To prevent more, a clearer definition would be beneficial.

Chairman Porter: questions? Further support?

35:57

Durant Schiermeister: Presented Attachment 3.

Chairman Porter: questions? Mr. Schiermeister, so we're clear, your area is being looked at and land people are out looking to procure easements to put a wind farm in place. Are you a partial participant, non-participant, or participant on your other parcels of land? Inside of the proposed wind farm, what's the closest that a wind tower would be to your residence?

Schiermeister: Nonparticant. I don't have the exact facts on that, approximately 4 miles?

Chairman Porter: 4 miles. So your main position is a line of sight concern, not necessarily your residence?

Schiermeister: Right. We live in a very scenic part of ND, the Louis and Clark Trail. These towers will be along there. The resale value – who's going to want to live along this corridor of wind towers? Our property is high in elevation, our ranch, and it'll be wind towers all in sight.

Chairman Porter: further testimony in support? Opposition to 2213?

42:00

Natalie Pierce, ND Planning Association: presented Attachment #4, requesting a Do Not Pass.

Rep. Keiser: If we assure ourselves, whether it's in current law or not, that local subdivisions have the authority to be more restrictive, you would still oppose that, because you want 100% authority to the local subdivision and authority?

Pierce: The setbacks established now, in Morton County, we do mirror those setbacks and it's very reasonable to have some kind of minimum. We feel what's proposed is too large and would like the option to leave it to local jurisdictions to have smaller if they so choose.

Rep. Keiser: So you do support a minimal standard just not this?

Pierce: Yes, I would say so.

Rep. Keiser: I'm going to pose a question. You own the land and the wind farm's located adjacent to your land. Even though you are on the south side, wouldn't you like to have that distance on the north side of your property as a land owner?

Pierce: The likelihood of me being able to own a piece of land. It depends on personal preference. For myself I don't mind.

Rep. Keiser: You would recognize that some might like it to be 3x's from their property line?

Pierce: If we were going to create a setback so there would be no visual impact any landowner,

Rep. Keiser: that's not what this does. There will still be a visual impact.

Pierce: could you repeat your last question?

50:35

Chairman Porter: It would just be a tower set back, not a visual setback.

Rep. Keiser: It affects the visual field but it's still within the visual field.

Pierce: If you can see it at all, that would still mean there's an impact there.

Chairman Porter: You hear Commissioner Christmann talk about a definition of a residence. How does Morton County handle that in their hearings?

Pierce: good question and we haven't established that specifically, but a good point to make and probably should adopt that if it is not adopted through this legislation exactly what it is.

Chairman Porter: Inside of the planning and zoning of Morton County for any project, if my land inside of a section in the center where all corners meet, and we're getting into higher density areas where wind farms are going, without some kind of protection of my property, for future development, are you taking away value of my land, but impeding up to that center point?

Pierce: You're talking about exurban areas that may become urban in the near future? Difficult to make a blanket statement across the state, there are certain areas you want an exclusion area because you know development is going to go there. At the pace of development around the city of Mandan, I think we could safely identify at least a minimum of where development is not going in the next 50 years.

Chairman Porter: If you as planning and zoning department, working for me as the taxpayer, if you think it's ok to impede on my quarter of section of land that I think has value for further development and be closer than where you would be if there's an occupied residence or residence at all?

Pierce: It goes to the question of what type of economic activities do we want to prioritize. As planners we are looking out into the long term but can't predict for any property owner unless they tell us what they're planning to do with their property and that can change. So we have to deal with the applications that come before us.

Chairman Porter: I think there's a lot of people that didn't think they had oil. Inside of planning and zoning, your job is just as much to protect me as it is to further the development, not to pick sides, winners and losers, because my property right is just as important as my neighbor's property right, and we have different ideas on that. We've always had the general discussion on where do your property rights start and where do mine end, is usually the fights we have here. I understand the visual concept, it's tough to have a visual right from my front porch but I have an absolute property right. If your tower falls over and lands on my property, then you're impeding on my rights. How are you addressing that from Morton County's planning standpoint when you're looking at it from a zoning standpoint inside of the PSC setting process.

Pierce: We do have minimums from property border and section lines which is 1.1 x's the height of the tower. These things, cell towers, more than likely they're not going to move themselves, they may fall over but not move themselves farther than the height they are.

Chairman Porter: So in Morton County you do have a 1.1 of the tip of the blade set back from all property lines?

Pierce: We have the 1320' from residences, parks and structures frequented by the public. We have the 1.1 from electrical lines, railroads, and right of ways, and 100' from section lines.

Chairman Porter: What about from a quarter line?

Pierce: we do not have it established from a quarter line.

57:00

Tom Nitschke: former superintendent in Kulm, have been an administrator in Bisbee-Egland. I see the importance of small schools and what wind towers have done for small schools. I've been there 12 years. 43 tower farm on Kulm school's property. It has helped Kulm financially, tremendously. I'm not sure the school would be here today without that. Kulm is recognized as a small but necessary school. We only have 130 students but our land

mass is just under 600 square miles. Without Kulm school, we would have students riding bus 2 hours each way. Now, 1 hour each way. Without the wind farm, we wouldn't be there. It's helped us. Valuation of the wind farm is \$1.5 million. With the current funding formula, 60 mills come back to the state, \$90,000 goes into coffers and distributed to students all over the state. It helps the whole state. There's another farm coming ½ on Ashley's district, ½ on Kulm's district. As soon as that would happen, everybody's property taxes automatically would go down in Kulm school district. Having said that I understand the need for setbacks. My massive ranch is 18 acres I bought 10 years ago, right on the edge of the windfarm, just outside Kulm. With proposed law that quarter would have been taken out of the wind farm. Plus, the setback of three towers. There'd be a couple towers this farm wouldn't be turning if that was the law. I live there, I look at them every day, I drive by them every day, I hunt in the area. They just don't bother me. I see them as a good thing for a community, good thing for our kids. It's a necessary thing, I see it as a positive thing. I don't get a penny from it. I support rural development in ND. I think the setbacks we have are adequate. Run the math quickly, not to mention what's come to the school, I think payments to the farmers have been about \$2 million from that farm. A lot of farmers that's probably what's keeping them going. I do think we have to weigh the rights of the people that are trying to develop with the neighboring people.

1:00:00

Rep. Keiser: Do you happen to know on the wind farm adjacent to your property, was there space available that those 2-3 wind towers could have been moved to?

Nitschke: I would have to speculate. One being developed just south of us, and there they have like 10 alternates. One did get moved because of a residence. I wasn't there when it was developed so I'd be speculating.

Chairman Porter questions? Further testimony?

1:01:50

Rep. Brandenburg: I will be brief and follow up. The wind farm has been there 13 years. The setbacks at the time and the people that worked with them, it worked. We've got an agreement here that causes these setbacks to be a problem. I agree with Durant Schiermeister, it's not a good place to put a wind farm. You've got buttes, the river, too close to Bismarck. We've got billion-dollar investment in our district. We just lost Titan Industry some 40 some jobs. Now we have an opportunity for this investment. If you add on a setback of another 1000', when you increase the size of the footprint you're going to have more wires, more land, more of an area, you've defeated the cost of the purchase power agreement put together between the power company and developer and increased the costs and close the margin. It may even cause the project not to happen if you have these issues.

Rep. Keiser: The purchase power agreements on the farms near Kulm would not be affected if this legislation passed. This legislation would only apply to future wind farms, those not under current construction? What would be the status of this?

Brandenburg: My point is right now today, Red River Energy has a purchase power agreement with NextAir, Otter Tail has a purchase power agreement with (??? Inaudible), Xell has a purchase power agreement with NextAir. Our wind farm hasn't been announced. That's when the deal was cut for the money cost to build these wind farms. This would apply after December 31, 2017, 6-12 months later.

Chairman Porter: You're a big property rights guy. In the middle of that section, four quarters meet, four different landowners, no set back requirement anywhere. Is that fair?

Brandenburg: We do have 1400' right now. I think this bill is 1500'. That's fine around the building site. The issue is that right now it's 1.1 with the power line. They do cut deals with adjoining land owners because of the terrain of the land they may have it even closer. But 500' is the number I would look at. It doesn't matter if it's 500' or 1500' you're going to see it for miles. In my 20 years working with wind towers, I'm finding that somewhere around 70% of the people support them and 30% that hate them. That's where you're at. You got property rights of people and you got to represent both. The ones that do want them, in Linton 125 people showed up. I said hey let's build it! They had a meeting in Dickey 50 people showed up, same thing. Not everybody's going to like it. We have to represent the majority.

Porter: You didn't come close to answer. 1.1 currently used by the PSC from an occupied residence. Is that a good standard around an entire quarter to protect that landowner's property rights?

Brandenburg: Yes. I would agree that 1.1 is a good number because if a tower fell down, and it wouldn't end up on their land. In 20 years from now the kids that inherit the land, or the new buyer, are going to go, I wonder why mom and dad hated that wind tower so much because they could have had some income from that. When they repower a new wind farm, they fill in those gaps of people that want to build them. The 1.1 doesn't impute on the other landowner to have the wind tower in the future.

Rep. Anderson: I'm more worried about the blade fracturing and being thrown 1500-200 feet from what I've been told.

Brandenburg: I've never heard that they've thrown. I've seen them fall down. If somebody has documentation that they've thrown 2000 feet, I don't know of that. I would suggest it's somebody who doesn't like wind towers.

Rep. Anderson: I will get that.

Brandenburg: There are oil wells that have explosions with salt water and ends up going into the same situation and can't predict. If you have a salt water spill it may very easily end up on someone else's land. A comparable situation

Porter: Further testimony in opposition?

1:12:00

John Olson, NextEra introduced Melissa Hochmuth, NextEra Energy Resources project director for development of wind projects in ND. She who presented Attachment #5.

Rep. Keiser: Thanks for being here and the investment in ND is great. Whenever we see this, I'm always curious to the other side of the ledger, do you have any idea what total value of tax credits and any other incentive program, grants, etc. from the government of any form, what the total amount on these 14 projects was?

Hochmuth: Are you talking about the tax the wind project is taxed that goes to the local community?

Rep. Keiser: I'm talking about sales tax, federal tax, whether some kind of credit given, or any other form of subsidy, which wind energy, in your 14 companies received, in any form, what that total amount might have been.

Hochmuth: I don't know. I'm not sure of that on a portfolio basis and would have to get that to you.

Rep. Lefor: If you could walk me through the process when NextEra decides this is what we want to do, this is where we want to put a wind farm. It it's a county, what power does the county commission have in this? Can they shut it down, can the PSC overrule them?

1:20:00

Hochmuth: At the county and township level if the townships are organized, they have the jurisdiction to regulate zoning and development in their areas. Often times a county or an organized township will have an ordinance covering wind farms, covering setbacks. That coupled with setbacks already codified in the PSC rules, the developer will look at when they come in to a community. The company works with the county and landowners, landowners may choose to sign up for the project, normally most do, some don't. They may have concerns may be laid out within the project. That conversation may happen with the developer. If a particular landowner is not satisfied with some aspect, they can talk with their county, the developer works with the county to address concerns.

Rep. Lefor: So does the county commission have the authority to say no, you are not moving forward?

Hochmuth: yes the County Commission has the authority and has. Once you design the project, applied for it, and proposing it to the county and planning and zoning board, they will look to make sure the project complies with zoning restrictions. That's the first step. By the time you're taking it that far it does comply both at the state and county level. Then the County Commission usually has a recommendation from the planning and zoning board. It's up the County Commission if they are going to take that recommendation or not. At that point they can take into account certain landowner concerns and ask for adjustments in a project layout. There is the possibility to take that feedback into account and ask for an adjustment in the layout and not approve it until that's done.

Rep. Lefor: You said the local subdivision can make a determination or adjustment. What I didn't hear is they can say no we're not going to allow this wind farm to go forward.

Hochmuth: Yes, they can. We had a project we proposed in Dickinson, was taken as far as the county commission and they said no. We moved the entire project and brought it back to the planning and zoning board and county commission and they approved it.

Rep. Lefor: So the county commission has denied it. Can your company go straight to the PSC?

Hochmuth: The PSC has jurisdiction separate from the counties jurisdiction. As far as their rules go, I'd have to defer to the PSC on whether or not they can legally override a county's decision. In my experience the PSC asks if the county has been supportive and they ask us if we have a conditional use permit or approval from the county if required.

Rep. Anderson: When we get a copy of the tax incentives they be emailed to all of us on the committee.

Chairman Porter: Currently no setback in law on quarter section. The discussion with Rep. Brandenburg of using the same 1.1 to protect that landowner and their future development of their land, do you as NextEra have any problem with the 1.1 all the way around a quarter section of a nonparticipating landowner?

Hochmuth: I have not looked at that situation. In thinking 1.1 is already in the rule, and usually if the edge of a quarter section also happens to be a property line I don't think we would have issues with that.

1:26

Andy Zachmeier, Morton County Commission, Morton County zoning board and Mandan City planning and zoning board. When wind turbines started coming to Morton County we did not have an ordinance in place so we started working on it. We built an ordinance and in the end everyone agreed was a fair compromise and workable. My suggestion to other counties is to build a wind turbine ordinance that's fair to everyone involved. While sitting here today, this meeting suddenly became a planning and zoning meeting, every argument, every person has brought them forward. You have to try to pick out what's reasonable and fair. I do believe the state has a right and should come up with a minimum standard. Morton County right now has 1.1, 1.5 would probably be acceptable. After that are you starting to infringe on the property rights of the landowner that is going to have a turbine? Questions are constantly brought before the planning and zoning board. Occupied structures, undue taking of their property rights, are we going to be compensated on the back side. The rule for an occupied structure is a good thing but also has to be reasonable and fair. Everything will it support a court challenge. Many times people talk about undue taking of their property rights at our planning and zoning board. The county does have the authority to deny a project of this type. One area Morton County did not do a good job at in the past was NE part of our county. Fastest growing part of our county. If they were to break off and make their own town, it would be the second biggest city in Morton County behind Mandan. We now have a long range plan for that area. Land use plan. I had this personal experience. My aunt was against

a project and especially one wind turbine out her dining room window. She attended meetings and found that they have alternate locations for a turbine. When she called me and gave me her argument about her property rights, I had to give her the fair argument on the other side. Your neighbor who has property rights, is going to have an income. Someone also mentioned DAPL. Hundreds and hundreds of ugly horrible calls about how backwards ND is, Morton County is, how they're not embracing renewable energy. These wind turbines are renewable energy, they're an economic engine for Morton County where we are getting property tax revenue. They're about \$1.8 million annually on property taxes which buy down everybody else's. The DAPL part, in Morton County, we are embracing a renewable energy but never got credit for it.

1:35:15

Rep. Keiser: You recognize there are 3 branches of government, that legislature sets the policy, the courts interpret the application of the policy, you are planning and zoning commission at the county level operates within the law, so we pass the law. Where is the risk for being unconstitutional? Right now you're at 1.1 so we go to 3x's. Why does that change if it's the law of the State of ND and we have the authority to do it, how does that get us in court.

Zachmeier: It comes back to the undue taking of property rights. That's the argument made constantly at our board. If I'm wrong, the AG will

Rep. Keiser: We're defining due taking. That's the point. We are saying what the property taking?

Zachmeier: Whatever would be fair and I also know wind turbines is a changing technology. The exploding blades never came to planning and zoning. No one ever mentioned it. The ones that argued at our planning and zoning, and county commission meetings was (1) fall down, (2) fire- is the rural fire department going to properly respond, (3) emergency response was constant, huge, (4) roads, are the roads going to be good enough to service wind turbines, and for area farmers can use it for their ranching and farming and hold up the firetruck when it gets there. My main this is, is it fair? Did everyone act fairly?

Chairman Porter: further testimony in opposition? One more that can't wait and be here at 2 pm.

1:38:00

Ryan Dralle, proposed wind farm SE of Bismarck.

Chairman Porter: What are my rights for developing anything I want?

Dralle: I am a resident in the area of the proposed wind farm in the area southeast of Bismarck Mr. Schiermeister referred to. We say the same thing. The Burleigh County zoning for wind towers- it is "minimum setbacks from dwellings are necessary to mitigate noise impacts. Wind turbines shall be set back at least 1.1 x's the height of the turbine from participating residences and at least 1750' from existing nonparticipating residences. It can

be added on to necessary to meet sound requirements. Shall not within 100' of any nonparticipating residents, shall not exceed 45 dBs" If you go over 1 quarter in the middle of a section that has a nonparticipating resident on it, it could potentially take out up to a full section of land. 640 acres out for a 140 acres of a nonparticipating residence. I don't think that's fair. Going over Burleigh County reverse setbacks, and then reverse setbacks of 1.1 x's the height of any existing turbine, to somebody who wants to build a house or anything if you want to be that close, that's there reverse setbacks they drafted in 2010.

1:40:00

Chairman Porter: inside of my argument that you've been listening, what are my rights on the quarter section for future development of my property?

David Dralle: for developing wind?

Chairman Porter: anything I want, it's my land, I can put anything on their I want I think.

Dralle: we take that same argument for our land that's touching your land, as we think we can put anything on our property as well. I would say the 1.1x's is a pretty fair that Burleigh County has adopted. Nobody that has signed a lease wants to put a wind tower in somebody else's backyard that doesn't want it.

Chairman Porter: My question really doesn't refer to a residence. It refers to an imaginary boundary around a quarter section. What are your thoughts around that imaginary boundary around a quarter section?

Dralle: I would say up to 1.1 times the height of the turbine, or 1.5 times the height of a turbine. We don't want to smother anybody's property that doesn't want a turbine, they have that right absolutely. I don't want it to take out what it would come out to as 2/3 of somebody else's quarter section if you have a 550-580-foot tower. It would take out almost 105 acres of your 140 quarter that is next to theirs the way it's written.

David Day: I'm in the same project SE of Bismarck that Mr. Dralle is. That proposed project has got 81 turbines with alternates. With the setbacks being proposed, we would lose 18 of those turbines in that project alone. That's \$18 million of investment for the company, over \$300,000 a year in landowner payments, \$200,000 a year in property tax revenue and \$4 million in sales tax revenue just for the project, losing those 18 turbines. The 1.1 setback is the standard for Burleigh County. We have a young lady in our project that doesn't care for the wind turbines. She's looked at every one of the ordinances in the state and has come back to us at our township meetings and said Burleigh Counties laws are the most fair in the whole state. You can't try to put the whole state into one set of rules like these other people have testified. Each individual area has its own quirks, terrain, how things fit, how they work. I was a township commissioner for many years and we adopted Burleigh County's wind ordinance. So we already have good rules set in. The wind turbine company came in know these are the rules, this is how we'll do our layout and everything works. Now you're going to come in and try to change that for these companies, they'll simply move out of state. They're going to build someplace because that's their business. We can't afford as a state to lose that kind of money with them going out of state. Just because you have coal energy,

doesn't mean it turns that light on. It could have been hydroelectric, nuclear from NY or anyplace. It all gets dumped into a system and pulled out when needed. The company will build somewhere else and we as a whole lose all that property tax. Like the superintendent said, the boom for these school districts in the smaller impoverished places with these wind farms, will keep these doors open. It's a huge economic development in our area.

Chairman Porter: you said your wind company. Are you a developer. Are you an owner?

Day: I'm a majority landowner in the project and as such the company hired me to get all the leases for the neighbors. I work in that capacity for the wind farm company. I work for P&E Wind USA, Chicago. After getting leases there's an ongoing bird study and all the cultural study. The company has me handle all the contractors that come out. They just put a met tower up last week and I was helpful with that and storing equipment, making sure everything works smoothly for the project.

Chairman Porter: Which township?

Day: Morton and Telfer, and extends down into northern Emmons County.

Chairman Porter: how many of your acres are involved?

Day: 3800 acres

Rep. Keiser: They would lose 18 towers. Give that's a wind tower within an occupied residence under this bill, would require it to be 3xs the height of the wind tower to affect not building the wind tower.

Day: it's not the occupied residence we're worried about. Burleigh County has already takes that into account. That 3xs the height is already in play. This is the 3xs from a property line that's going to affect these 18 turbines. Not the occupied residence, the property lines.

Chairman Porter: the way Section 4 reads right now it's property lines.

Day: that's what's going to affect the 18 turbines.

Rep. Keiser: no residences?

Day: No. that's part was already taken in when they were siting the turbines.

