

SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 227

As Amended by House Committee on
Energy and Utilities

Brief*

SB 227, as amended, would address two property issues involving renewable energy: preventing the permanent severance of wind and solar rights from a tract of land, and establishing daylight marking requirements for anemometer towers (anemometers measure and record wind speed).

Severance of Wind and Solar Rights

The bill would amend current law concerning conveyance of real estate. It would allow only the surface owner of a tract of land to use the land to produce wind or solar generated energy, unless the owner has entered into a lease or easement for those rights for a definite period. The requirement would not apply to leases filed before July 1, 2011. In addition, the requirement would not affect any otherwise enforceable restriction on the use of the land for production of wind or solar energy, nor would it prohibit conservation easements.

The bill also would require any conveyance for solar resources to include the same types of information that must be included in a instrument conveying interest in wind resources.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Visibility Marking Requirements for Anemometer Towers

The bill would require specific daylight visibility markings for any anemometer tower that is at least 50 feet in height and that is located outside the corporate boundaries of a city, provided the appearance of the tower is not otherwise mandated by state or federal law. (Anemometers are instruments for measuring and recording the speed of wind.)

The following markings would be required at the time the tower is erected: the top one-third of the anemometer tower must be painted in equal, alternating bands of aviation orange and white; two marker balls must be attached to and evenly spaced on each outside guy wire; and one or more seven-foot safety sleeves must be placed at each anchor point.

The requirements would apply to any anemometer tower erected on or after July 1, 2011. Towers erected before that date would be required to be marked within two years of the effective date of the act.

Failure by an owner of an anemometer tower to properly mark the tower is a class C nonperson misdemeanor.

Background

A representative of the Kansas Department of Agriculture testified that the introduced version of SB 227, which addresses visibility markings on anemometer towers, would help protect the safety of pilots engaged in low-altitude activities such as aerial applications, emergency medical helicopter services, law enforcement, and fire suppression. The Federal Aviation Administration threshold for obstruction markings is a height of 200 feet. Many meteorological evaluation towers, such as anemometer towers, fall below that level. The National Transportation Safety Board issued an alert to pilots in March 2011 to be vigilant in watching for meteorological evaluation towers during low-altitude flights. Written testimony in support of the bill was received from the Kansas Agricultural Aviation Association.

A representative of The Wind Coalition provided neutral testimony on the bill, noting that most Coalition members already comply with the bill or are in the process of achieving compliance. The Wind Coalition expressed concern about a provision in the bill requiring contrast marking, and in some cases fencing, of the area where each guy wire is anchored to the ground. No testimony in opposition to the bill was received.

The Senate Committee on Utilities amended the definition of anemometer tower in the bill to delete references to the purpose of the towers, and deleted the section of the bill that required contrast marking, and in some instances fencing, of the area surrounding the anchor point. The Committee specified the definition of municipality as the corporate boundaries of a city.

The House Committee on Energy and Utilities amended the contents of HB 2141 into SB 227, and amended the title of the bill.

During testimony in the House Committee on HB 2141, Representative Carl Holmes explained that the intent of the bill was to ensure that, unlike mineral rights, wind and solar rights could not be severed permanently from a tract of land. He cited the detrimental effect that permanent severance of wind and solar rights could have on agricultural use of the land.

NextEra Energy Resources, LLC, the developer of Gray County Wind Farm, submitted written testimony in support of HB 2141.

A representative of the Wind Coalition provided neutral testimony on the bill.

A representative of the Kansas Land Trust spoke in opposition to the introduced version of HB 2141, expressing concerns that it could be broadly interpreted to prohibit conservation easements on land. Tallgrass Ranchers

submitted written testimony expressing similar concerns. Written testimony submitted on behalf of the Southwest Kansas Royalty Owners Association expressed concerns that the bill would remove landowners' ability to freely transfer rights associated with their land.

The House Committee on Energy and Utilities amended the bill to clarify that it would not prohibit conservation easements.

Similar testimony was heard on HB 2141 in the Senate Committee on Utilities, except the representative of the Kansas Land Trust stated the amendments in House Committee eliminated the Land Trust's concerns with the bill.

The fiscal notes prepared by the Division of the Budget indicate the introduced version of SB 227 would have no fiscal effect on state operations, and HB 2141 would have no fiscal effect on the Kansas Corporation Commission, local governments, or other groups.