Shawn OLeary: LM Wind Power, presented Attachment #6.

Chairman Porter: maybe you want to address Rep. Anderson's question about sheering of blades since that's your job.

O'Leary: I'm not an engineer, but I'm sure LM doesn't build the blades that explode and I'm unaware of this as a severe or remote problem in the industry. A wind turbine is a mechanical device subject to wear and tear and in need of maintenance, I'm not aware of any blades flying off turbines onto neighboring properties.

Anderson: It's rare but occasionally does happen. 1600' when it happens.

Rep. Ruby: What about ice buildup on the blades?

O'Leary: I'm just hear from an engineering standpoint, just to give my support and give everyone awareness of the jobs standpoint.

Rep. Keiser: Help me understand from Section 3 from the property line 3xs? As I read this it's only from the property line if there's a residence from it.

1:51:00

Chairman Porter: Sub 3 Page 3 it says from the property line of a nonparticipating landowner and the areas of one less ...containing an occupied residence

Rep. Keiser: That's my point. The question was where are the 18 occupied residence on the other and it was said it was the property line. As I read this it is the property line of a quarter section IF there is an occupied residence. That's very different than simply from the property line. I just offer that because I'm confused when I read it.

Robert Harms, Lobbyist for Tradewind Energy. I'd like to introduce VP of Development for Tradewind, Brice Barton.

1:52:47

Brice Barton, VP of Development of Tradewind Energy presented a map as Attachment #7. Our existing project, Lindahl Project. 150 megawatt project in Williams Called the committee to order on, ND. 4 mi. N of the City of Tioga. We have a fair amount of development in the state of ND. We now have a 300 megawatt project we're developing west of Lindahl, and a couple SE of Bismarck. We're putting about 450-500 megawatts addition into ND. We value the relationships with landowners. The landowners got together, formulated a lease with a law firm, worked together to create a project, put up a met tower, applied for an interconnection which is a rarity. We met in the middle. We wanted a project here and they wanted a developer to take them to the next step. We've put about 2000 megawatts in the US, probably 3000 by the end of this year. We bought their project, added a different interconnection and sold the power from that project to Basin Electric. The reason we continue to work here you have one of the best fuel sources, wind. Wind is one of the rights that stays with the surface owner. They have the ability to get some investment on their property they maybe haven't seen. The went to the PSC and got approval. Talked about planning and zoning. In the Lindahl Project, I was here 30 times in 35 weeks for meetings of all kinds including 3 townships, City of Tioga, Planning and Zoning of Williams, the Airport Board of the City of Tioga, stakeholder meetings in the community and surrounding people, and the County Commission. All entities approved the project. Once we had approval we went to the PSC where we got approval. Now speaking to the map, the orange is our project bounds. You see sparsely populated, the purple and green boxes being houses. On the right side of the map, 4000 acres without a boundary. We had this entire area leased but in those meetings, had a fair amount of concern so we decided on our own to cut about 4000 acres

out. The landowners brought 18000 acres to us and developing 14,000. Those were landowners that lost out on the project. When it comes to setbacks and projects, we are looking at your concerns even before they need a setback level. There's 2 part to this in Section 4, part 3 line 11, an area less than 1.1 x's the height of the turbine from property line of nonparticipating landowners. A landowner without a residence, whatever their property bounds is this bill says will set back 1.1 x's, vistas 2.0, machine with 110 meter roter, about all the wind turbines in the state are 80-meter hub heights. Those are 265' tall turbines for the hub. Tip height 110 meter roter, is about 455'. So 480-500 being that 1.1 setback depending on the length of the blade. The first part of Sec.4 is 1.1 from the property line, no house. That's part of it. The other part is the 3 x's the height of the turbine from any quarter section of property containing an occupied residence of a nonparticipating landowner. That's really the crux of our concern in this bill, the quarter section rule. Top dark blue circle at the top, or in the top left box, the Brusters own about 10-12 acres. Their inside that quarter section. That now takes out about $\frac{3}{4}$ of that entire section that Gerald Gorick owns. In your example, 3 go away here. If the Brusters lived 300' to the North across the road, they'd have a 3xs setback from these turbines and the turbines would be fine. So there's an unbalanced approach by the quarter section. The other thing is it's a setback from a participating person's property line. Mr. Gorick owns this whole section so that section line we're setting off from, he owns on both sides. In the bottom left, the Rodahls own an 80. You offset the whole quarter section. Turbines that are 3500' away are getting taken out by an 80. The Brusters and Rodahls are fine with the placement of the turbines, it's a project that got build. The setback here shows you're setting a precedent that's unbalanced in terms of what side of the quarter section you live on, you're protected in one way or another. This bill affects real people and their private property rights. I hope you understand the difference between the property line setback and quarter section setback. All the tax benefits afforded to wind will always pass through to the consumer. We will be there at low cost. Regarding blade throw was an issue on your turbines in CA. Those were a high speed turbine, 600-700 rpm. That's why they also had trouble with bird strikes. Ours run a constant 17-19 rpm. We've had blade damage from lightening. The blades weigh enough they hit the ground.

Rep. Keiser: you gave us two examples. The bottom one you said they have no objections. It almost looks like if those towers had been a few feet further north they would have been out of the zone. They almost met the current guidelines, is that true?

Barton: Lindahl was 75 turbines. We started with 3 alternates, not enough to start a project. We lost one on state land due to an undocumented tailing pit and undiscovered until we starting digging and another we found an artisan well. We didn't have an alternate location on this project. 1-2-3 of these turbines could be nudged. County, PSC are not the only people to be appeased. After we were well into our siting we realized the US Fish and Wildlife retained about a 2-mile buffer from the big slough up there. There's lots of setbacks to affect turbines. This setback would have been close to ruining our chances of building Lindahl because of the lack of alternates.

2:08:30

Rep. Keiser: Were these property owners receiving payment for those?

Barton: These are under the rule are non-participants, not involved in this project.

Rep. Roers Jones: The comment you made about a blade that came off and fell straight down.

Barton: Yes in Kansas, had a faulty torque gun. The manufacture came in to do warranty work. He torqued the blades and the blade vibrated off.

Rep. Roers Jones: It was operation?

Barton: It destroyed the turbine. Fell in the safety buffer, less than the 1.1.

Rep. Keiser: I agree; any tax benefits have benefited the consumer. Maybe we should have given those same benefits to natural gas and oil, and not wind, and would that have benefited the consumer?

Barton: All forms of energy receive a tax benefit.

Rep. Keiser: I understand but do they benefit the consumer?

Barton: Yes I get depreciation on oil and gas I appreciate.

Chairman Porter: Your comment on the consumers receiving the benefit. You sell power out of Lindahl, are you selling it for less than the market or at market?

Barton: we're a wholesale provider. We provide power to the utility so it's less than what the consumer would pay. We don't deliver it, we don't distribute it, we don't have the lineman or secretaries or overhead expenses. Just as the guy that provides sea weed to the farmer.

Chairman Porter: how does the consumer benefit from that tax break if you're a wholesaler to a utility or coop?

Barton: The utility, Basin, buys wind power. They know they're receiving that portion of the power from wind at that price and that's layered into their price model. It does pass to the consumer because the utility has go to the PSC. The lower price we provide to the utility the lower for the consumer.

Chairman Porter: You're giving a coop example that isn't regulated by the PSC with an investor owned utility rate setting process that is regulated by the PSC. Your contention is the person who is selling to the consumer is passing on all of the incentives on wind energy production to the end consumer?

Barton: the tax credit stops at the owner operator. It's already realized in the price that goes to the utility. That where the flow of that tax benefit stops, it doesn't flow to the utility. We only offer the power at the cost.

Chairman Porter: I still don't see how the consumer benefits. Further opposition?

Laurie Mills, landowner, west of Moffit ND. Presented Attachment #8

Rep. Keiser: You mentioned with this legislation you would lose towers. There are not alternate spacing on your property or anyone else's property?

Mills: With the current changes it is my understanding they decrease to 63 tower, loss of 18 towers, 5 on our property. We are earmarked for 7 but would lose 5.

Mark Randall, project manager for Burleigh Project, SE of Bismarck and into Emmons County. The landowner would lose \$315,000 annual revenue due to the loss of 18 turbines roughly each turbine costs \$5 million, \$270,000 in taxes annual revenue to the county, lost in \$4 million of sales tax revenue to the state. We made a considerable effort in this location to be sensitive to that. A migratory bird flyway, we spent a lot of money with wildlife biologist we want to respect landowners around this project. This was the genesis of this project was being invited by the landowners. We don't do solar, oil and gas, nuclear power plants, don't own utility companies. The benefit to the consumers, I think the general principal is that utility companies are bound to buy power at the lowest possible cost. Wind power has worked hard over the years to lower the cost and bring a clean sustainable renewable source in the market place.

Chairman Porter: do you have a map?

Randall: I do but I don't have it here today. I will get it to you.

Rep. Keiser: Could you identify all the residences that are impacting that 16-18 towers and how many total residences are there that would affect those towers.

Randall: 23 participating landowners, affecting 5 neighbors. Very rural area with large parcels. Some other smaller landowners with a 40-acre minimum in those townships.

Rep. Keiser: If I understood your comment, if this law is passed, you would have to go out and get additional leases for towers that would be displaced to make your project work?

Randall: I don't feel it's achievable at this point. We pretty much know where everyone stands at this point.

Chairman Porter: The map that Mr. Barton gave would be a good one to work off so we can see where the nonparticipating residences are and where the tower sites are.

Randall: That information is confidential simply because we are moving in the direction of filing for conditional use permits. Until that becomes public, I can tell you we have a handful of alternate sites.

Chairman Porter: You can trust us to keep a secret! We're really good at that!

Rep. Keiser if you give us that information it's public, I'm telling you right now. Section 5 nobody refers to that. It talks about the application. Are you not going to be able to apply prior to that date?

Randall: No, our intention is to apply. This is not the only project that we have in development.

Rep. Keiser: You're talking about financial damage on this project and there is none based on this application. Future projects, if you know the rules, you can follow them.

Randall: It's true. My comment stands we're trying to make these compact, avoid spreading out over the landscape. More restrictive requirements are, the more land we need.

Rep. Mitskog: with the proposed legislative changes will this impede future wind development?

Randall: yes

2:38:42

Tom Carlson, EDF Renewable Energy, regulatory affairs. We have 850 employees in the US. We've developed about 8000 megawatts of renewable energy since 1985. Developing our first project in McIntosh and Dickey Counties, the Merricourt wind project. Two points, in Section 4, there's 2 aims. (1) putting into statute a setback from the property line of nonparticipating landowners and the other I think, (2) put in statute a setback from occupied residences of nonparticipating landowners. The way it reads now is 3x's a turbine from a quarter section that contains an occupied residence. The way it is now, 90% is participating, even if they wanted to participate, would be off limits, plus 3 x's the turbine. You also want something in there, from an occupied residence itself.

2:41:40

Joel Geist: I moved back from Florida back to ND. I left 20 years ago because there were no jobs in the state that fit my work. The Mills family will be hit specifically hard due to the 3x's from the quarter section. My uncle sold off a 40 to someone who was aware there was a project coming and now the purchaser has changed his mind and doesn't want them there. That put in jeopardy the 3 wind towers for the rest of the land on the Mills land. If ND has this resource, you shouldn't make it harder. You're basing it on Burleigh County. MN is now buying wind power from Canada and could be right here in ND.

Chairman Porter Questions? Further testimony in opposition.

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

SB 2313
3/16/2017
29333

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a wind energy restoration and reclamation oversight; relating to the creation and duration of wind energy easements, annual reports on meeting renewable and recycle energy objectives, and exclusion areas for wind energy conversion facilities; and to provide for application

Minutes:

Attachment #1

Chairman Porter: Called the committee to order on SB 2313 and handed out Amendment 04002, Attachment #1. Discussion?

Rep. Lefor: Clarify removing the words, quarter section of property containing. If I'm understanding this, it's much less restrictive than the original language? In the original I felt it was too restrictive.

Chairman Porter: That is correct. As you draw your quarter section, they have to be 1.1 from the tip away from someone else's property line of someone else. If the residence is on that corner, 10' off the property line, they have to be 3xs the height from the residence, not the quarter section line.

Rep. Lefor: you said you worked with the industry?

Chairman Porter: yes

Vice Chairman Damschen: Line 7 we referred to inhabited rural residence. Does it matter that it's different than an occupied residence on Line 13? Consistency?

Chairman Porter: There was discussion on the definition of an occupied residence. That falls back to the local zoning ordinances. I think by putting the 1.1 of the nonparticipating property line, that starts keeping them off the property line.

Vice Chairman Damschen: I don't have a problem with that, but the terminology, same verbiage, to me line 7 could say an occupied residence.

Chairman Porter I didn't look at that. I was looking at Sub 3. When council drafted that they usually catch that.

Rep. Keiser: Have Kyle call up and take care of it now.

Chairman Porter Page 3 line 7, uses the term inhabited rural residence. Other discussion?

Rep. Ruby: Does local zoning authority include PSC?

Chairman Porter: This is PSC's minimum set of zoning authority when they're siting. The local zoning authority can have, even without this bill, can have a stricter zoning authority over the siting process. Rep. Lefor can touch on that where they actually said no.

8:90

Rep. Roers Jones: What is the purpose of the changes in Sec 1, Section 4 is that different. (no mic, some of the question can't hear).

Chairman Porter: Note the fiscal note supplied by Dept of Ag based on Section 1 of the bill, says they would need \$50k of appropriated of general funds in order to do what's laid out in Section 1. What we're saying in our amendment, hey should use existing money inside of their budget, can use the existing operating funds which would include the \$200,000 from the oil reclamation fund for the similar Ombudsman pipeline program. We're saying you're good to go but we're not giving you the money to do it and find money inside of your budget.

Rep. Lefor: motion to adopt amendment

Rep. Ruby: Second

Rep. Devlin: I'm puzzled why we want to put in the floor. If the local zoning authority wants less restrictive because of the land they're dealing with in their township or county, why do we care? Why should it be great, why the state should set a floor. That should be up to the local people to make that decision.

Chairman Porter: great point. We have set up the floor and the basic guidelines of siting of energy transmission facilities. That's the responsibility of PSC, so we are setting up the floor for them to look at their siting process. They still need to work with the locals. We've given the variance to the participating owners. This protection is really to the nonparticipating owners that don't have a say in how the process is working.

Rep. Devlin: I think local participants and nonparticipants would be a lot more comfortable dealing with someone at their local level, local public zoning meeting and authority than they would dealing with someone in Bismarck.

Chairman Porter: I appreciate your concern. In that process where the county doesn't have the zoning authority and even in the case where they do, there has been the situation where people are so bent on getting the project, they have not protected the nonparticipating owner.

Rep. Lefor: I would concur. What happened in Stark County was nothing short of a blood bath. In terms of people who are so emotional on both sides of the issue, I think this language is good.

Rep. Devlin: Another issue, we talked about taking out Section 1. We did it last time and I opposed it. We do not need to grow government by adding this section. I believe this is a responsibility of the PSC.

Chairman Porter: no contract positions, no FTEs. It is responsibility that we took and used reclamation dollars to start the program. You heard that from the bill making that a permanent program. Discussion? Seeing none, all in favor to SB 2313 say aye, opposed. Motion carries. The important part of removing the fiscal affect.

Kyle: Legislative council said (? not mic) not deliberate, means the same thing (?)

Chairman Porter: So committee as you look at the language on Line 7 and 8 and Line 13, on Page 13. Which language does the committee like best?

Rep. Keiser: move to change the language on Page 3 Line 13 to inhabited rural residence.

Rep. Ruby: second

Chairman Porter: we have a motion from Rep. Keiser to change the language on Page 3 Line 13, overstrike "occupied" to "inhabited rural" and a second. Discussion?

Rep. Heinert: when PSC testified on this they asked for a definition of an occupied residence. Is inhabited residence defined within code?

Chairman Porter: I do not know a direct answer that it's defined. I think it's one of those words they can figure out but I do think our change to protect the quarter line and base line of that resident fixes the reason to define it any further. Further discussion on the proposed amendment Page 3, Line 13. Voice vote, Motion carried.

We have a further amended bill in front of us. What are you wishes?

Vice Chairman Damschen: move

Rep. Anderson: second

Chairman Porter: We have a motion from Vice Chairman Damschen, second from Rep. Anderson for a Do Pass as Amended to Engrossed SB 2313. Discussion?
Roll call vote. Yes 7 No 5 Absent 2 Do Pass prevails. Rep. Roers Jones is carrier.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 3, remove "17-04-03,"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

Renumber accordingly

March 16, 2017

3/16/17 DD

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

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Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 13, replace "occupied" with "inhabited rural"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

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Renumber accordingly

Date: 3-16-17

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2313**

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0390.04002

- Recommendation
- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions Reconsider _____

Motion Made By Rep Lefor Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

voice vote motion carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

04002

Date: 3-16-17

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2313

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Reconsider

Other Actions

further amend

Motion Made By Rep Keiser Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*voice
vote
motion carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Line 13 Page 3 overstrike "occupied" to "inhabited rural"

Date: 3-16-17

Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2313

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0390.04003

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions Reconsider _____

Motion Made By Rep Damschen Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall		✓
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby		✓
Rep. Devlin		✓	Rep. Seibel	AB	
Rep. Heinert	✓				
Rep. Keiser		✓	Rep. Mitskog		✓
			Rep. Mock	AB	

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep Roers Jones

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

REPORT OF STANDING COMMITTEE

SB 2313, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2313 was placed on the Sixth order on the calendar.

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Re-number accordingly

2017 CONFERENCE COMMITTEE

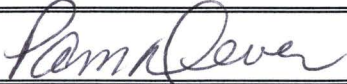
SB 2313

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2313
4/6/2017
Job #29960

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Minutes:

Conf #1

Chairwoman Unruh: Call the conference committee to order. Present: Chairwoman Unruh, Sen. Armstrong, Sen. Oban, Rep. Lefor (chair), Representative Damschen, Representative Roers Jones.

Chairwoman Unruh: House made a couple of changes. My intent this morning is to walk through some and get an explanation. Have a conversation on where we need to head. Page 1, I had a request from PSC that they would like to see a memo of understand language in Section 1 in the oversight program as it will be housed with PSC. They would like some input. That seemed reasonable. Section 2 is ok. In Section 3, is where you changed it to 3 times the height of the turbine from the residence. Please consider that setback from the property line but up to a quarter section of land but only if that property is owned by who lives there. Before we had up to the property line, whether or not they owned it up to a quarter section. If they own the quarter section, the setback would be from that property line. If they own 40 acres, the setback would be from the edge of the non-participating landowner's inhabited residence property line. I wanted to propose this to see if there was movement there or make adjustments. Page 3, lines 1,2,3 have language for a variance to be granted. It looks like a variance can be granted without the actual permission of the non-participating land owner given the way it is written now. I need to investigate that a bit. Section 5 is effective date. I thought of language that would say 'Section 3 of this act applies only to projects that receive a certificate of site compatibility after August 1. This is the normal effective date. Those are some things I was looking at and see where House is at with those.

Rep. Lefor: The issues you are addressing, with the PSC, I certainly see that. No heartburn over that. Changing the date to August 1, I think that is ok. If you could explain the setback. You are talking about a quarter section. Correct?

Chairwoman Unruh: Drew a map and explained. I propose that the setback be from the edge of the property line up to a quarter section.

Rep. Lefor: So you are saying from the property of the residence rather than the residence itself.

Chairwoman Unruh: Correct. If anyone in audience wants to get us actual height of a turbine the way it is defined in the bill, that would be great. Now it is to tip of blade. I tried to figure out the larger and smaller heights of the different turbines. I know they are different based on the capacity of the turbine. I would like to get some numbers to see what the actual setback is in feet based on some of the new turbines heights. I do not want to put something in Code that is worse that is worse than current practices. Now it is 1400' setback from a residence. I would rather use the height of the turbine because as technology improves, I want to make sure that the setback distance grows with the industry.

John Olson, NextEra Energy: Our general understand was that you would take the height from the top of the blade. So that is what we have all been working with. At 1400 feet would accommodate the 450 foot towers that we have right now. We agree with you, that is should be the height in distance. We are ok with a feet requirement. The 4350 feet really accommodates the policy they have right now at 1400 feet.

Chairwoman Unruh: Is there a potential for larger turbines in the future. Are you using largest ones now?

John: I am not the one to answer that. I understand we are at 450 feet now. Maybe they will grow in size. (9.40) 1.1 from the property line or 3 times the residence will accommodate any increase any height in the tower.

Rep. Roers Jones: When you were talking about seeing this from the distance from property, you said owner occupied residence. That would not apply to rented in the situation you mentioned?

Chairwoman Unruh: No, that is not accurate. Those details we would have to clarify. That was not what I was intending. (10.26)

Rep. Lefor: I agree with you. As far as the variance language, did you want to discuss that? We have homework to do. The PSC portion for sure and changing the date. Will you work with LC? We are ok with these issues. (11.12)

Representative Roers Jones: To clarify, originally the way this was proposed, it was going to be similar to the Ombudsman Program in the oil area. That one is handles in Dept. of Agriculture. So this one we don't want handles through Ag, but through PSC?

Chairwoman Unruh: No, between the Agriculture Commissioner and the PSC just so they have communications between. The Agriculture Commissioner would run the program, but not run it as an island. He would work with PSC to resolve problems. (12.07)

Sen. Armstrong: I think it might read wrong. On sub-section 3, where you have the setback language, it is 1.1 from the property line, then on non-participating landowner, on the residence may be closer than 1.1. We want them at least be 1.1 away. They don't get to go right on the property line. That is not how it reads, for sure. I think that is the intent, but reads differently.

Senate Energy and Natural Resources Committee

SB 2313

4-6-2017

Page 3

Chairwoman Unruh: So we need an “or” instead of and “and”. Good catch. (13.10) Any other comments. Adjourn.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2313
4/10/2017
Job #29998

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Conf. #2, Attch#1, #2- Chairwoman Unruh,

Present: Chairwoman Unruh, Sen. Armstrong, Sen. Oban
Rep Lefor(chair), Rep Damschen, Rep Roers Jones

Chairwoman Unruh: You have the Xmas Tree version before you. (see Attch#1) You can see the changes we talked about in our last meeting. The only thing missing is the language in Section 1 to outline and identify communication between the Dept. of Agriculture and PSC. We should have that be the end of today. I hope we can get in with these amendments. (see Attch#2) Please digest this over the next 24 hours. She went on to explain the Xmas Tree. (1.30-3.00)

Rep. Damschen: On page 3, line 12, should we have 'or' and not 'and'? "And areas less than" should be added in. (3.23) Could be misinterpreted the way it is.

Chairwoman Unruh: OK. We will take a look at that. The 'and' made more sense. We wanted to not leave anyone out. We added 'or more' which allows the PSC, if they decide in their discretion, that a larger setback is necessary.

Rep.Lefor: (4.25) This looks like we talked about and it is a good amendment. We can have a discussion on Representative Damschen's point next time. And finish tomorrow.

Chairwoman Unruh: We are waiting for language from Dept. of Ag and the PSC for the directives. We will add that in. Adjourned.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2313
4/11/2017
Job #30051

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Attch#1 = Chairwoman Unruh

**Present: Chairwoman Unruh (chair), Sen. Armstrong, Sen. Oban
Rep. Lefor (chair), Rep. Damschen, Rep. Roers Jones**

Chairwoman Unruh: Let's discuss one more time SB 22313. I passed out the new amendment that should take care of concerns from yesterday. (see Attch#1) I apologize for no Xmas Tree. Page 1, line 12, I added some language at request of PSC for support and outreach. That stroke sub-section 3 of section 1, which had the technical education support outreach. We just added 'outreach'. We added a new sub-section, which is sub-section 4. Section 4, page 3, sub-section 3, the language establishing the floor is in there. The absolute minimum setback from the residence for a non-participating landowner will be 3 times the height of the turbine. That floor language allows the PSC to create a greater setback around the residence if they deem necessary. We also added the language that Rep. Damschen had concerns about, which was 'the less than' language. We removed the quarter section language because it is not necessary anymore. We clarified the variance language to make sure that non-participating landowners are included in that process. We have changed the effective date from December 31 to August 1, 2017. Any committee discussion? (4.07)

Rep. Damschen: Page 3, line 12, when we added 'or more'; doesn't that open it up wide open? I thought that was an assumed that we set a minimum.

Chairwoman Unruh: That is really what that does is say that the absolute minimum is 3 times the height. If the PSC wants more of a setback, they have the ability to do that with that language. (4.5)

Sen. Armstrong: I move amendment 17.0390.04006 and House recede from House amendments and further amends.
Rep. Lefor: I second.

Chairwoman Unruh: Any discussion? Seeing none, call the roll. YES 6 NO 0 -0-absent. That passes and completes our work on SB 2313. Adjourned.

April 11, 2017

CJ
4/11-2017
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

That the House recede from its amendments as printed on page 850 of the Senate Journal and page 1017 of the House Journal and that Engrossed Senate Bill No. 2313 be amended as follows:

Page 1, line 3, remove "17-04-03,"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, line 12, replace the first "and" with an underscored comma

Page 1, line 12, after "support" insert ", and outreach"

Page 1, line 17, remove "The program may provide technical education, support, and outreach on wind-related"

Page 1, remove line 18

Page 1, line 19, remove "4."

Page 1, after line 21, insert:

"4. The agriculture commissioner shall work in cooperation with the public service commission to carry out the duties described in this section."

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, after "and" insert "less than"

Page 3, line 12, after "turbine" insert "or more"

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 13, replace "occupied" with "inhabited rural"

Page 3, line 15, replace "A variance may be granted" with "The commission may grant a variance"

Page 3, line 16, after "permittee" insert ", the nonparticipating landowner,"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position."

CJ
4/11-2017
2 of 2

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

Page 3, line 22, remove "have applied"

Page 3, line 23, replace "for" with "receive"

Page 3, line 23, replace "December 31" with "August 1"

Renumber accordingly

Date: 4-6-17 4/10/17 4/11/17
 Roll Call Vote #: 1

**2017 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2313 as (re) engrossed

Senate Energy Natural Resources Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Armstrong Seconded by: Rep. Lefor

Senators	<u>4/11</u>				No	Representatives	<u>4/11</u>				No
	<u>4-12</u>	<u>4-10</u>	<u>4-11</u>	Yes			<u>4-12</u>	<u>4-10</u>	<u>4-11</u>	Yes	
Sen. Jessica Unruh, (chair)	/	/	/	/		Rep. Mike Lefor (chair)	/	/	/	/	
Sen. Kelly Armstrong	/	/	/	/		Rep. Chuck Damschen	/	/	/	/	
Sen. Erin Oban	/	/	/	/		Rep. Shannon Roers Jones	/	/	/	/	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: -0-

Senate Carrier Sen. Unruh House Carrier Rep. Lefor

LC Number 17.0390 . 04006 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2313, as engrossed: Your conference committee (Sens. Unruh, Armstrong, Oban and Reps. Lefor, Damschen, Roers Jones) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 850, adopt amendments as follows, and place SB 2313 on the Seventh order:

That the House recede from its amendments as printed on page 850 of the Senate Journal and page 1017 of the House Journal and that Engrossed Senate Bill No. 2313 be amended as follows:

Page 1, line 3, remove "17-04-03,"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, line 12, replace the first "and" with an underscored comma

Page 1, line 12, after "support" insert ", and outreach"

Page 1, line 17, remove "The program may provide technical education, support, and outreach on wind-related"

Page 1, remove line 18

Page 1, line 19, remove "4."

Page 1, after line 21, insert:

4. The agriculture commissioner shall work in cooperation with the public service commission to carry out the duties described in this section.

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, after "and" insert "less than"

Page 3, line 12, after "turbine" insert "or more"

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 13, replace "occupied" with "inhabited rural"

Page 3, line 15, replace "A variance may be granted" with "The commission may grant a variance"

Page 3, line 16, after "permittee" insert ", the nonparticipating landowner,"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of"

Insert LC: 17.0390.04006
Senate Carrier: Unruh
House Carrier: Lefor

this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

Page 3, line 22, remove "have applied"

Page 3, line 23, replace "for" with "receive"

Page 3, line 23, replace "December 31" with "August 1"

Renumber accordingly

Engrossed SB 2313 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2313

Testimony of Senator Jessica Unruh
District 33
SB 2313
Senate Energy and Natural Resources Committee

2313
2-A-17
Attach #1
pgs

Mr. Vice-Chairman, members of the committee, for the record my name is Jessica Unruh, Senator from District 33, coal country. And while I'm obviously very proud of that, I'm also proud that District 33 is also known for all types of energy production. We have nearly 250 wind turbines in my district, and while I've never investigated fully, I think it's safe to say that my legislative district is in the top 3 for wind producers in North Dakota. And we're proud of that. It's proof that we see the value of an all-of-the-above energy policy and welcome the responsible development of these resources. We've seen first-hand for 30 plus years what responsible energy development and production looks like when industry works hand in hand with landowners. And it's not always perfect, but years of trial and error and adjustments have helped work out most of the kinks. We have a lot to be proud of in District 33.

SB 2313 comes to you as result of endless hours of phone calls, emails, and grocery store corner conversations during the last interim regarding this very topic. I've done a lot of listening, Mr. Vice-Chairman, and have done my best to compile those concerns in the bill in front of you.

Section 1 of the bill requires easements for wind development to terminate upon the conditions stated in the easement, thirty days after decommissioning or if development has not occurred within five years from the commencement of the easement.

Section 2 addresses reclamation and bonding requirements. This section includes language from Administrative Code and puts it into Century Code, along with some changes.

Subsection 2 would require, not give the option to, owners, not owners or operators, to ensure a performance bond before operations to build the facility begin. This could be done in the form of a performance bond, surety bond, or corporate guarantee to cover the anticipated costs of decommissioning the facility. The new language also includes a requirement for an A rating by one of the national rating organizations to qualify for bonding.

Subsection 3 would require underground cables to be removed to a depth of 4 feet and removal of foundations, buildings and ancillary equipment to a depth of 8 feet. The remaining portion of this section requires the area be reclaimed as it was prior to disturbance unless the landowner requests otherwise.

Section 3 explicitly states exclusion and avoidance areas. Subsection 3, subsection a. lists the exclusion areas. Subs 1, 2, 3, 4, and 6 were all pulled directly from Administrative Code, but the setback was increased from 1 and 1/10th times the height of the turbine to 2 times the height of the turbine. The interesting thing I found while drafting this bill is that there is currently no existing setback for occupied residences in administrative code or century code, so I added subsection 5 to increase the setback from an occupied residence to 3 times the height of the tower. As the committee hears this bill today, I would like them to consider the possibility of increasing that setback amount to 5 times the height of the tower or a half mile, whichever is greater. Although the Public Service Commission has never authorized anything closer than 1400', I think it would be prudent of us to codify some sort of limitations here.

pg 2

Subsection b of that section codifies the current limitation of decibel impact at an occupied residence, something that is important for those living in and around these areas.

Finally, Section 4 would require developers of an energy conversion facility to notify and mitigate mineral owners within the project's scope of impact. This is a layer of protection for the owners of the minerals under these facilities.

Committee - these are suggestions. You will be hearing from both sides of this issue today. All of them will be passionate. Some will say this bill goes too far. Some will say it does not go nearly far enough. I have confidence that we will be able to come up with reasonable solutions for both sides as we learn more about this issue.

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Attach # 2
PS!

Testimony 2/9/2017 Thomas W Reichert-Stark County

Energy and Natural Resources-Senate Bill 2313

Chairman: Senator Jessica Unruh

Introduction:

I am a member of Concern Citizens of Stark County, an organization formed to educate the public about Wind Farms and Wind Farm development. As I began educating myself regarding wind farms and following the permitting process at the county level I was shocked at how little the zoning boards and county commissioners knew about wind farms. County regulations and ordinances are vague, poorly written and vastly inadequate. County officials do not have the capacity nor the will to make informed decisions that protect the property rights, health and welfare of all citizens in rural ND.

As I followed the permitting process through the PSC I further discover that commission has little statutory direction upon which to regulate Wind Farms adequately. As a result the ultimate decision on wind farm approval is left to the individual counties.

Senate Bill 2313

This bill attempts to rectify the lack of statutory guidance. Quite frankly this bill I believe needs substantial changes to be effective and that is why we are here today. We would like to suggest several changes or amendments to substantially improve this bill. Did you know the PSC has no requirement for any decommission bonding for existing wind farms in ND for the 1st 10 years of a wind farms existence? Did you know there is today thousands of abandon wind turbines in this country that likely will become the burden of the states in which they are located. California faces a huge financial burden.

Suggested Amendments:

I am referring to **Section 2** of the bill which under **par. 2** requires financial assurances from developers to complete decommissioning and reclamation of wind farms. We suggest that the developers provide **3rd party reclamation bonds** similar to what is required of other industries in the state like coal, oil & gas and construction. Corporate guarantees will not work. Every wind farm is a separate LLC organized precisely to limit liability.

- With regard to **par. 4** in the same section we suggest; The facility owner....shall record location any portion of underground foundation not removed during decommission and provide such location to the county recorder as well as appropriate state agencies similar to the requirements of coal mines, oil and gas operators and contractors.
 - Examples- use of applications such as:
 - NDDOT Projects-Inert Waste Beneficial Use Application

- ND Department of Health Inert Waste Disposal Variance Application

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pg 2

Section 3.

Carla Arthaud is going to discuss some suggested changes regarding section 3.

Trespass Zoning

Before she does I would like to introduce a concept called Trespass Zoning. Currently we have Trespass Zoning in the state, both outlined in many county zoning regulations as well as in current PSC regulations.

- In a civilized and organized society the rights of property owners must be balanced with the rights of his or her neighbor's right to the un-infringed use and enjoyment of their property. And that is precisely why we have **zoning** regulations.
- When authorities determine setback distances from a dwelling (the neighboring currently occupied residence) rather than from the neighbor's property line you create legalized trespassing or trespass zoning.
- I would like to use my personal situation regarding Stark County setback ordinances and how they limit the potential future use of my property.

Example:

- I own property in southern Stark County approximately 3 miles north of the Brady 1 wind Farm. Stark requires a wind turbine cannot be placed closer than 2,000' from my occupied dwelling. Assuming I'm a non participating land owner and the Brady1 Wind Farm borders my property on my south property line. Well my occupied dwelling is 1,200 feet north of my south property line. So the WF developer can place a turbine 800' south of my property line in compliance with the Stark County ordinances. The WF developer is using 1,200' of my property to meet the county zoning requirement. The county tells me 2,000 feet assures me that I will be safe from any of the negative effects of wind turbines such as noise and shadow flicker. Our plan for the future is for my son and his family to build a home 600' south of the existing dwelling or 1,400 feet north of an hypothetical operating wind turbine and inside the county protection area. Current zoning laws legalize trespass zoning, infringe upon the use and enjoyment of my property. A property right I fully expected I would have when I purchased my property.
- All zoning regulation in ND should recognize land owners' property line and guarantee the reasonable use and enjoyment of their property.
- I would also note I have attached the Seitz/Martis article which makes reference to

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pg 3

○ Ohio legislation which did just what we propose for ND. I would strongly encourage you to read the discussion regarding Trespass Zoning.

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Attch 3
pg 1

The American Wind Energy Association and its allies at the Sierra Club and the Ohio Environmental Council continue to press the Ohio legislature to overturn recent wind energy siting guidelines that corrected a grievous fault in the earlier state guidelines.

The old regulations measured turbine setback distances and noise limits from the 500 foot to 600 foot tall wind turbines from the foundation or bedroom windows of neighboring homes. The new regulations established by the legislature measure setback distance and noise limits from neighboring property lines. Establishing siting regulations from property lines is standard practice for all other land use regulations. After all, homeowners are not confined to their homes. They and their kids like to play in the yard, enjoy outdoor picnics, or watch sunsets from patios and decks.

By measuring noise and setbacks for wind turbines from neighboring homes rather than property lines, the old law essentially awarded wind developers an uncompensated nuisance noise and safety easement across private property even though that neighboring parcel was not leased to the wind developer.

In effect, future development rights on thousands of acres of private property were stripped from Ohio's rural citizens and handed to their neighbor's tenant: the wind developer.

The basic premise of zoning is to separate conflicting uses of land. If safety setbacks and noise emissions are measured at a home rather than a property line, there is in fact NO separation of the conflicting use.

The definition of trespassing is "to enter the owner's land or property without permission".

By establishing the setback and noise limit criteria from neighboring homes rather than from property lines, Ohio's former wind turbine siting guidelines had effectively legalized trespassing in our rural communities. It essentially established trespass zoning.

The legislature simply moved the setback distances to the property lines, thus replacing trespass zoning with property rights zoning. The legislature did not change the setback distance itself which remains at 1,125 feet—a distance that is consistent with the wind turbine manufacturers' own safety manuals. The only change was to restore property rights zoning by eliminating trespass zoning.

Since 2008 when Ohio's wind mandate was adopted, one thing has become clear: wind development brings controversy and sharply divides residents in our rural communities.

People opposing wind development are often crudely caricatured by wind developers and wind lease holders as NIMBYs-Not In My Back Yard. In truth these are landowners who simply recognize that the trespass zoning demanded by wind developers like the U.K.'s EverPower and Spain's Iberdrola-is a de facto subsidy extracted from the neighbors without any compensation.

Where the wind developer can use these unleased properties for nuisance noise and safety easements free of charge, they have no reason to approach the neighboring residents to negotiate a fair price for their loss of amenity. Trespass zoning has deprived wind plant neighbors of all economic bargaining power. Trespass zoning has donated their private property to the neighboring landowner's wind developer tenant.

By replacing trespass zoning with property rights zoning as the Legislature did in 2014 in House Bill 483, the wind developer can no longer ignore the private property rights of rural Ohioans.

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Att #3
Pg 2

The environmental lobby regularly demands that "fossil fuel" utilities be held accountable for the "externalities" of their conventional coal- and gas-fired power generation. By moving turbine setbacks to the property lines the Ohio Legislature has simply held wind electric generators accountable for the externalities of wind development: noise pollution, turbine rotor failure and its attendant debris field, property value loss and visual blight.

Good neighbors don't trespass. If Big Wind wants to be a good neighbor in rural Ohio, it needs to abandon its demand for trespass zoning.

William J. Seitz is a state senator. Kevon Martis is executive director of the Interstate Informed Citizens Coalition.

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Comments

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Fr: Tom Rechart

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Attach 4
pg 1

Farren and Autumn Richard live four miles west from Lefor and have resided in their home for 14 plus years. Their home and farmland is within the center of the Brady 1 Windfarm, and although they actively did not participate in the Next Era Wind Energy Project, at least 9 wind towers are within a mile or less of their home and have been quoted to saying they can count up to 40 turbines within eye sight of their driveway.

This is their testimony:

We were always concerned about the changes that would be seen in our community from the erection of the wind farm. Now that it is in full effect, we can see the long term and negative effects that disrupt our lives on a daily basis.

From our residence, we can visually see several windtowers above the tree line; the rotation can often be heard at our home. At times, the sound is equivalent to an airplane, and the roar can be heard even within the house. We have not measured the decibels of the sound, but it is loud enough to be noticeable and disruptive; clearly not what was portrayed by Next Era.

As for our personal quality of life, living day to day within a wind farm, we believe the wind turbines will cause more disruption when summer arrives, simply because we will no longer have our quiet summer nights that we used to enjoy. The turbines are loud, almost constantly. Long shadows are created by the blades, and the night only brings the red flashes. We can hear the whooshing sounds within our bedroom and upper levels of our home.

Though we cannot confirm or correlate our suspicions, Autumn has had a spike in migraines, which developed shortly after the wind farm was completed; she is now prescribed a daily medication to control the increase of migraines that she suffers and we find this concerning.

Another major concern we have, as non participants within the footprint of Brady 1 Windfarm, is the decrease in property value. We could have sold our home, and lived in another region where there is no chance for another project, but we realized that the value we would receive for our home would be subpar. A close neighbor bought a home within the city limits of Dickinson, and has been trying to sell his farmstead for almost a year; the neighbor confided in us that every prospective buyer was dismayed by the proximity of the wind farm and was no longer interested in the property. We feel that this is a good indication of the loss in property value that everyone in this footprint suffers from, whether they signed on for the project or not.

If we could make a request, we would say that we would like the entire farm eradicated, or transported to a less populated area. However, since this is unlikely, we would settle for future wind energy projects to have further setbacks from the homesteads, particularly those who are non participants. The Brady 1 Wind Farm used a setback that measures from the foundation of a dwelling to the base of a turbine; we believe that the setback should start from a resident's property line. It is unfair to use an individual's own property to achieve a setback, especially when that individual or family chose not to participate in the project.

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Attached #4
pg 2

We are non participants, living within a wind farm, and one of the most alarming possibilities is if the wind farm were to be decommissioned. In the preliminary stages of the Brady 1 Wind farm, we realized that many of those that signed for the wind turbines, the participants, did not actually live in the footprint of the wind farm. So, if there is no bond for the decommissioning of these wind turbines, and the company abandons them, for whatever reason, this problem will affect mostly non participants, such as ourselves, who live amongst the deteriorating, useless, structures. We are in favor of a bond that can help prevent this for us and others who are forced into the same unfortunate position.

Finally, we want to leave you with these final thoughts; we love our home and intend to live there, regardless of the turbines. However, everyday, when we pull into our drive, we have an unsightly view of our house being towered over by two wind turbines and they look to be literally in our backyard; they are approximately one mile away. We would like to note that the owner of this land does not have to look at any of the towers like us; the property owner does not live anywhere near the footprint. It is disheartening and a constant reminder of what has been lost in our community. Not a gain, but surely a loss.

Thank you for taking the time to listen to our testimony and personal experience of life within a wind farm.

Sincerely,

Autumn & Farren Richard

Fr: Tom Reuhent

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2-9-17
#5
1

To Chairman Jessica Unruh, Energy and Natural Resources Committee and fellow committee members:

My name is Jon Wert, I live near New England, ND where I own and operate a farm with my wife Sheri, and two children, Devin and Brenna.

We have lived on our farm since our marriage 22 years ago. My wife is from the Jamestown area where she was raised on her family farm. She never hesitated to moving to the western part of the state and immediately fell in love with the beautiful vistas that this part of the state has to offer. Very few places in the state can one see for 30 to 40 miles in one direction.

Two years ago after many years of hard work we decided to build our dream home. We picked a spot near our old yard but with a small increase in elevation afforded us a view like I've never seen. It truly is breathtaking as we can see for over 40 miles, we can see all of the local buttes and farmland and even the highest peak in ND even though it is a great distance.

The project took nearly 2 years and we moved in Jan of 2016. But to our great disappointment a proposed wind farm in our area was gaining traction. We were approached to have multiple turbines on our land but refused the offer. The first step I took was to get a petition going on changing our county setbacks from people's residents. The county zoning ordinance is only 1320 feet. After seeing other wind farms in the state I knew this was unacceptable. I worded the petition so that the setback would only be changed for non participating residents. It was for a change to one mile from their residents. I received 70% of the signatures of those living in the two townships affected including several that had signed up for the project, as they also believed the turbines shouldn't be that close to those who don't want them. The petition was presented to the county zoning board and the commissioners but unfortunately they didn't listen to the will of the people and would not change their zoning ordinance.

We did manage to convince the wind company to move to 2640 ft from nonparticipating residents but that was only half of what was requested.

Now we live in a wind farm with 159 turbines that has forever changed our landscape. Our view from our new home has lost its luster, our quiet countryside has an industrial hum to it and the value of our new home that we have worked so hard for has lost a substantial amount. We have already lost a couple families, with more threatening to leave. The homes up for sale have no interest because no one wants to live in or near a wind farm. Of the 52 people who signed up for the project only 13 live in or near the project. So a group of mostly absentee landowners destroyed our beautiful countryside, lowered our quality of living and greatly reduced our property values while they padded their wallets.

Now I know what redistribution of wealth means. Anything the state legislature can do to correct these injustices would be a move in the right direction. Thank you. Sincerely, Jon Wert

SB 2313
2/9-1/17
Arthaud
PSI

Good Morning Chairman Unruh and members of the Senate Energy and Natural Resource committee.

My name is Carla Arthaud I am a member of CCSC, Concerned Citizens of Start County, and I am here to speak in favor of SB 2313.

I appreciate that there is this bill being considered to regulate wind turbines in North Dakota. I have seen and experienced what happens when there are very limited laws in place. It affects not just one, but a community as a whole. Therefore, we would like to see this bill go even further with setbacks for these reasons.....

Sect. 3. Paragraph 3.a.

Suggested Wording

- (1)Two times the height (height defined as the maximum height of the vertical blade at its highest point) of the turbine or 1,500', whichever is greater from the interstate or state roadway right of way.
- (2)Two times the height (height defined as the maximum height of the vertical blade at its highest point) of the turbine or 1,500', whichever is greater from any county or maintained township road right of way.
- (3)Two times the height (height defined as the maximum height of the vertical blade at its highest point) of the turbine or 1,500', whichever is greater from any railroad right of way.
- (4)Two times the height (height defined as the maximum height of the vertical blade at its highest point) of the turbine or 1,500', whichever is greater from a one hundred kilovolt or higher voltage transmission line.
- (5)Five times the height (height defined as the maximum height of the vertical blade at its highest point) of the turbine or 2,640', whichever is greater from the PROPERTY LINE of any nonparticipating landowner.

These setbacks are a little more defined, as to the top of the vertical blade verses the hub, which is important as most hubs are 280' and the top of the vertical blade is 429'. This is important because when you debate property lines verses occupied residence the distance of where these turbines are placed, which are permanent structures, has a huge effect on both participating and non-participating landowners. Sound levels, decibels, are also important to take into consideration when these turbines are placed near occupied residences. I have provided you with written testimony by Lea Dorner, we have spoken about the turbine noise at her place. Lea is inside of the Brandy Wind farms and is a non-participating land owner. She has stated to me that she has contacted the Energy Company and the PSC about getting a decibel reading and they both have told her they are not aware of a company that measures the decibel sounds. In her testimony it also states her readings are above the measurement standards. With the amendments that we have proposed this could rectify sound and some sight problems in the future.

Thank you for your time and I will be happy to answer any questions you have.

Senate Energy and Natural Resource Committee
SB 2313 Testimony

*Bro't by Carla Anthard
Lea Dorner*

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Good Morning Chairman Unruh, and members of the Senate Energy and Natural Resource Committee.

My name is Lea Dorner. I live North of New England, ND. I am one of the many directly affected by the Brady I and Brady II wind tower farms. Please accept my apologies for not being able to be here in person. I hope I can convey my concerns and experiences correctly with the sincerity that's in my heart.

Therefore I will begin. These towers are a threat to everyone. They claim to be environmentally safe, but are far from it. They not only pollute the land with garbage, but the people's health. I have experienced migraines, nausea, and ear ringing since they turned them on, back in December. My youngest son who is 5, experiences the feelings of plugged ears.

There were attempts to help address all these concerns by the PSC at their meetings. But now when problems are arising, there is no effort to find truths. For example the noise level of these towers at ½ mile away is exhausting to say the least. There are three noises to their pollution. The first is a "whoosh" sound heard from the blades piercing the air. The second is the constant motor that fluctuates up and down. The third is the sound of a jet that is hovering overhead. I have used two different decibel apps inside and outside of my house at 2:00 in the morning. They range in the 80-90 decibel reading, and that is with a wind speed of 5-10 miles an hour. The PSC set a maximum of 50 decibels, no matter which sound you hear. But when called and informed of the high volumes noted, I was told they have no third party testing abilities. Instead they contacted the wind company to test their towers. I was called by their project manager and told they would look into it with a report in two days. That was 2 ½ weeks ago and I'm still patiently waiting a response from him or the PSC, on a report.

These noises make my ears ring. The pressure in my head is very painful. Imagine putting in an 18 hour day at work, and longing to go home to put your feet up and relax, or just crash into a deep sleep. I no longer have that luxury. When I get home to relax in my cozy haven, I hear constant roaring noises from outside. There is nothing I can do to get them to quiet down. Unlike an old freezer that hums or phone charger that squeals. I have no power in the noises that they produce, that attack my health. There are three towers within a half a mile away from my house. One to the North, one to the East, and one to the Southeast. I not only hear them, but can feel there pressures they give off.

The other pollutant these towers possess is the blinking red light at night. They cause a hypnotic affect when I have to drive through them to my house. I really have to take note at what I'm doing, or I end up thinking, how I got this far without remembering that curve in the road. A big sale on these at the County Commissioners meeting in Mott, was that they were supposed to have the latest and greatest technology. Where they would only turn on while an aircraft was in the area, which would be detected by radar in the plane. At the PSC meeting it wasn't as far in technology as they had planned, but would get right on it to install them as soon as they could.

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Alford #7
JS 2

I understand the importance of keeping our passengers in the sky as safe as we can. But when things are promised and no repercussions for lies portrayed, one questions why these things were so great. That and the story changed from meeting to meeting on every account. Before they turned the towers on they had a dull red light on them. Some still don't have any lights on them. The planes that used to fly right over our place seem to veer around to the East of the towers to get to Dickinson's airport anyway. But my question to you is, if they were safe enough to sit in the air for 3 months while completing construction with a solid, not so bright red flashing light, and not one airline complained, why is it demanding that we have the bright blinking red light now? I think it is time to hold these big companies accountable to their words and actions. If not for the ND government, for the great people of ND.

This company has lied not only to you but everyone they came in contact with. They don't care about us here or respect our laws. They care about their dollar only. Setting laws now to keep those in check should not be harder than the most daunting of chores. We have held the oil and coal industries to the highest standards and given the wind industry free reign. We also hold farmers and ranchers to high standards of supply and demand, along with safe products. We have to follow rules of the trade. We take pride in our product and only want the best for everyone to enjoy it as much as we do. If I can't eat what I grow, I sure wouldn't push it on anyone else, and don't. I take pride in the hard work I do to provide, not for just my family, but others who enjoy the benefits of beef. I think we need to enforce these companies to live up to the pride they claim they have for the product they are selling, without intoxicating anyone's life for it. If we are going to be a success with this, we need to set high standards on any new industry, and stick to our ground on keeping everyone here safe.

We have good people here in ND. The best around in my book. But these wind farms tear apart the strongest communities, and friendships. They have even managed to tear apart families. How do we raise the future generations by teaching them hardships that could be averted. We shouldn't have to keep touching the fire to know it burns. Many communities have divided from these, it's time to take a stand and save the next ones who are in line. Small town caring communities is what ND is all about. You may have heard many celebrities loving our state for its gracious hospitality throughout. Why should we let that go? Grab on to it, hold it with Pride, and never let another community get pushed to the sidelines. It does reflect the state as a whole unit. If those who keep taking from us are laughing, let them have their laugh. Now it's time to get our ground back and stand tall. Dust ourselves off and learn from the mistakes. Hold these big companies accountable for their actions. Set strict laws that benefit the North Dakotans and protect us from the ugly money hungry intruders, who are making us the end of their jokes. Listen to the great people of ND, who love this land, and want the best for the future of her. They are the people that are here today, fighting for the protection of the people, and not their wallet.

Thank you for your time today on this sensitive and heartfelt subject. I hope you can listen with a pure heart and open mind.

If anyone has any questions on my experiences, please feel free to call the phone numbers listed at the bottom of this page. Please leave a message if I'm unavailable, I will get back to you. I have 3 boys, (preteen to preschool) and my husband and I work in town as well, while ranching 90 head of cattle.

I won't be ignoring you or snobby, I'm just pulled in many directions to follow a dream I hope to carry out in this life.

Thank you again,

Lea Dorner

Home: 1-701-579-4226

Cell: 1-701-590-0255

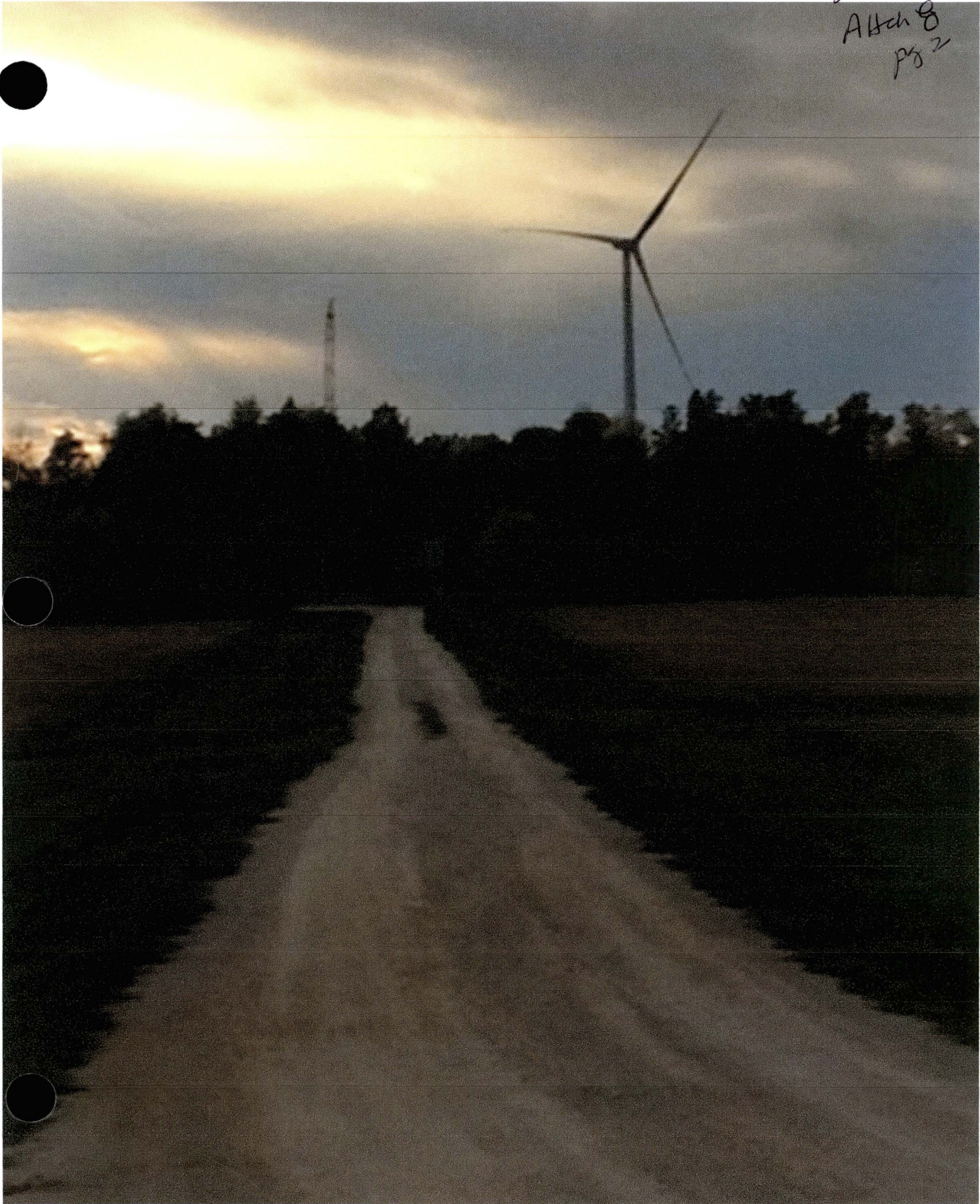
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Keith
Kessler

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pg 1



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Atch 8
pg 2



Keith Hessler

Turbine on Neighbors



Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013). Data are approximate and subject to change.

Legend

- Turbine
- Turbine Access Road
- Parcel & Lot Boundary
- Underground Collection Line
- Wind Project Improvement Easement
- ROW Limit
- Construction Easement
- 1/4 Section Line

N $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 15 T141N R87W	
Wind Project Improvement Easement	1.72 Acres



B4 - 27.1
Rev. A



Westwood Professional Services, Inc.
 7699 Anagram Drive
 Eden Prairie, MN 55344
 PHONE 952-937-5150
 FAX 952-937-5822
 TOLL FREE 1-888-937-5150
 www.westwoodps.com

Bison 4
 Oliver County, ND
 Exhibit B - Easement Plan

Map Document: P:\0001265.00\GIS\130820\Bison4_EasementPlan_SelectedQSecs_130820_Pg27-1.mxd 8/20/2013 10:36:51 AM

Keith Hessler

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John Olson
NextEra Energy Resources
Lobbyist #65
SB 2313

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Section 2. Decommissioning of wind energy conversion facilities. SB 2313 significantly impacts the PSC's authority to adopt rules regarding decommissioning, site restoration, and financial assurances.

Section 3. Exclusion and Avoidance areas – Criteria. Siting. The PSC currently regulates avoidance and exclusion areas through administrative rules, this includes setbacks from roads and non-participating landowners. SB 2313 puts exclusion and avoidance areas requirements into statute, and again takes away PSC authority and the ability to change or add such areas as needed.

- The PSC currently has the authority to regulate and does regulate decommissioning and siting of facilities through administrative rules.
- SB 2313 negates the PSC's authority to adopt rules.
- SB 2313 limits the PSC's ability adapt to changing technologies, landowner preference, and a changing market place.
- The PSC has noticed proposed decommissioning rules that are set for hearing February 27th, 2017.
- SB 2313 imposes much more onerous requirements than currently exist for siting new wind farms.
- Circumvents the rulemaking process that provides the public and industry the opportunity to submit comments and information to the Commission, which the Commission is then required to review and address as part of the rulemaking process.
- SB 2313 is statutory rulemaking and addresses requirements best left regulated through administrative rulemaking by the PSC who has the technical expertise to do so.

John Olsen

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Comparison of Senate Bill 2313 to NDPSC's Proposed and Existing Rules

SB 2313	NDPSC's Proposed and Existing Rules
<p>N.D.C.C. § 17-04-03. Wind easements – Creation – Term – Development required.</p> <p>SB 2313 amends statute that contains conditions for termination of wind easements.</p> <p>Under SB 2313, a wind easement terminates upon the conditions stated in the easement or thirty days after decommissioning, whichever occurs first.</p> <p>The bill voids a wind easement if development to produce energy from wind power associated with the easement has not occurred within five years after the easement is created.</p>	<p>Proposed and existing rules do not address wind easements. Wind easements are currently regulated under N.D.C.C. § 17-04-03.</p>
<p>N.D.C.C. § 49-02-27. Decommissioning of wind energy conversion facilities.</p> <p>SB 2313 significantly impacts the NDPSC's authority to adopt administrative rules that address methods of ensuring funds for decommissioning and restoration, and rules that address the manner in which a project will be decommissioned and a site restored.</p> <p>SB 2313 amends statute to regulate financial assurance for decommissioning.</p> <ul style="list-style-type: none"> Require financial assurance to be placed before facility operation. 	<p>N.D. Admin. Code ch. 69-09-09 Wind facility decommissioning.</p> <p>Currently, N.D.C.C. § 49-02-27 grants the NDPSC authority to adopt administrative rules that address methods of ensuring funds for decommissioning and restoration, and rules that address the manner in which a project will be decommissioned and a site restored.</p> <p>The proposed rules amend current financial assurance requirements.</p> <ul style="list-style-type: none"> Require financial assurance to be placed prior to commencement of facility construction.

AH 10

original

Comparison of Senate Bill 2313 to NDPSC's Proposed and Existing Rules

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| <ul style="list-style-type: none">• Require the Commission to issue an order that requires the owner to secure a performance bond, surety bond, corporate guarantee to cover anticipated decommissioning costs.
• Condition acceptance of a corporate guarantee. Require the corporation to have a tangible net worth of at least ten million dollars, a ratio of total liabilities of net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of A or higher as issued by Moody's Investors Service, A or higher as issued by Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission. | <ul style="list-style-type: none">• Require the owner to provide financial assurance in the form of a performance bond either as, or combination of, a surety bond, irrevocable letter of credit, self-guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of construction.
• Condition acceptance of a corporate self or corporate guarantee on the following:<ul style="list-style-type: none">○ The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a self-guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
○ The owner or parent guarantor has or is at least one of the following:<ul style="list-style-type: none">▪ A current rating of "A" or higher for its most recent bond issuance as issued by Moodv's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange |
|---|--|

Comparison of Senate Bill 2313 to NDPSC’s Proposed and Existing Rules

	<p>commission, that is acceptable to the commission.</p> <ul style="list-style-type: none">▪ A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater: or▪ An electric public utility as defined by N.D.C.C. § 49-03- 01-5(2). <ul style="list-style-type: none">○ The total amount of an outstanding self-guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.○ The combined total amount of an outstanding self-guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth in the United States. <ul style="list-style-type: none">• Owner is required to immediately notify the Commission if any financial assurance is modified, cancelled, suspended or revoked, and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.• Commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.
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Comparison of Senate Bill 2313 to NDPSC’s Proposed and Existing Rules

<p>SB 2313 amends statute to regulate site restoration, and requires:</p> <ul style="list-style-type: none"> • Dismantling and removal of towers, turbine generators, transformers, and overhead cables. • Removal of underground cables to a depth four feet. • Removal of foundations, buildings, and ancillary equipment to a depth of eight feet. • Removal of surface roads material and restoration of roads and turbine sites to substantially same physical condition that existed immediately before construction of the facility or turbine. • Facility owner or operator to file record notice with the county recorder with the location of any cables, foundations, buildings, and ancillary equipment not removed. • Site reclamation to the same topography that existed immediately before the beginning of facility construction. Respread topsoil over disturbed areas to pre-disturbance depth. • Areas disturbed by facility construction and decommissioning activities to be graded, topsoiled, and reseeded to natural resource conservation service technical guide 	<p>The proposed rules amend decommissioning requirements for site restoration:</p> <ul style="list-style-type: none"> • Dismantling and removal of towers, turbine generators, transformers, and overhead cables. • Removal of underground cables to a depth two feet. • Removal of foundations, buildings, and ancillary equipment to a depth of: <ul style="list-style-type: none"> ○ Three feet for facilities constructed before July 1, 2017. ○ Four feet for facilities constructed on or after July 1, 2017. • [The proposed rules do not address road reclamation specifically although, the proposed rules’ broad reclamation requirements can be interpreted to impose such a requirement.] • [Proposed rules do not address notice requirements.] • Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance. • Grading and topsoiling of areas disturbed by the facility, and reseeded according to natural resource conservation service recommendations, unless the commission approves an owner request signed by the applicable landowner, identifying the
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Comparison of Senate Bill 2313 to NDPSC’s Proposed and Existing Rules

<p>recommendations unless landowner requests in writing that access roads or other land surface areas be retained.</p>	<p>surface features the landowner prefers to remain in place, and the reason the landowner prefers those features to remain.</p>
<p>§ 49-22-05.1. Exclusion and avoidance areas – Criteria.</p> <p>Creates statutory regulation of geographical areas that must be excluded in consideration of a site for a wind energy conversion facility.</p> <p>It appears the intent of the bill is to create exclusion areas under § 49-22-05.1(3)(a) and avoidance areas under §49-22-05.1(3)(b).</p> <p>Exclusion areas include areas less than:</p> <ul style="list-style-type: none"> • Two times the height of the turbine from an interstate or state roadway right of way. • Two times the height of the turbine from the centerline of any county of maintained township roadway. • Two times the height of the turbine from any railroad right of way. • Two times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line. • Three times the height of the turbine from an occupied residence of a participating or nonparticipating landowner or a business. 	<p>The proposed rules do not address exclusion and avoidance areas. Exclusion and avoidance areas are currently regulated in N.D. Admin. Code ch. 69-06-08. The following rules are located in the administrative code at § 69-06-08-01.</p> <p>Exclusion areas include areas less than:</p> <ul style="list-style-type: none"> • One and one-tenth times the height of the turbine from interstate or state roadway right of way. • One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway. • One and one-tenth times the height of the turbine from any railroad right of way. • One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line. • [The NDPSC has adopted a general setback requirement of 1,400 feet from all existing occupied structures but this requirement is not codified in rule or statute.]

Comparison of Senate Bill 2313 to NDPSC’s Proposed and Existing Rules

<ul style="list-style-type: none"> • Two times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this paragraph. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. • [Appears sound levels would remain an avoidance area.] Areas where the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty A - weighted decibels. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building. 	<ul style="list-style-type: none"> • One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04. • [Sound levels are currently classified as an avoidance area under the administrative rules.] A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
<p>Create new subsection 1 of § 49-22-08 Application for a certificate – Notice of filing – Amendment – Designation of a site or corridor.</p> <p>Creates a requirement that applications filed with the NDPSC contain a statement explaining the manner in which an energy conversion facility has informed and mitigated any affected subsurface mineral owners or lessees.</p>	<p>Existing and proposed rules do not contain provisions regarding this requirement.</p>

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February 9, 2017

SB 2313 – Hearing

Testimony from NextEra Energy Resources, LLC (“NextEra”), Melissa Hochmuth, Project Director, Wind Development

Chair Unruh and Senators:

My name is Melissa Hochmuth, and I am a Project Director for NextEra Energy Resources responsible for the development of our wind projects in North Dakota. I most recently managed development of the Brady I and II wind energy centers in western North Dakota. These two projects, along with our Oliver III wind energy center that just went operational in Oliver and Morton counties, brings the total number of wind farms we operate here in North Dakota to 14. We have been doing business in North Dakota for over a decade investing in wind and oil and gas. Our wind farms represent a capital investment of over \$2.4 billion. We employ over 75 full-time employees, spend approximately \$8.5 million in annual payroll, \$3.0 million annually in property taxes and \$6.5 million annually in lease payments to local landowners in the state.

We value our partnership with North Dakota, which continues to be very important to the success of our company. We strive to be a good partner with local communities and landowners. The wind projects that I have managed were challenging, but they are examples of projects where we worked with landowners, counties and the state to address concerns and develop successful projects that are now operating and bringing revenue and jobs to the local community.

North Dakota is well-known for reasonable, fair and predictable energy policy that allows us to build these projects, and NextEra would like to commend the state on its long-term policy of even-handed regulation of wind farms.

I am here today because SB 2313 represents a departure from this long-standing policy.

If this bill passes in its present form, many wind projects will not meet the standards contained in the bill, specifically the setbacks for turbines, and thus will not be built. Now, this doesn't mean the projects won't be built at all – the marketplace is asking for wind farms – the technology of wind today makes it a cost-effective choice for many customers. What will happen is the projects will be built in other states – taking jobs, landowner revenue and tax revenue away from the North Dakota communities who want the benefits of these projects.

We support the Public Service Commission (PSC) regulating the decommissioning and siting of wind farms through rulemaking. Wind farm siting is not a one-size fits all approach – there are unique aspects to every project, every landowner and every

original

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county, and right now the siting process allows for those unique aspects to be vetted on a project-specific basis. The onerous setbacks contained in this bill would take away most of that flexibility. There are communities in this state who want wind farms, and there are communities who don't. What this bill does is take away the option for those who do want the benefits of a wind farm.

For example, we recently built the Oliver III wind project in Oliver and Morton Counties - this is an example of a community who wanted a wind farm. We did an analysis, and if the setback requirements included in this bill had been applicable to the Oliver III project, about 2/3 of the turbine locations would not have been viable, and we could not have built the project. Here is a community who wants a wind farm, and if this bill had been in place, they wouldn't have been able to get one.

In addition to the siting requirements, I would also like to touch on a few other aspects of the bill.

Regarding decommissioning, detailed requirements like credit standards is best developed with full stakeholder input through rulemaking and the public comment process, and the PSC should retain the flexibility to address financial assurance requirements to account for changing market conditions. For example, the "A" credit rating required in the bill would disqualify every entity in the renewable energy industry doing business in North Dakota, including large rural electric cooperatives, investor owned utilities and independent power producers.

Regarding mineral notification requirements, it is unclear how we would comply with the bill as written. We consider other energy interests and leases when we design the layout of our projects. It is unclear how much of impact these notification requirements would have on the viability of our projects. An extreme interpretation could mean that our projects would not be able to proceed due to these obligations; thus, this requirement should be considered.

NextEra encourages the legislature to continue to support reasonable, fair and predictable energy policy for wind generation, and for the reasons I outlined in my testimony, this bill is not in line with this policy. Thus, NextEra urges the committee to vote Do Not Pass on SB 2313.

February 9, 2017

Senate Energy and Natural Resources Committee
ND State Senate
Bismarck, North Dakota

Madam Chairman, Members of the Committee:

My name is Robert Harms. I'm the lobbyist for Tradewind Energy, Inc. We **OPPOSE** SB 2313.

Tradewind Energy, is a wind-developer that has been in business since 2003, has \$5 billion of capital invested in 3,000 MW of wind in the US, and developed the Lindahl Wind Project north of Tioga. The Lindahl Wind Project—developed by 28 local landowners provided:

- 150 MW of new power into the Bakken region
- 13,000 acre foot print; approximately 75 towers
- 28 landowners (who developed their own land lease)
- \$250 million investment
- 100 construction jobs
- 12 permanent jobs after construction
- Low-cost power to local market in need of power, as per ND Transmission Authority (2012)
(load to triple by 2032; 339% growth in McKenzie Co; requires 3,000 MW of new power)
- 25 year power purchase agreement signed with Basin Electric-executed November, 2014
- Constructed in 2016 and will be in service by March, 2017

Tradewind continues to develop wind resources of a similar size in other parts of North Dakota.

WIND METRICS:

- \$4billion capital investment in ND; developed in, and approved by 21 ND counties;
- significant part of ND energy mix; 4200 MW of coal; 2800 MW of wind, 600 MW natural gas
- millions in property taxes, salaries, economic activity and payments to landowners
- helps to diversify ND's economy, create jobs and creates economic opportunity in rural ND

Tradewind opposes SB 2313 because:

SECTION 1. Limits easements to 5 years

Five years is too short for developing these projects.

Changing the law now impacts projects underway, and creates uncertainty for investment and impedes.

The language is vague and also creates more uncertainty. For example,

Line15, provides the easement is void "if development to produce energy"..has not occurred.

"Development" is vague and undefined and creates uncertainty for the project, the investors and impedes future wind development.

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Line 21, provides the five year period commences after the easement is "created" (rather than signed, or recorded). "Created" is undefined and also leads to uncertainty in the market and impedes investment.

SECTION 2. Mandates decommissioning requirements upon PSC

Decommissioning is under consideration by the PSC and should be allowed to evolve through rule-making process. North Dakota citizens, taxpayers and the power industry will all be better served through a careful and orderly consideration of all factors relative to de-commissioning that can be crafted to meet the needs of the public and the industry. The rule-making process, authorized by the Legislature affords the PSC members time to deliberate on its decision, utilize the expertise within the agency, consider comments of stakeholders and amend the proposed rule in a time-frame that is not as compressed as the legislative process. The legislative process binds the stakeholders, in a way that may be contrary to the public interest until the statute can be amended in a future Legislative Session.

PSC has jurisdiction for decommissioning under current law, and has begun a rule making to address the concerns of the public. SB 2313, is unnecessary and is a less artful way of addressing the concerns relating to de-commissioning of wind-farm.

Financial assurances are already covered by project contracts, or PSC rules, or both.

SECTION 3. Mandates "one-size fits all" setbacks on local government

Mandates to local governments and to landowners are not necessary----interfere with the use and enjoyment of private property, and impede the economic vitality of rural North Dakota. A "one-size fits all" approach is not ordinarily embraced by North Dakota when it comes to federal policy, and should not be a standard we impose on our own people.

Perhaps most importantly, SB 2313 circumvents the local zoning ordinances that counties have in place and require a conditional use permit (CUP) for any project such as a windfarm. That process allows local decision-makers to tailor setbacks for roads, homes, other facilities and allows development if that is the goal. County Commissioners in 20+ counties in North Dakota have approved wind development and can best tailor their local concerns to better fit the project, rather than a mandate as required by SB 2313.

SECTION 4. Mandates siting a certificate condition that is unnecessary, onerous and overly broad

The bill mandates that a developer has informed and mitigated "affected subsurface mineral owners, or lessees."

- it's unnecessary because the project doesn't impact sub-surface development
- it's cumbersome because title to sub-surface may include thousands of owners
- it's overly broad, and has the potential to impede gas-turbines, refineries, and transmission lines (NDCC 49-22-07 requires a "certificate" and includes "energy conversion and transmission facilities)".

For these reasons we ask that you reject SB 2313 and recommend a Do Not Pass to the Senate.

Robert W. Harms, JD

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From: Carol Goodman [<mailto:goodman@utma.com>]
Sent: Wednesday, February 08, 2017 4:39 PM
To: 'Robert W. Harms' <robert@harmsgroup.net>
Subject: RE: keep an eye out for new wind polling in ND (strong support)

From
Bob Harms

February 8, 2017

Madam Chairman, Members of the ND Senate Energy & Resources Committee:

I respectfully request that you DO NOT PASS SB 2313 out of committee, as it will be detrimental to wind development in North Dakota, to say the least. I have read the bill and see nothing positive in it.

Cavalier County has a 199mw wind farm, which has been a major economic success for our community. There was not a single landowner or citizen that was not in favor of this project. Please consider the following points:

- wind leases are to be negotiated between the developer and the landowner with support from the local community.
- The PSC already has the responsibility to handle decommission, and we trust them to carry out a decommissioning in coordination with the wind energy company and the landowner. We have confidence in that process.
- The set backs in this bill will make it impossible to site a wind project for maximum wind generation. I do believe that the counties and their zoning boards have the responsibility and capability to follow their own ordinances which specify setbacks. Cavalier County is now in the process of updating our ordinances to continue to best serve our citizens.

Energy development should be an "all of the above" effort in ND. We already have successful wind farms in the state and we should not make it impossible to carry out further development.

Carol Goodman
Director, Primary Sector Development

Cavalier County Job Development Authority

901 3rd Street, Suite 5
Langdon, ND 58249
Phone (701) 256-3475
Fax (701) 256-3536
Email: goodman@utma.com

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Capital Power presentation to North Dakota Senate Committee re: SB 2313 February 9, 2017

Good morning madam Chair and members of the committee, thank you for your time this morning.

I'm Jerry Bellikka, Director of Government Relations in the USA and Canada for Capital Power. We are a publicly traded company that develops, owns and operates more than 3500 MW's of electricity generating facilities across North America. Our power plants use a variety of fuels including natural gas, landfill methane, biomass, wind, solar and coal. Among our fleet is the largest supercritical coal plant in Canada that is among the cleanest coal plants on the continent.

Here in North Dakota we are developing the New Frontier wind project in McHenry County and the Garrison Butte project in Mercer County. SB 2313 as proposed would render both of these projects uneconomic. The setback requirements combined with the extra ordinary decommissioning conditions and other components of the Bill would force us to look elsewhere to invest.

Our investment in these projects and our financial agreements with landowners and counties is substantial. New Frontier is slated to be a 99 MW project on 13,000 acres of land that represents a capital investment of about \$150 million dollars. Garrison Butte is about the same. Together, these wind farms would pay about \$20 million in tax to the counties over 20 years. About 60 landowners can expect to earn another \$18 to \$20 million in lease payments over the life of the project. That doesn't include the millions that will be spent on local trucking contractors, gravel, concrete, trenching, construction materials and other supplies during construction of these facilities. Not to mention money spent in local restaurants, gas stations, hotel rooms and safety supply stores. When you add it all up, a modest figure would be \$350 million.

This investment won't happen if SB 2313 goes ahead. The reality is, investment capital will go where it is most welcome. Capital Power has development opportunities in more than 14 other states right now. We already operate facilities that stretch from North Carolina to New Mexico and across 3 Canadian provinces. North Dakota has an excellent wind resource and the North American demand for renewable energy makes this state a great fit with our projects in Ohio, Wisconsin, Illinois and Kansas. We see it as a win-win for our company, landowners and the municipalities. But the proposals in SB 2313 could cut the size of our projects in half and turn them into losing propositions. That would force us to invest our capital elsewhere.

I would just like to offer a couple of comments on what seems to be an underlying thread of this legislation, and at least two of the other bills that are before the legislature this session. I've heard from some landowners that this is an effort to pit North Dakota's vibrant coal industry against renewable power. As mentioned earlier in my remarks, our company owns and operates coal plants as well as wind and solar. Where fossil fuels serve as baseload generation, wind is an additional resource that can easily co-exist with coal or natural gas. We use a variety of fuels in several of our markets and they work well together. There is plenty of room here in North Dakota for wind and coal to be part of the energy future.

I'd be happy to answer any questions you might have.

original

North Dakota Senate Standing Committee on Energy and Natural Resources
Hearing: SB 2313 02-09-17 9:30am

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Chairman Schaible, members of the Committee.

My name is Warren Enyart. I am the General Manager of M-Power, LLC of Finley and the Project manager for Rolette Power Development, LLC of Rolette. On behalf of these two Companies, as well as our constituent landowners, respective communities, and private investors, I'm here today in opposition to several of the provisions of SB 2313.

M-Power is a community-based, landowner-driven renewable resource development company. For the past 12 years, our focus has been exclusively on wind generation development. Our initial approach was carefully planned, with lessons learned by other developers in North Dakota and elsewhere. Our first two projects were contiguous and amounted to a total of 169.5MW in Griggs and Steele Counties. We sold 120MW to NextEra and 49.5MW to Otter Tail Power as "construction ready." With that successful experience, we were invited to replicate our landowner-oriented model in a joint venture with Border Power, LLC of Rolette, ND. Rolette Power Development is that joint venture company; owned equally by M-Power and Border Power.

Between M-Power and Rolette Power, we have a total of 250MW currently under development. A footprint of 100MW is located in Rolette County, and has already received a Certificate of Site Compatibility and a Conditional Use Permit. Another 150MW footprint is located in Steele County and is adjacent to the 49.5 MW windfarm that we sold to Otter Tail Power in 2009. Although Conditional Use permits have been issued for the Steele County project, an application for a Certificate of Site Compatibility has not yet been submitted.

There are a total of 129 landowners, six community economic development agencies, three County Commissions, three Township Boards, and 140 private investors, with vested interest in these projects. With the lessons learned from our first projects, we have incorporated improvements in balancing the interests of multiple stakeholders, including economic development interests, the many landowners who pledged their wind rights and land for turbines and transmission lines and other individuals who have invested cash to support the development efforts.

Landowners pledge their participation by way of wind development easements for which they gain ownership in the development company. In return, landowners who ultimately host turbines receive annual turbine lease payments based upon turbine nameplate capacity as well as land rent payments for acres included in the easement up to a mile from the turbine site. Participating landowners, who don't happen to have a turbine sited on their land, also receive land rent payments for pledged acres within the developed footprint, regardless of how far their lands may be from an installed turbine up to 1/2 mile of the outermost perimeter of turbines. In addition,

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participating landowners share in the profits of the development company, based upon the number of acres pledged under their development easement agreement.

Community economic development entities sponsor projects with seed capital and benefit by way of returns on their investment in successful projects. Counties and taxing entities benefit by way of badly needed new tax revenue for local public entities. Moreover, as development company shareholders, landowners have input in general siting preferences and infrastructure layout.

The increased setbacks proposed in SB 2313 adversely affect this model. These provisions may negatively affect other development models as well. The fact is: **Increased setbacks diminish the overall efficiency of any given sized footprint while increasing the overall negative impact to landowners.**

The optimum generation of a given footprint is dependent upon the combination of a number of factors, including but not limited to: the net capacity of the wind resource across the area under easement, turbine design, lay of the land, number of suitable sites within the easement area, options to strategically array turbines within the development area in order to minimize wake disturbance, and flexibility to make adjustments in turbine sites to accommodate landowner preferences.

Increasing the setbacks beyond those required to reasonably minimize adverse sound and safety concerns reduce the potential for optimum generation production of the footprint. In order to offset the diminished productivity of a given area, more easement area is required. In addition to adding more nonproductive land, less dense footprints require more infrastructure including access roads and buried generation collection cables.

Therefore, while the advantages of optimum density production are diminished, construction and operational costs are increased along with potential adverse impacts to landowners; due to the inclusion of non-productive easement areas. Ultimately, this consequence increases costs without any measurable increase in economic or safety benefits accruing to the landowner or to the project's other supporting entities.

A similar case can be made against the several other elements of this bill and a number of other wind generation related proposals that this Legislative Assembly has under consideration. In general they: 1. increase the costs of the project, 2. reduce the tax revenue accruing to the local entities, and 3. place unwarranted burdens upon developers; all of which will result in higher prices for this valuable resource... which in turn will ultimately be borne by the consumers. You must realize therefore that these proposals have the effect of a "hidden tax;" or worse, a not so cleverly hidden deterrent to further investment in wind development in North Dakota.

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Senate Bill 2313

Presented by: Randy Christmann
Chairman, Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Jessica Unruh, Chairman

Date: February 9, 2017

TESTIMONY

Chairman Unruh and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

Section 1 No PSC position. Caution that using “development to produce energy” on page 1, line 15 as a delineation point may provide an incentive for someone to begin construction with no real plan for completion. Perhaps “production of energy” may be a more clear delineation point.

Section 2 Highly recommend leaving subsections “d” and “e” on page 2, lines 8-11 in the law. Whether this bill passes in current form, an amended form, or not at all, the Commission will need rules regarding assurance that funds are available and the manner that projects will be decommissioned.

The PSC is in the middle of a rulemaking procedure that addresses most of the issues in Subsections 2 and 3 from the middle of page 2 to the middle of page 3. A hearing is scheduled for Feb 27.

Subsection 2 is about financial assurances. The proposed rules allow an incremental bond schedule. I think it is a reasonable option that the Committee may want to consider. The more important difference is that the proposed rules require that financial assurances be in place before “commencement of construction”, while SB 2313 requires these assurances

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“before operation”. I urge the Committee to consider amending the bill to require financial assurances before commencement of construction.

Subsection 3 is about the actual reclamation. The Commission’s current rules require removal of underground cables to a depth of 24” and our current rule change proposal does not change that. SB 2313 changes it to 48”. The PSC has no position on this part of the bill, but I request that the Committee clarify whether the new requirement includes existing wind farms or if the 48” requirement includes only future developments. The other key difference is that SB 2313 would require removal of foundations to a depth of 8’. The Commission’s current rules require removal to a depth of 3’ and we have proposed changing that to 4’ for facilities sited after July 1, 2017. If the Committee chooses to require a deeper removal requirement, I would suggest clarifying whether the change includes existing facilities.

Section 3 This section at the bottom of page 3 through much of page 4 codifies and toughens exemption areas, most of which are currently in PSC rules and are not part of our proposed rule changes. SB 2313 requires a setback of 2 times the turbine height from the centerline of county and township roads. (#2 on page 4) The current rule is 1.1 times the turbine height plus 75’.

SB 2313 requires a setback of 3 times the turbine height from residences or businesses. (#5 on page 4) That would be less than 1400’ for most turbines being used in ND today. While there is no written rule on this subject, the Commission has traditionally not allowed turbines within 1400’ of residences or businesses. This setback recognizes potential adverse living conditions such as noise, shadow flicker, and view shed. I request that the committee consider whether a setback from residences should be in law, as it may become insufficient if turbine sizes continue to grow. If you codify a minimum setback from residences, I suggest it be an “at least” minimum so the PSC could require more.

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1.52:44

Current Commission rules require setbacks of 1.1 times the turbine height from state and federal highway right of ways, RR right of ways, transmission lines of 115 kv and greater, and the property lines of nonparticipating landowners. (#1, #3, #4, and #6 on page 4) I believe the purpose of having the rule at 1.1 times the turbine height was to assure that if it fell it would not enter the right of way. If that is the goal I think in most of these cases the current rule is sufficient and the PSC takes no position on the proposed change. However, I will point out that in hearings nonparticipants have frequently pointed out that allowing turbines this close to their property lines (#6 on page 4) lessens their ability for future development of their property because potential buyers would presumably have the same concerns about noise, shadow flicker, and view shed as current residences and businesses.

Section 4 Mineral mitigation is not addressed in the PSC's current or proposed rules and we take no position.

This concludes my testimony. I will be happy to answer any questions.

Fr. Gen. Schaible 2

Setback Requirements

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States take several approaches to establishing a “setback” for wind turbines, which defines the minimum distance between wind turbines and neighboring structures or property lines. These differences largely depend on whether—and to what degree—state government is involved in the wind energy siting. Of the 20 states with substantial local autonomy, only one state has established a statewide setback. Additionally, 15 of those states have no statewide process or legislation specifically addressing wind facilities, and therefore have no statewide setback requirements. Localities, however, can adopt setback requirements. Dekalb County, Alabama, for example, requires turbines to be setback at least 2,500 feet from neighboring and adjacent property lines, as well as setback 1.5 times the height of the tower from any overhead powerlines and .5 times the height of the tower for underground powerlines (Ala. Code §45-25-260.05). In contrast, four states reserve all siting authority for wind energy and an additional 24 states have both state and local siting provisions. Of these states, 12 have statewide setback requirements for wind turbines and one state clarifies that any locally-established setback cannot be an unreasonable restriction on wind energy development.

Setbacks are calculated based on the height of the tower or the turbine (which includes the height of the blade) and often measured against adjacent property lines or structures.

California

Cal. Government Code §65100-65107; §65893-65899; Cal. Public Resource Code §2100-21006

Land-use decisions, including wind siting, are determined by local governments. Additionally, the California Environmental Quality Act requires local governments to analyze wind generator environmental impacts. Counties are authorized to adopt an ordinance that provides for the installation of wind generators 5 megawatts (MW) or smaller, conditioned on maximum restrictions for tower high, parcel size, setbacks, public notice and noise level.

While localities can adopt wind siting ordinances, the state has established that minimum setbacks can be no further from the property line than the system height. Further setbacks are authorized to comply with fire setback requirements. Additionally, the state has an extensive siting process for wind turbines and nearby military facilities.

Connecticut

Conn. Gen. Stat. Ann. § 16-50j; Connecticut Siting Council Wind Regulations

The Connecticut Siting Council has promulgated wind siting regulations that include provisions addressing tower height, distance, flicker, decommissioning, ice throw, noise and public hearings. The Siting Council also provides a certificate for all renewable electricity generating facilities 1 MW or larger.

The legislatively-established Connecticut Siting Council has developed siting regulations for facilities 1 megawatt (MW) or larger. On setbacks specifically, facilities greater than 65 MW in total capacity must comply with the greater of 2.5 times the height of the turbine or the manufacturer’s recommended setback from any property lines. Facilities less than 65 MW must comply with the greater of 1.5 times the height of the turbine or the manufacturer’s recommended setback from any property lines. Note: facilities 65 MW in capacity are not designated in either category. Provides exceptions for this under specific circumstances.

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Delaware

Del. Code Ann. tit. 29 §80-8060

The state prohibits local governments from passing restrictions that prohibit land owners from using wind systems on residential properties. Otherwise wind power generation is governed by local zoning ordinances. Establishes that setbacks are 1.0 times the height of the turbine (defined as the tower plus the length of one blade).

Illinois

Ill. Rev. Stat. ch. 55 §5/5-12020 (County); Ill. Rev. Stat. ch. 65 §5/11-13-26 (Municipality)

Illinois has no specific siting authority for wind at the state level. A county cannot require a wind tower or other renewable energy system that is used exclusively by an end user to be setback more than 1.1 times the height of the renewable energy system from the end user's property line.

New Hampshire

N.H. Rev. Stat. Ann. §162-H: §674:63

The New Hampshire Siting Evaluation Committee provides a certificate for energy facilities greater than 30 MW. Developers of facilities between 30 MW and 5 MW can opt-in to the SEC process to preempt local jurisdiction. All other wind facilities fall under local jurisdiction. State law also prohibits municipalities from adopting unreasonable ordinances or regulations relating to small wind generation.

Prohibits localities from adopting ordinances that require setbacks more than 150 percent of the system height from property boundaries. Allows for individual project circumstances to be considered in modifying this requirement.

New Jersey

N.J. Rev. Stat. §40:55D-4; 55D-7; 55D-66.12; 55D-70(d).

Wind developers can gain variances to local zoning ordinances, as wind generation is defined as having an "inherently beneficial use." Local governments cannot adopt ordinances regulating small wind energy systems that unreasonably limit wind generation development.

State laws authorize municipalities to adopt local ordinances, so long as they do not unreasonably limit or hinder small wind energy systems. Localities cannot restrict tower or system height through a generic ordinance or regulation that does not specifically address allowable tower height or system height of a small wind energy system. Localities cannot establish setbacks greater than 150 percent of the system height. This distance serves as the standard setback in absence of a local ordinance stating otherwise.

North Carolina

N.C. Gen. Stat. §143-215.115

North Carolina law prohibits the construction or operation of a wind energy facility without a permit from the Department of Environment and Natural Resources.

Establishes that turbines be setback at least .5 miles from the boundary of an adjacent property owner. Additionally, the state has an extensive siting process for wind turbines and nearby military facilities.

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Ohio

Ohio Rev. Code Ann.
§4906.13; §4906.20

Ohio Power Siting Board preempts local jurisdiction and provides a certificate of environmental compatibility and public need for the construction of an “economically significant wind farm” (between 5-50 MW). Smaller facilities are subject to local jurisdiction. For “economically significant wind farms” (between 5 and 50 MW) setbacks must be at least 1.1 times the total height of the turbine, measured from the base to the tip of the highest blade, and at least 1,125 feet from a property line, measured from the turbine’s blade nearest to the adjacent property. Wind facilities 50 MW in capacity or greater are designated as “major utility facilities” and subject to broader siting regulations.

Wisconsin

Wis. Stat. §193.378(4g);
Public Service
Commission Wind Siting
Rules; Model Wind Ordinance

The Wisconsin Public Service Commission is tasked with promulgating rules, under the advice of the Wind Siting Council, for wind energy siting. No local government may impose any restriction on a wind system that is more restrictive than the PSC rules. The state has developed a model ordinance for local governments.

Wind turbines must be located at least 3.1 times the maximum blade tip height from occupied community buildings and nonparticipating residences, and at least 1.1 times the maximum blade tip height from participating residences, nonparticipating property lines, public road right-of-way and overhead communication and electric transmission or distribution lines. Distances are measured as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature. Small wind energy systems (combined systems smaller than 300 kW or individual systems smaller than 100 kW) must be located at least 1.0 times the maximum blade tip height from overhead communication and electric transmission or distribution lines, occupied community buildings and nonparticipating residences and property lines.

Local governments may not set height or setback distance limitations for a wind turbine near an airport or heliport that are more restrictive than existing airport and airport approach protection provisions. If no provisions are established, the local government may adopt wind turbine height or setback distance provisions that are based on, but not more restrictive than, the Federal Aviation Administration (FAA) obstruction standards. Local governments may set height or setback distance limitations for wind turbines near a private heliport at a medical facility used for air ambulance service that are based on, but not more restrictive than, FAA obstruction standards that apply to public use helicopters.

Sixty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2313

Introduced by

Senator Unruh

Representative Porter

1 A BILL for an Act to create and enact a new ~~subdivision to subsection 1 of section~~
2 ~~49-22-08~~section to chapter 20.1-02 of the North Dakota Century Code, relating to ~~application~~
3 ~~requirements for certificates of site and corridor compatibility for energy conversion facilities;~~
4 ~~and~~ a wind energy restoration and reclamation oversight program; to amend and reenact
5 sections 17-04-03, ~~49-02-27~~49-02-34, and 49-22-05.1 of the North Dakota Century Code,
6 relating to the creation and duration of wind energy easements, ~~the decommissioning of~~
7 ~~commercial wind energy conversion facilities~~annual reports on meeting renewable and recycled
8 energy objectives, and exclusion areas for wind energy conversion facilities; and to provide for
9 application.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **17-04-03. Wind easements - Creation - Term - Development required.**

14 A property owner may grant a wind easement in the same manner and with the same effect
15 as the conveyance of an interest in real property. The easement runs with the land benefited
16 and burdened and terminates upon the conditions stated in the easement or thirty days after
17 ~~decommissioning~~full reclamation, whichever occurs first. However, the easement is void if ~~the~~
18 ~~following have not occurred with respect to the property that is the subject of~~development to
19 produce energy from wind power associated with the easement has not occurred within five
20 years after the easement ~~commences~~:

- 21 1. ~~A certificate of site compatibility or conditional use permit has been issued, if required;~~
- 22 and
- 23 2. ~~A transmission interconnection request is in process and not under suspension~~is
- 24 created.

1 ~~SECTION 2. AMENDMENT.~~ Section 49-02-27 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~49-02-27. Decommissioning of wind energy conversion facilities.~~

4 ~~1. The commission shall adopt rules governing the decommissioning of commercial wind~~
5 ~~energy conversion facilities. The rules must address:~~

6 ~~a. The anticipated life of the project;~~

7 ~~b. The estimated decommissioning costs in current dollars;~~

8 ~~c. The method and schedule for updating the costs of the decommissioning and~~
9 ~~restoration; and~~

10 ~~d. The method of ensuring that funds will be available for decommissioning and~~
11 ~~restoration;~~

12 ~~e. The anticipated manner in which the project will be decommissioned and the site~~
13 ~~restored; and~~

14 ~~f. Present and future natural resource development.~~

15 ~~2. Before operation of a commercial wind energy conversion facility or wind turbine, the~~
16 ~~commission by order shall require the owner to secure a performance bond, surety~~
17 ~~bond, or corporate guarantee to cover the anticipated costs of decommissioning the~~
18 ~~commercial wind energy conversion facility or turbine. The commission may accept a~~
19 ~~corporate guarantee if the corporation has a tangible net worth of at least ten million~~
20 ~~dollars, a ratio of total liabilities of net worth of 2.5 or less, and a ratio of current assets~~
21 ~~to current liabilities of 1.2 or greater; or if it has an investment grade current rating for~~
22 ~~its most recent bond issuance of A or higher as issued by Moody's Investors Service, A~~
23 ~~or higher as issued by Standard and Poor's Corporation, or an equivalent rating by~~
24 ~~any other nationally recognized statistical rating organization, as defined and approved~~
25 ~~by the United States securities and exchange commission.~~

26 ~~3. Decommissioning and site restoration includes dismantling and removal of all towers,~~
27 ~~turbine generators, transformers, and overhead cables; removal of underground~~
28 ~~cables to a depth of forty eight inches [121.92 centimeters]; removal of foundations,~~
29 ~~buildings, and ancillary equipment to a depth of eight feet [2.44 meters] and removal of~~
30 ~~surface road material and restoration of the roads and turbines sites to substantially~~
31 ~~the same physical condition that existed immediately before construction of the~~

1 commercial wind energy conversion facility or wind turbine. The facility owner or
2 operator shall record notice of record with the county recorder with the location of any
3 cables, foundations, buildings, and ancillary equipment not removed. The site must be
4 restored and reclaimed to the same general topography that existed immediately
5 before the beginning of the construction of the commercial wind energy conversion
6 facility or wind turbine and with topsoil respread over the disturbed areas to a depth
7 similar to that in existence before the disturbance. Areas disturbed by the construction
8 of the facility and decommissioning activities must be graded, topsoiled, and reseeded
9 according to natural resource conservation service technical guide recommendations
10 and other agency recommendations, unless the landowner requests in writing that the
11 access roads or other land surface areas be retained.

12 ~~4. The facility owner or operator of a commercial wind energy facility shall record the~~
13 ~~location of any portion of underground foundation not removed during~~
14 ~~decommissioning with the county recorder in the county in which any such~~
15 ~~underground foundation is located.~~

16 **SECTION 2.** A new section to chapter 20.1-02 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Wind energy restoration and reclamation oversight program.**

- 19 1. The director shall establish a program that provides technical assistance and support
20 to property owners on wind property restoration and followup support to property
21 owners on wind property reclamation.
- 22 2. The director may contract for ombudsmen for purposes of being a resource for
23 technical assistance and followup on wind property issues. The ombudsmen may not
24 investigate or assist in any easement negotiations.
- 25 3. The program may provide technical education, support, and outreach on wind-related
26 matters in coordination with other entities.
- 27 4. The director may contract with local individuals, deemed trustworthy by property
28 owners, to be ombudsmen. The director is not subject to chapter 54-44.4 when
29 contracting for the services of ombudsmen.

30 **SECTION 3. AMENDMENT.** Section 49-02-34 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **49-02-34. Public reporting on progress toward meeting the renewable energy and**
2 **recycled energy objective.**

3 Commencing on June 30, 2009, retail providers shall report annually on the provider's
4 previous calendar year's energy sales. This report must include information regarding qualifying
5 electricity delivered and renewable energy and recycled energy certificates purchased and
6 retired as a percentage of annual retail sales and a brief narrative report that describes steps
7 taken to meet the objective over time and identifies any challenges or barriers encountered in
8 meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers
9 shall report to the public service commission, which shall make data and narrative reports
10 publicly available and accessible electronically on the internet. Distribution cooperatives may
11 aggregate their reporting through generation and transmission cooperatives and municipal
12 utilities may aggregate their reporting through a municipal power agency.

13 **SECTION 4. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 16 1. The commission shall develop criteria to be used in identifying exclusion and
17 avoidance areas and to guide the site, corridor, and route suitability evaluation and
18 designation process. The criteria also may include an identification of impacts and
19 policies or practices which may be considered in the evaluation and designation
20 process.
- 21 2. Except for transmission lines in existence before July 1, 1983, areas within five
22 hundred feet [152.4 meters] of an inhabited rural residence must be designated
23 avoidance areas. This criterion does not apply to a water pipeline. The five hundred
24 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be
25 waived by the owner of the inhabited rural residence in writing. ~~The criteria may also~~
26 ~~include an identification of impacts and policies or practices which may be considered~~
27 ~~in the evaluation and designation process.~~
- 28 3. The following geographical areas must be excluded in the consideration of a site for a
29 wind energy conversion area:
- 30 a. Areas less than:

- 1 ~~(1) Two times the height of the turbine from an interstate or state roadway right~~
2 ~~of way;~~
- 3 ~~(2) Two times the height of the turbine from the centerline of any county or~~
4 ~~maintained township roadway;~~
- 5 ~~(3) Two times the height of the turbine from any railroad right of way;~~
- 6 ~~(4) Two times the height of the turbine from a one hundred fifteen kilovolt or~~
7 ~~higher transmission line;~~
- 8 ~~(5) Three times the height of the turbine from an occupied residence of a~~
9 ~~participating or nonparticipating landowner or a business; and~~
- 10 ~~(6) Twoone and one-tenth times the height of the turbine from the property line~~
11 ~~of a nonparticipating landowner and three times the height of the turbine~~
12 ~~from any quarter section of property containing an occupied residence, must~~
13 ~~be excluded in the consideration of a site for a wind energy conversion~~
14 ~~area, unless a variance is granted. A variance may be granted if an~~
15 ~~authorized representative or agent of the permittee and affected parties with~~
16 ~~associated wind rights file a written agreement expressing the support of all~~
17 ~~parties for a variance to reduce the setback requirement in this paragraph. A~~
18 ~~nonparticipating landowner is a landowner that has not signed a wind option~~
19 ~~or an easement agreement with the permittee of the wind energy conversion~~
20 ~~facility as defined in chapter 17-04.~~

21 ~~b. Areas where, due to operation of the facility, the sound levels within one hundred~~
22 ~~feet of an inhabited residence or a community building will exceed fifty~~
23 ~~A weighted decibels. The sound level avoidance area criteria may be waived in~~
24 ~~writing by the owner of the occupied residence or the community building.~~

25 ~~**SECTION 4.** A new subdivision to subsection 1 of section 49-22-08 of the North Dakota Century~~
26 ~~Code is created and enacted as follows:~~

27 ~~A statement explaining the manner in which an energy conversion facility has~~
28 ~~informed and mitigated any affected subsurface mineral owners or lessees.~~

29 **SECTION 5. APPLICATION.** Section 4 of this Act applies only to projects that have applied
30 for a certificate of site compatibility after December 31, 2017.

February 16, 2017

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pg 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

Page 1, line 1, replace "subdivision to subsection 1 of section 49-22-08" with "section to chapter 4-01"

Page 1, line 2, remove "application requirements for certificates of site and"

Page 1, line 3, replace "corridor compatibility for energy conversion facilities; and" with "a wind energy restoration and reclamation oversight program;"

Page 1, line 4, replace "49-02-27" with "49-02-34"

Page 1, line 5, remove "the decommissioning of commercial wind energy"

Page 1, line 6, replace "conversion facilities" with "annual reports on meeting renewable and recycled energy objectives"

Page 1, line 6, after the second "facilities" insert "; and to provide for application"

Page 1, after line 7 insert:

"**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Wind energy restoration and reclamation oversight program.

1. The agriculture commissioner shall establish a program that provides technical assistance and support to property owners on wind property restoration and followup support to property owners on wind property reclamation.
2. The agriculture commissioner may contract for ombudsmen for purposes of being a resource for technical assistance and followup on wind property issues. The ombudsmen may not investigate or assist in any easement negotiations.
3. The program may provide technical education, support, and outreach on wind-related matters in coordination with other entities.
4. The agriculture commissioner may contract with local individuals, deemed trustworthy by property owners, to be ombudsmen. The agriculture commissioner is not subject to chapter 54-44.4 when contracting for the services of ombudsmen."

Page 1, line 14, replace "decommissioning" with "full reclamation"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 31

Page 3, replace lines 1 through 13 with:

"**SECTION 3. AMENDMENT.** Section 49-02-34 of the North Dakota Century Code is amended and reenacted as follows:

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency."

Page 3, line 29, remove "The following geographical areas must be excluded in the consideration of a site for a"

Page 3, remove line 30

Page 3, line 31, remove "a."

Page 3, line 31, remove the underscored colon

Page 4, remove lines 1 through 9

Page 4, line 10, replace "(6) Two" with "one and one-tenth"

Page 4, line 11, after "landowner" insert "and three times the height of the turbine from an occupied residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area"











Page 4, line 15 after the underscored period insert "If a nonparticipating landowner indicates the setback may not be sufficient, the commission shall consider whether the setback is sufficient and may in the issuance of a certificate of site compatibility direct the setback be revised."

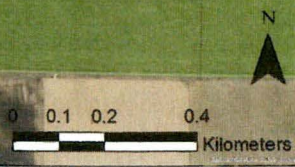
Page 4, replace lines 18 through 25 with:

"SECTION 5. APPLICATION. Section 4 of this Act applies only to projects that have applied for a certificate of site compatibility after December 31, 2017."

Re-number accordingly



-  Turbines
-  3.0x Setback
-  Houses
-  Quarter Section
- Prospecting - Status
-  No Status
-  Targeted
-  Pending
-  Signed Lease
-  Not Interested
-  Competition



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1
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Testimony of Senator Jessica Unruh
District 33
SB 2313
House Energy and Natural Resources Committee

Mr. Vice-Chairman, members of the committee, for the record my name is Jessica Unruh, Senator from District 33, coal country. And while I'm obviously very proud of that, I'm also proud that District 33 is also known for all types of energy production. We have nearly 250 wind turbines in my district, and while I've never investigated fully, I think it's safe to say that my legislative district is in the top 3 for wind producers in North Dakota. And we're proud of that. It's proof that we see the value of an all-of-the-above energy policy and welcome the responsible development of these resources. We've seen first-hand for 30 plus years what responsible energy development and production looks like when industry works hand in hand with landowners. And it's not always perfect, but years of trial and error and adjustments have helped work out most of the kinks. We have a lot to be proud of in District 33.

SB 2313 comes to you as result of endless hours of phone calls, emails, and grocery store corner conversations during the last interim regarding this very topic. I've done a lot of listening on this topic and that has continued into this legislative session. The original version of this bill included many more sections than what you see in front of you today. The Senate Committee listened closely to both sides and did their best to balance responsible development and landowner concerns. I think you'll hear from our Public Service Commissioners on pending rules within the commission and other various regulations currently in place.

Section 1 of the bill creates a Wind Energy Restoration and Reclamation Oversight Program that reflects the one already in place for pipelines. This was added to the bill after we had our hearing in the Senate. It was discovered that any development or potential reclamation issues with wind farms didn't have a proper or official complaint process. While this program has been very successful in dealing with pipelines, I'll leave it to the committee today to decide if there is a better path of protection we can implement for landowners or if this program implemented by the Ag Department is the best option.

Section 2 clarifies that any easement for wind development is void either 30 days after full reclamation or if development has not occurred within five years after the easement was created.

Section 3 simply extends reporting requirements already in place to report renewable production to the PSC.

Section 4 is truly the meat of the bill. It codifies setback requirements for wind towers from non-participating landowners. That distinction is one I want to make sure the committee is clear on. Non-participating landowners are landowners within a wind farm area that do not have leases with the wind developer and have not consented to development. In my research in writing this bill, I was surprised to find that there is nothing specifically codified, either in CC or AC, that requires a setback from a residence of any kind. Two setback provisions are codified here. The first is a 1.1 times the height of the turbine setback from the property line of non-participating landowners. The second is a 3 times the height of the turbine from any quarter section containing an occupied residence of a non-participating landowner, unless a variance is granted. And since both sides were upset with us by the time we found what we thought was a happy medium, we decided we had come up with some good policy.

17.0414.02000

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1181

2
3-9-17
SB 2313

Introduced by

Representatives Toman, Klemin, Longmuir, Pollert, Steiner, Streyle

Senators Cook, Klein, Schaible

1 A BILL for an Act to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North
2 Dakota Century Code, relating to termination of wind option agreements, wind easements, and
3 wind energy leases.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 17-04-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **17-04-01. Wind option agreement - Definition - Termination.**

8 1. A wind option agreement is a contract in which the owner of property gives another the
9 right to produce energy from wind power on that property at a fixed price within a time
10 period not to exceed five years on agreed terms.

11 2. A wind option agreement is void and terminates if the following have not occurred with
12 respect to the property that is the subject of the wind option agreement within five
13 years after the wind option agreement commences:

14 1- a. A certificate of site compatibility or conditional use permit has been issued, if
15 required; and

16 2- b. A transmission interconnection request is in process and not under suspension.

17 3. If the requirements of subsection 2 are not met by the owner of the wind option
18 agreement, the owner of the energy rights may provide to the owner of the wind option
19 agreement a notice of termination, by certified mail or other personal delivery, and file
20 the notice with the county recorder in the county in which the real property is located.
21 Termination of the wind option agreement is effective five years after the wind option
22 commences.

23 **SECTION 2. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **17-04-03. Wind easements - Creation - Term - Development required.**

2 1. A property owner may grant a wind easement in the same manner and with the same
3 effect as the conveyance of an interest in real property.

4 2. The easement runs with the land benefited and burdened and terminates upon the
5 conditions stated in the easement. ~~However, the, however:~~

6 a. The easement is void if the following have not occurred with respect to the
7 property that is the subject of the easement within five years after the easement
8 commences:

9 1. (1) A certificate of site compatibility or conditional use permit has been issued, if
10 required; and

11 2. (2) A transmission interconnection request is in process and not under
12 suspension.

13 b. A wind easement is presumed to be abandoned if a period of thirty-six
14 consecutive months has passed with no construction or operation of the wind
15 farm facility. If the operator of the wind farm facility does not file a plan with the
16 public service commission outlining the steps and schedule for continuing
17 construction or operation of the facility within the thirty-six month period, the
18 owner of the energy rights may provide, by certified mail or other personal
19 delivery to the owner of the wind easement, a sixty-day written notice of the intent
20 to terminate the easement. If, within sixty days of the receipt of the notice of the
21 intent to terminate, the owner of the easement fails to provide a written objection
22 to the notice by certified mail or other personal delivery, the owner of the energy
23 rights may file a notice of termination with the county recorder in the county in
24 which the real property is located. Termination of the easement becomes
25 effective with the notice of termination is filed and recorded with the county
26 recorder.

27 **SECTION 3. AMENDMENT.** Section 17-04-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **17-04-05. Wind energy leases - Termination.**

2 1. A lease for wind energy purposes is void and terminates if the following have not
3 occurred with respect to the property that is the subject of the lease within five years
4 after the lease commences:

5 4- a. A certificate of site compatibility or conditional use permit has been issued, if
6 required; and

7 2- b. A transmission interconnection request is in process and not under suspension.

8 2. A wind lease is presumed to be abandoned if a period of thirty-six consecutive months
9 has passed with no construction or operation of the wind farm facility. If the operator of
10 the wind farm facility does not file a plan with the public service commission outlining
11 the steps and schedule for continuing construction or operation of the facility within the
12 thirty-six month period, the owner of the energy rights may provide, by certified mail or
13 other personal delivery to the owner of the wind easement, a sixty-day written notice of
14 the intent to terminate the lease. If, within sixty days of the receipt of the notice of the
15 intent to terminate, the owner of the lease fails to provide a written objection to the
16 notice by certified mail or other personal delivery, the owner of the energy rights may
17 file a notice of termination with the county recorder in the county in which the real
18 property is located. Termination of the easement becomes effective with the notice of
19 termination is filed and recorded with the county recorder.

Testimony on SB 2313

Mr. Chairman and members of the committee, my name is Durant Schiermeister and I am a 3rd generation farmer in Emmons County. Our farm is located on Highway 1804 along the Missouri River, approximately 8 miles south of the Burleigh/Emmons County line. We enjoy the beautiful landscapes of rolling hills, rugged buttes and the Missouri River. There is a proposed wind farm project being pursued in our area which will impact our farm and ranch. We feel it would be very unfortunate to put up wind towers in an area that would be visible from the Lewis and Clark trail along Highway 1804. Our home is about 30 miles from Bismarck and we are able to see the State Capitol building which is approximately 240 feet tall. The wind towers that are being proposed to be placed in our area would be over twice that tall, so you can imagine how far away these towers will be visible.

I would like to urge your support for SB 2313 which establishes setbacks for wind towers from property lines of nonparticipating landowners. These increased setbacks are needed as it is not fair to adversely affect a nonparticipating property owner's landscape, quality of life and property values by allowing wind towers to be placed too close. I feel that at a minimum, the setback requirement of three times the height of the turbine should apply to any nonparticipating landowners property line, not just property containing an occupied residence. However, I feel a setback of one mile or more would be more appropriate, considering the enormous size of these wind towers.

I also feel it is important to require these wind companies to have bonding in place to provide for the removal of wind towers when they are no longer in service. As indicated above, these wind towers are huge - more than twice the height of the State Capitol - and are visible from great distances. Allowing these towers to clutter our landscape when they are no longer in production would be detrimental to the beauty of North Dakota. I would encourage you to put back in the provisions for decommissioning the wind turbines and bonding requirements that were removed by the Senate.

This concludes my testimony.

Durant Schiermeister
6125 Hwy 1804
Hazelton, ND 58544
701-220-0283

*IDont Believe this wind tower company's
Have the best interest of the people of our
Great state do to there Business tactics
like contributing 375,000 To date Protesters
Wich i provided the story along with
my testimony - And how they pit
Neighbor against neighbor In our county
I have also atted what walworth county S.D
testimony there are wind towers in...*

~~I have also atted via~~

Standing Rock took \$375,000 from wind farm industry while fighting Dakota Access pipeline



A banner protesting the Dakota Access oil pipeline is displayed at an encampment near North Dakota's Standing Rock Sioux reservation on Friday, Sept. 9, 2016. The Standing Rock Sioux tribe's attempt to halt construction of an oil pipeline near its ...
[more >](#)

By Valerie Richardson - *The Washington Times* - Thursday, November 17, 2016

The Standing Rock Sioux tribal council accepted \$375,000 in donations from wind farm companies as it prepared earlier this year to fight the Dakota Access pipeline, raising questions about whether the green-energy industry is fueling the increasingly violent protests.

The council voted unanimously at its April 5 meeting to accept two \$125,000 donations from Consolidated Edison Development, which owns a wind farm in nearby Campbell County, North Dakota, and Fagen Inc., a contractor on the project.

At its March 9 meeting, the council accepted \$125,000 from ConEdison for "Oyate/community development," according to the minutes posted online on the tribe's website.

The donations came as the tribe girded to beat back the oil pipeline, which runs a half-mile from its reservation. On March 22, the council agreed to retain the environmental law firm Earthjustice "for the tribe's co-counsel to oppose the Dakota Access pipeline."

ConEdison did not respond immediately to requests for comment on the donations, first reported Wednesday by the Washington Free Beacon, while a Fagen spokeswoman said the chairman was out of town and could not be reached until next week.

In April, KFYP-TV reported that the funding was intended for a privatized housing development and as a show of thanks for the tribe's help during construction.

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"We wanted to go ahead and build the wind project and be part of the community. The tribe has other important issues that they need to deal with," Mark Noyes, ConEdison president and CEO told the station. "And you work together to create a win/win for both organizations."

In light of the monthslong uproar over the pipeline, Rob Port, a talk show host on North Dakota's WDAY-AM who runs the Say Anything blog, said the companies and council should address the contributions.

"Both the tribe and these companies need to provide the public with a thorough explanation for what occasioned these payments," said Mr. Port, "because right now they look like companies in an industry which competes with fossil fuels providing monetary aid to the organizers of often unlawful, often violent protests aimed at obstructing the safe, efficient transport of oil."

Craig Stevens, spokesman for the Midwest Alliance for Infrastructure Now, which supports the pipeline, said the donations call into question the tribe's motivations.

"If true, it's disappointing that this protest appears to have never been about indigenous issues, but rather about getting money," said Mr. Stevens. "What's even more troubling though is that this threatens the credibility of other Native tribes who may have legitimate concerns in the future."

The tribe, which did not respond Thursday to a request for comment, has urged the Obama administration to shut down the 1,172-mile, four-state project over concerns about water quality and historic relics.

As many as 3,000 protesters have built six camps on U.S. Army Corps of Engineers land near the pipeline construction site while the agency continues to withhold a previously approved permit on the project's final 1,100 feet in North Dakota pending further review.

Tribal Chairman David Archambault II has called for supporters to join the “peaceful and prayerful” protest and “stand with Standing Rock,” but the tribe has been unable to control a core group of aggressive activists that has clashed repeatedly with law enforcement.

Local deputies have made about 500 arrests since Aug. 10 involving protesters trespassing and rioting on private property; throwing debris, rocks, Molotov cocktails and feces at officers, and setting vehicles and bridges on fire.

A report released this week on the 143 activists arrested during an Oct. 27 melee showed they have 764 previous citations and charges, including domestic violence, theft and burglary, driving under the influence, and drug-related offenses.

The analysis by the website I Am Netizen said that just 9 percent of those arrested are from North Dakota, while the others are from states such as California, Florida and Vermont.

“It’s been proven that environmental protesters are paid to cause issues, damage equipment and antagonize law enforcement,” said the report. “In fact, according to actual hard numbers, there have been 395 protesters arrested in connection with the riots.”

One woman was charged with attempted murder after firing three shots at deputies at the Oct. 27 protest, all three of which missed.

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People



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Wind farm hinges on setback ordinance

BY SHANNON MARVEL
smarvel@aberdeennews.com

Walworth County officials are in the process of reworking their planning and zoning ordinances, including a setback ordinance that could make or break a wind energy project.

According to Walworth County State's Attorney James Hare, the existing zoning ordinances are very old and basically obsolete.

Two weeks ago, the planning and zoning board approved the revamped ordinances and forwarded them to the county commission for public hearings.

"Basically, the main issue was, of course, wind energy setbacks," Hare said. "At a previous meeting, they had modified the setbacks to 2,600 feet. Then they moved to change the setbacks back to the original 2 miles. For the wind energy people, that pretty much kills the deal."

If the 2-mile setbacks are approved, Hare said that would

hurt a proposed Tradewind Energy project and essentially place a moratorium on wind development in the county.

"They've done a lot of ground-work ahead of time. But this was going to be one of the keys of them going to work on a whole wind farm," Hare said of Tradewind's plans.

Hare said the number of wind farm proponents and opponents seem about evenly split in the county.

Kate Valentine, project development manager for Tradewind Energy, issued a statement that said the company still looks forward to working with landowners and county officials to develop a project that creates jobs and provides economic development.

"However, we were disappointed by the Planning Board's decision to revert the zoning ordinance to the 2-mile setback from non-participating residences from the half-mile setback," Valentine said in the statement.

"This far exceeds the current industry standard. It is our hope that the Walworth County Commissioners will work with us to find a fair and equitable solution for the community,"

In a phone interview on Feb. 21, Valentine said the 200-megawatt wind farm project would include between 70 and 100 towers.

"We started our contact with landowners back in September and October of 2016," Valentine said. "First, we reached out to landowners and had a meeting — which was well-attended — for people to just learn about Tradewind and wind energy in general."

The wind farm was sited in the northeastern region of Walworth County, she said.

Walworth County Commissioner James Houck voted in favor of the 2-mile setbacks after hearing of the troubles wind farms have caused some counties in other states.

"I've talked to people from other parts of the country that have had

See WIND, Page 5F

WIND

Continued from Page 1

wind farms — I got some letters in Wisconsin and Minnesota — and they are having some big feuds between neighbors," Houck said.

"In my opinion, if they're going to have (a wind farm) up there, they need to have their neighbors all involved instead of pitting each other against each other," Houck said, fearing the wind farm would start a feud among Walworth County residents.

Houck said there were around 30 Walworth County landowners who showed up to a recent planning and zoning meeting in opposition of the wind farm. That's compared to two who were in favor of it, he

said.

He said the opponents were concerned about the noise and "flicker," which is the flicker of shadows and sunshine created by the rotating turbines.

Houck also said many wind farm opponents are not against wind energy, but against the possibility of giving up their property rights.

Hare echoed Houck on the reasons residents oppose having the wind farm in Walworth County, and said other concerns included disruption of livestock and wildlife.

Dick Randall is one of the Walworth County residents whose land is being considered for use as the site of a turbine or two.

"There are a lot of landowners and right now, but nobody is

guaranteed a wind farm, myself included," Randall said.

He is against the 2-mile setbacks and would like to see wind energy be generated within the county for the economic stimulus.

"Walworth County has no more land to tax. God isn't going to make any more land," Randall said. "The only way to balance these budgets and to keep spending money is to either raise the taxes on the land the county has or figure out new ways of revenue. And right now, a wind farm is an awfully good idea."

Lyle Perman, a Walworth County resident and former member of the planning and zoning board, said it isn't the board's job to gauge the economic benefits of a project.

"That's not the role of a planning and zoning commission. It's to protect those who want the particular business and protect the county," he said.

Many of the reasons cited by both sides lack research of evidence, Perman said.

"Some of them that they did bring up, I had a hard time finding any type of evidence to support their claims, other than testimonials or anecdotal-type of evidence," he said.

"You've got to hang your hat on the proof. With lack of proof it's a non-issue," he said.

According to Houck, the public hearings for the ordinances will be scheduled for sometime in March or April.

Follow @smarvel_AAN on Twitter.

6

SB 2313

North Dakota Planning Association Testimony – presented by Natalie Pierce

If enacted, SB 2313 would establish exclusion areas for the siting of wind turbines with a provision for variances. The North Dakota Planning Association (NDPA) opposes Section 4 of SB 2313 for the following reasons:

- Minimum setback distances for wind energy facilities should be left to the local jurisdictions to establish. Some communities may have a greater acceptance for wind energy projects and wish to establish less-restrictive setbacks than what SB 2313 proposes. Some communities may wish to establish more-restrictive setbacks.
- The setback standard of 3 times the height of a turbine from a quarter-section line is excessive. Setbacks should be measured directly from a residence (or similar use), rather than from a property or quarter-section boundary.
- What does “conversion area” mean? Does this include only turbines or does it include meteorological (MET) towers, access roads, laydown yards and operations buildings as well? If “conversion area” means all of these elements associated with a wind energy facility, and if the bill were adopted in its current form, in a quarter-section that contains a non-participating landowner residence, any other landowner in that quarter (and nearly a quarter mile outside each quarter line) would be precluded from participating in the project, because their land would have no value to the project. This is an excessive restriction on the property rights of landowners who may potentially wish to participate in the project.
- The variance process describes “affected parties with associated wind rights.” “Affected parties” is ambiguous. Does this mean other participating land owners? Non-participating and participating land owners? Non-participating landowners only? How far away from the site does one have to live to be considered an affected party?
- The bill describes a siting applicant as a “permittee” rather than an “applicant.” This would indicate that variances can only be granted after the applicant has applied for and been granted a siting permit. How can a siting permit be reasonably granted if the applicant is not assured that the landowner of the approved site will agree to participate?

As written, Section 4 of SB 2313 is ambiguous and unnecessary. NDPA urges the Committee to strike Section 4 from the bill or report back a “do not pass.”

5
39-17
SB2313

March 9, 2017

Engrossed SB 2313 - Hearing

Testimony from NextEra Energy Resources, LLC ("NextEra"), Melissa Hochmuth, Project Director, Wind Development

Chairman Porter and Representatives:

My name is Melissa Hochmuth, and I am a Project Director for NextEra Energy Resources responsible for the development of wind projects in North Dakota. I most recently managed development of the Brady I and II wind energy centers in western North Dakota. These two projects, along with our Oliver III wind energy center that just went operational, brings the total number of wind farms we operate here in North Dakota to 14. We have been doing business in North Dakota for over a decade investing in wind and oil and gas. Our wind farms represent a capital investment of over \$2.4 billion. We employ over 75 full-time employees, spend approximately \$8.5 million in annual payroll, \$3.0 million annually in property taxes and \$6.5 million annually in lease payments to local landowners in the state.

We value our partnership with North Dakota, which continues to be very important to the success of our company. We strive to be a good partner with local communities and landowners. The wind projects I have managed were challenging, but they are examples of projects where we worked with landowners, counties and the state to address concerns and develop successful projects that are now operating and bringing revenue and jobs to their local communities.

North Dakota is well-known for reasonable, fair and predictable energy policy that allows us to build these projects, and NextEra would like to commend the state on its long-term policy of even-handed regulation of wind farms. NextEra would also like to recognize the work that has been done thus far on this bill. The bill as it stands today resolves many of the issues we originally brought to the Senate Committee. However, we are still concerned with the setback from quarter sections proposed in Section 4.

This setback affords no greater health or safety protections than what is currently in rule, it prioritizes non-participating landowner rights over participating landowners, and it takes away local control from communities who are best suited to address local concerns.

Section 4 proposes to apply a setback to the boundaries of a quarter section on which a non-participating landowner's house is located. It does not consider whether the non-participating landowner owns the entire quarter section or not. If one of the objectives of this proposed setback is to protect landowner property rights, this proposal does not accomplish that objective. The result is a setback that removes a large amount of land from consideration for development and may create

circumstances where the property rights of a non-participating landowner effectively supersede the property rights of a neighboring participating landowner. Furthermore, if the non-participating landowner's house is located on the boundary of the quarter section, the house is afforded a very large setback in one direction, and a smaller setback in the opposite direction.

This is a good example why political subdivisions, such as counties and townships, are best situated to address landowner concerns. Wind farm siting is not a one-size fits all approach - there are unique aspects to every project, every landowner, and every local community. The Public Service Commission (PSC) has set standards protective of community health and safety, and political subdivisions have the flexibility to adopt more restrictive regulations to address specific local concerns. When siting a project, NextEra applies the more restrictive setback of either the political subdivision or the PSC. There are communities in this state who want wind farms, and there are some communities who do not. SB 2313 forces a political subdivision interested in attracting development to adopt a more restrictive setback than they might otherwise do and possibly deter development in their area.

NextEra appreciates the opportunity to present our concerns to the Committee on Section 4 of the bill. Thank you.



6
3-9-17
SP 2313
OLEARY

Sean O'Leary – Neutral Comments – SB 2313 (Set back Wind)

Mr. Chairman, Members of the Committee,

Thank you for an opportunity for me to tell a bit of my own thoughts and experiences in the wind power industry.

I consider myself lucky to have worked in wind energy for 17 years now. I work for a company called LM Wind Power, that makes blades for wind turbines in Grand Forks. LM Wind Power calls North Dakota home to one of their leading and most experienced plants, now with over 1000 employees at our ND plant in GF. From my first days at LM if felt that I had joined on to something special, I am proud to work for a company that contributes towards our nations power production, along with the many energy providers found here in ND.

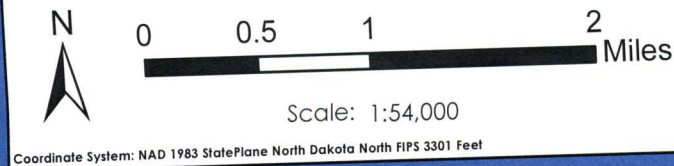
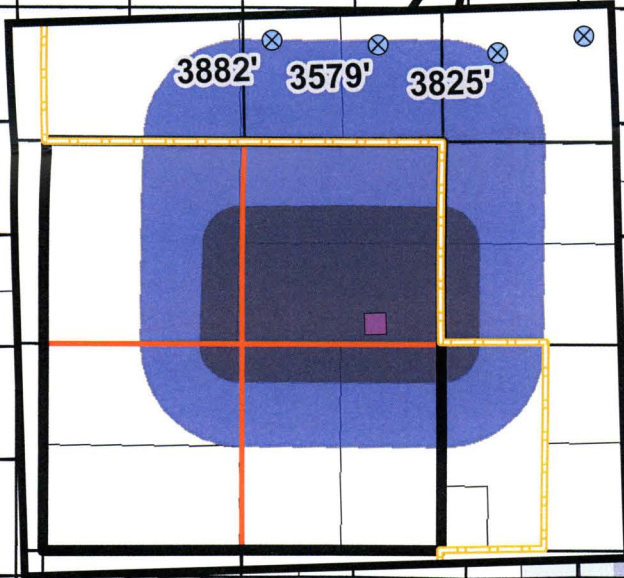
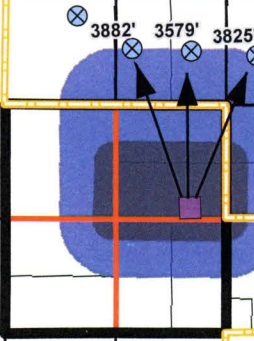
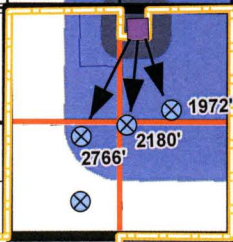
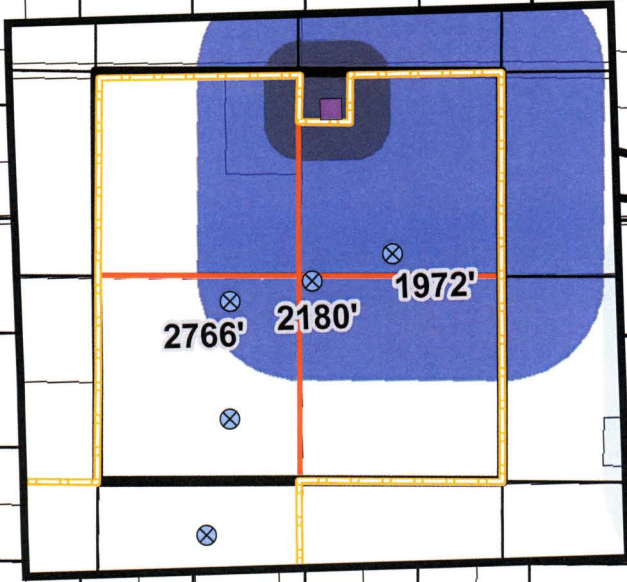
I have been fortunate myself to have had steady employment with LM Wind Power. This has not always been the case for all of LM's employees in their 18 years in GF. Stable growth of course sustains a company, and without stability all of our jobs become much more challenging. My employer has faced multiple layoffs due to policy volatility at the federal level, causing layoffs for hundreds of employees in Grand Forks that faced hardships with lost incomes. The company struggled to rebuild each time, successfully, but not without pain and cost.

I am very hopeful that my employer LM Wind Power, and all members of the power industry participating in the energy portfolio that ND delivers, continue to receive the support that communities like GF, and the state of ND, have always provided.

Thank you for your time today,

Sean O'Leary

Proposed SB 2313 Setback for Non-Participating Land Owners



Confidential and proprietary information.
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The following companies and organizations provided data that contributed to the production of this map.

- U.S. Geological Survey (USGS)
- Environmental Systems Research Institute (ESRI)
- U.S. Department of Agriculture (USDA)
- U.S. Federal Aviation Administration (FAA)
- WhiteStar Corporation
- Ventyx Inc.

Analyst: tbarker

Date: 3/7/2017

- Project Boundary
- Project Turbines
- Participating Occupied Structure
- Occupied Structures Outside Project Boundary
- 3x Turbine Height Setback (Quarter Section Property Line)
- 1.1x Turbine Height Setback (Property Line)
- Section Lines
- Quarter Section Lines

We apologize for the incorrect information in our previously submitted letter. We were told by a contracted consultant that it would kill roughly 80% of the tower sites if the proposed changes passed legislation. We apologize for the incorrect numbers on our prior letter, however, Mark with PNE Wind testified the numbers on how many towers we could receive are a secret. The secrecy is due to the fact that placement can change and they do not want to tell someone they are getting X amount of towers when it could be less or none, this could cause hard feelings. As of March 9, 2017 we now confirmed with Mark during lunch break how many towers we could get and possibly lose. Hopefully our project is permitted prior to December 31, 2017. However, this does not change the fact that we are for wind and do not want the proposed changes to effect anyone's project.

Please find our enclosed amended setback letter.

Thank you.

8
3-9-17
SB 2313

Mills

AMENDED COMMENTS OF THE MILLS FAMILY

STATE OF NORTH DAKOTA

HOUSE OF REPRESENTATIVES

CHAPTER 69-06-08 Setback Criteria Changes

Following changes proposed at the last meeting on February 22, 2017 are nothing more than a direct attack on property rights. There is currently a proposed wind farm west of Moffit, ND which has followed all current North Dakota rules and regulations and meets all criteria with the land currently under contract. All current projects in development stages should be excluded from the new guidelines if passed. The change of 3 times the turbine height from any quarter section containing an occupied residence of a nonparticipating landowner would be disastrous. These new guidelines will eliminate 22% of the proposed wind tower sites. This reduces the wind farm from approximately 81 towers to only 63 towers with these proposed rules changes for an elimination of 18 towers. Of these 18 towers there are five on the Mills property which means an annual income loss of more than \$86 thousand to our family. These new guidelines are unrealistic and only an attempt to kill the project. By doing so would undermine the time and money invested in the current proposed projects. We and others believe in wind power and have invested money, time and energy with the current guidelines. Any changes would take away a majority of the area that is available for the proposed wind farm. These changes would take away our right to have this proposed project built. This is nothing more than a direct attack on property rights

We would like to comment on one of the statements brought up at the last meeting and previous meetings dealing with wind turbine. Namely about those individuals suffering from epilepsy and the effects of shadow flicker. We would like to bring up the research from the National Society for Epilepsy of the United Kingdom has posted research on their website that was review back on 2016. Their findings are as followed:

- **The turbine blades would need to rotate at speeds faster than 3 hertz (flashes per second). Turbines on commercial wind farms rotate at speeds less than 2 hertz.**
- **The sun would need to be bright enough, and in just the right position and angle from the horizon in relation to the turbine, to cast shadows of enough intensity and length. On days with cloudy weather greatly reduces the effect.**
- **The person with photosensitive epilepsy would need to be within a certain distance from the turbine (some estimates are if the person is within range of 1.2 times the height of a wind turbine may be affected)**

- **The person would need to be looking at the turbine, with the sun behind the turbine. As most people will avoid looking directly at the sun, this further reduces the risk (this reason is one of the key factors).**

The factors for someone to face a seizure from the current wind mills projects would have to have just the right combination of factors to even happen. Watching television is a far greater threat to someone with photosensitive epilepsy. In fact only 3% of people with epilepsy are photosensitive. The risk of shadow flicker from wind turbines causing an epileptic seizure is estimated to be less than 1 in 10 million in the general population and 17 in 1 million among people at risk of photosensitive epilepsy. In summary the individuals with photosensitive epilepsy would have to nearly go out their way to cause a seizure even then chances are it would not happen.

A final thought the proposed changes would supersede the standards already set by Burleigh County which are already designated for an urbanized area. However, the existing guidelines are more reflective of the state as a whole.

We reject the attempts to threaten the wind projects in North Dakota under the pretext of safety. Much of this is pure fear mongering and an attempt to put unrealistic restrictions on wind turbines. In summary the setback criteria listed in **69-06-08-01 (2)** should not be revised as this is a deliberate attempt to stop wind development. We hope the voting members will come to same conclusion. We believe wind energy is needed to help North Dakota to have a more diversified energy portfolio.

The Mills family respectfully submits these enclose comments for filing in the above referenced matters.

Sincerely,

THE MILLS FAMILY

Daymon & Lois Mills
21350 Moffit Road
Menoken, ND 58558
701-673-3374

Daymon Jr & Lori Mills
1306 Westwood Street
Bismarck, ND 58504
701-226-2746
701-226-9206

Wade & Kerri Mills
24575 Moffit Road
Moffit, ND 58560
701-220-4537
701-220-2711

Kerri Mills

Commissioners:

Thank you for your time today. I am here in support of Wind Energy because it's not about us or them. It is about our children, grandchildren and generations to come.

We have been given the opportunity as a community to explore Wind Energy which will provide a clean alternative and has the potential to be beneficial not only to the land owners but also to the township, county, state and nation. No one can protest the fact that North Dakota has an abundance of wind. I cannot recall a single day in which at least one of my conversations did not center around the wind. So why not take advantage of this opportunity and explore this idea further. I am not opposed to fossil fuel or coal. My family has many years invested in these areas. However, I am a firm believer of not putting all of your eggs in one basket. Wind energy provides us with an opportunity to allow other industries an opportunity to re-evaluate their existing technology and resources as well as look closer at the benefits of clean energy. As a mother of a child who has suffered all of her life with breathing conditions I am all in favor of tapping into another natural resource which may make life a little easier for her.

Sincerely,

Lori Mills
1306 Westwood Street
Bismarck, ND 58504
701-226-9206

--

Kerri Mills

House Energy + Natural Resources Committee
SB 2313

9
3-9-17
SB 2313
Turner

To whom it may concern;

There has been a lot of discussion regarding installation of Wind Towers and how they will effect the land values involved, along with the surrounding land. The information our office has gathered from sources such as land investors, agriculture and development attorneys along with recreational buyers and agriculture producers, shows Wind Towers having a negative impact on the current value. To date we have never had a request from anyone looking to buy land with a Wind Tower. In fact the opposite is more common where buyers don't want to even be in the vicinity of the Towers.

A big attraction to owning land in North Dakota is our tremendous Waterfowl population. The Wind Towers interrupt the Migration Flyway which is a huge impact to buyers for investment and development alike. They deteriorate the landscape beauty and the noise negatively impacts the value of the land as far development including the surrounding acres.

The incentive monies paid for sign up will be deducted from the value and then an additional value reduction to compensate new owners for the inconvenience. We have also been told that the Wind Towers are federally subsidized so there is not a profit to share and that some of the contracts are missing a removal of the Towers once they are obsolete. This information came from an attorney handling the leases in Logan County. So I am sure it will be addressed in the future.

Therefore, it is the opinion of this office that there is sufficient evidence that Wind Towers are not a good way to protect your investment. Thank you.

Naomi Turner
Broker, GRI
Prairie Rose Realty Inc.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 3, remove "17-04-03,"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

Renumber accordingly

17.0390.04004

FIRST ENGROSSMENT

SB 2313
4-10-17
AH #1
pg 1

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2313

Introduced by

Senator Unruh

Representative Porter

1 A BILL for an Act to create and enact a new section to chapter 4-01 of the North Dakota Century
2 Code, relating to a wind energy restoration and reclamation oversight program; to amend and
3 reenact sections ~~17-04-03~~, 49-02-34, and 49-22-05.1 of the North Dakota Century Code,
4 relating to ~~the creation and duration of wind energy easements~~, annual reports on meeting
5 renewable and recycled energy objectives, and exclusion areas for wind energy conversion
6 facilities; to provide a statement of legislative intent; and to provide for application.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Wind energy restoration and reclamation oversight program.**

- 11 1. The agricultural commissioner shall establish a program that provides technical
- 12 assistance and support to property owners on wind property restoration and followup
- 13 support to property owners on wind property reclamation.
- 14 2. The agricultural commissioner may contract for ombudsmen for purposes of being a
- 15 resource for technical assistance and followup on wind property issues. The
- 16 ombudsmen may not investigate or assist in any easement negotiations.
- 17 3. The program may provide technical education, support, and outreach on wind-related
- 18 matters in coordination with other entities.
- 19 4. The agricultural commissioner may contract with local individuals, deemed trustworthy
- 20 by property owners, to be ombudsmen. The agricultural commissioner is not subject to
- 21 chapter 54-44.4 when contracting for the services of ombudsmen.

22 ~~**SECTION 2. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

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4-10-17
AH #1
Pg 2

~~17-04-03. Wind easements – Creation – Term – Development required.~~

~~A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement or thirty days after full reclamation, whichever occurs first. However, the easement is void if the following have not occurred with respect to the property that is the subject of development to produce energy from wind power associated with the easement has not occurred 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 is created.~~

SECTION 2. AMENDMENT. Section 49-02-34 of the North Dakota Century Code is amended and reenacted as follows:

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

SECTION 3. AMENDMENT. Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and

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4-10-17
AH #1
Pg 3

1 designation process. The criteria also may include an identification of impacts and
2 policies or practices which may be considered in the evaluation and designation
3 process.

4 2. Except for transmission lines in existence before July 1, 1983, areas within five
5 hundred feet [152.4 meters] of an inhabited rural residence must be designated
6 avoidance areas. This criterion does not apply to a water pipeline. The five hundred
7 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be
8 waived by the owner of the inhabited rural residence in writing. ~~The criteria may also~~
9 ~~include an identification of impacts and policies or practices which may be considered~~
10 ~~in the evaluation and designation process.~~

11 3. Areas less than one and one-tenth times the height of the turbine from the property
12 line of a nonparticipating landowner and three times the height of the turbine or more
13 from ~~any quarter section of property containing an occupied~~inhabited rural residence
14 of a nonparticipating landowner, must be excluded in the consideration of a site for a
15 wind energy conversion area, unless a variance is granted. ~~A variance may be~~
16 grantedThe commission may grant a variance if an authorized representative or agent
17 of the permittee, the nonparticipating landowner, and affected parties with associated
18 wind rights file a written agreement expressing the support of all parties for a variance
19 to reduce the setback requirement in this paragraph. A nonparticipating landowner is a
20 landowner that has not signed a wind option or an easement agreement with the
21 permittee of the wind energy conversion facility as defined in chapter 17-04. A local
22 zoning authority may require setback distances greater than those required under this
23 subsection. For purposes of this subsection, "height of the turbine" means the distance
24 from the base of the wind turbine to the turbine blade tip when it is in its highest
25 position.

26 **SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND**
27 **RECLAMATION OVERSIGHT PROGRAM.** It is the intent of the sixty-fifth legislative assembly
28 that the agriculture commissioner establish the wind property restoration and reclamation
29 oversight program, created in section 1 of this Act, using existing operating funds.

30 **SECTION 5. APPLICATION.** Section 43 of this Act applies only to projects that ~~have~~
31 ~~applied for~~receive a certificate of site compatibility after ~~December 31~~August 1, 2017.

April 10, 2017

SB 2313
4-10-17
Att. # 2
pg 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

That the House recede from its amendments as printed on page 850 of the Senate Journal and page 1017 of the House Journal and that Engrossed Senate Bill No. 2313 be amended as follows:

Page 1, line 3, remove "17-04-03,"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, after "turbine" insert "or more"

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 13, replace "occupied" with "inhabited rural"

Page 3, line 15, replace "A variance may be granted" with "The commission may grant a variance"

Page 3, line 16, after "permittee" insert ", the nonparticipating landowner,"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position."

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

Page 3, line 22, remove "have applied"

Page 3, line 23, replace "for" with "receive"

Page 3, line 23, replace "December 31" with "August 1"

Renumber accordingly

April 11, 2017

88 2313

4-11-17

AK #1

pg 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

That the House recede from its amendments as printed on page 850 of the Senate Journal and page 1017 of the House Journal and that Engrossed Senate Bill No. 2313 be amended as follows:

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Page 1, line 3, remove the second comma

Page 1, line 4, remove "the creation and duration of wind energy easements,"

Page 1, line 5, remove the comma

Page 1, line 6, after the semicolon insert "to provide a statement of legislative intent;"

Page 1, line 12, replace the first "and" with an underscored comma

Page 1, line 12, after "support" insert ", and outreach"

Page 1, line 17, remove "The program may provide technical education, support, and outreach on wind-related"

Page 1, remove line 18

Page 1, line 19, remove "4."

Page 1, after line 21, insert:

"4. The agriculture commissioner shall work in cooperation with the public service commission to carry out the duties described in this section."

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Page 3, line 12, after "and" insert "less than"

Page 3, line 12, after "turbine" insert "or more"

Page 3, line 12, remove "any"

Page 3, line 13, remove "quarter section of property containing"

Page 3, line 13, replace "occupied" with "inhabited rural"

Page 3, line 15, replace "A variance may be granted" with "The commission may grant a variance"

Page 3, line 16, after "permittee" insert ", the nonparticipating landowner,"

Page 3, line 21, after the underscored period insert "A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position."

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4-11-17
A# 1
pg 2

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds."

Page 3, line 22, replace "4" with "3"

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Renumber accordingly