- Thank you for the opportunity to address this Committee.

- Name is Bill Scopp. I have been a resident of KS since about 1980 and a rural landowner in Linn County since 1995. I have spent 37 years in the leasing industry, primarily in equipment leasing but also in some real property leasing.

- I am here as a PROPONENT of Senate Bill #324.

- Senate Bill #324 is another crucial step to protecting Kansas Landowner rights –specifically related to Industrial Energy Development and the "real property" leases that are pushed upon trusting, if not naïve', landowners, by the industrial energy developers. This includes Industrial Wind development and Industrial Solar development.

- I am NOT an attorney so I am clearly not attempting to provide any legal advice or review, rather to provide a perspective from years in the leasing world and as a concerned and vested Kansas property owner and citizen.

- I have had the opportunity to review an Industrial Wind Developer/tenant proposed lease that was presented in Linn County, Kansas.

- This proposed lease agreement has also been reviewed by an attorney and I recognize that there simply is not sufficient time to go over all the concerns and risks placed on a landowner in the lease. But I would like to address some of the material concerns that exist in leases that were presented to landowners to sign as part of an industrial wind development, and that is the focus of Senate Bill 324. This bill aims to address a primary issue and concern related to industrial energy developers tying up property for extended periods of

time without any actual development or construction or benefit to the landowner.

- The lease I reviewed provided the landowner with a minimal “sign on/sign up bonus” ($1,500) that then ties up the owner’s property for a 7-year window, WITHOUT any obligation on the part of the industrial energy developer to do anything! That sign on/sign up money is simply for signing the agreement. Even worse is that the industrial energy developer/tenant lease includes provisions for additional payment to the landowner in the form of minimum “Development Rent” paid to perpetuate the option on the landowner’s property, or a portion of the property if the developer/tenant elects, at their discretion, to drop some “acreage” from the agreement. The developer could also release a landowner’s acreage from the development project, but retain a “non-obstruction” easement which would prevent the landowner from developing the property in any number ways, effectively transferring control to the industrial energy developer.

- Also included in the lease is an option, in the event the tenant does release the landowner’s property from the project, for the developer/tenant to allow for “any other easement on the property which Tenant determines, in its reasonable judgment are necessary for the Project”. This this happens, they owe NOTHING in rent to the landowner.

- The lease also provides for the industrial energy developer/tenant to tie up the property for a total of 37 years! The lease I reviewed provides that the industrial windmill developer/tenant has 7 years to begin development and then once the generating units are operational, the lease is binding for another 30 years.

- If the industrial energy developer doesn’t do what they say they are going to do, the termination provision written into the lease are for the

express benefit of the tenant/developer and to the detriment of the landowner. To the point that even if they verbally committed to anything, language in the lease requires that the landowner acknowledge “that the Tenant has made no representations or warranties to the Owner, including any regarding development of, or the likelihood of power generation from the property”.

- Any and all industrial energy developers will have substantial monetary invested in any project. But that money pales in comparison to the real risk it places on the landowner, and ultimately on the County in which the development is proposed, as well as the State. This includes a host of financial as well other risks such as land and landowner health and even the livelihood of the operators of the property on which an industrial energy development is built. And this restriction ultimately includes accountability of the developers to the landowners over the course of any land lease.

- The complexity and scope of the tenant (industrial energy developer) drafted and tenant favoring land leases is simply mind-boggling. The lease I reviewed is 57 pages long. 57 pages! And that is without any sort of addendum(s) that include real property land descriptions. The only reason any lease would possibly be 57 pages long, is if one of the parties (Tennant/Lessee/industrial energy developer) is pushing as much risk as possible, onto the other party (Owner/Lessor/Landowner) -- and that is exactly the case with the agreement I reviewed. This land lease, in my opinion, is not in any way an equitable or mutually beneficial agreement and it is reasonable to believe the language in any other industrial energy developer’s drafted agreement will mirror this.

- In all my years in the leasing world, I have NEVER seen any agreement more agregious or one sided. This lease places virtually unlimited risk on landowners and at the same time it indemnifies the developer from virtually all liability. Again, the agreement lacks any

reasonable level of mutual benefit between the landowner and the industrial energy developer tenant.

- Which is why it is imperative that this committee take action to limit an industrial energy developer from tying up a landowner's property for what is candidly an indefinite period of time without commencing development.

- The lure of what appears to be "easy money" and developer created time sensitive pressure to execute an agreement, could lead to a devastatingly bad outcome for any property owner who does not fully understand the ramifications of lease contract. This includes simple landowner "given" rights that are potentially relinquished via the lease, and the long-term risks to not only that property, but to the financial wellbeing of the landowner and its local government.

- It is crucial to understand that these industrial energy development leases do not treat landowners equally. They allow for and grant to the developer/tenant virtually unlimited easements beyond a footprint for the base energy device (example: windmill) and those additional easements granted to an industrial energy developer include; rights to add an unlimited number of buildings, add roads, drainage modification, power and transmission line installations, installation of substations, etc…. And the scope of the lease agreement can even restrict a landowner from using some if not all of their property, allows the developer to take and use water, remove trees, re-route drainage and riparian strips, and potentially limit a landowner from even using his property for ag, hunting, fishing, or ultimately, their livelihood.

- Included in the lease I reviewed, is a provision that provides the industrial energy developer the option to literally purchase from the landowner, the property included in the developer/tenant's easement on the landowner property. And this provision is at a fixed price, set at the time of execution of the lease, can be elected at any time by

the developer/tenant, and without any allowable increase in the property price-meaning the value of the property is not indexed to increase over time. This sets up the opportunity for the industrial energy developer, as the development reached the end of its life cycle, to purchase the easement footprint/property, sunset the development, and abandon the “development”, leaving the generating equipment and associated assets in place without any obligation to remove them.

- It is exceedingly important that landowners understand not only the ramifications of any lease of their property to an industrial energy developer, but also to have a reasonable opportunity to understand the larger “picture”.

- I believe that it is imperative that this committee look even beyond the provision of Senate Bill 323 and the bill being addressed today, Senate Bill 324, and establish a broader scope of State regulations that protect landowners from lopsided tenant/industrial energy developer agreements that place excessive risk on trusting, and again, if not naïve, Kansas landowners.

- Senate Bill 324 provides, at a minimum, a reasonable timeframe for any industrial energy developer, to commence development and not tie up a landowner’s property for an indefinite period of time, effectively restricting that landowner from use of their property for other purposes. In my opinion, proposed Senate Bill 324 should include a strict provision that the industrial energy development MUST commence withing 3 years of the execution of a lease, and that the landowner would hold the sole option to terminate the lease at the end of that 3 year window, without any extension or delays that may be attempted by the developer.

I urge those on this committee and anyone who will be voting on this bill, to put Kansas and the very landowners who have made this great State, first!

Move this bill forward and sign it into law. At a minimum, this bill will set State mandated development commencement requirements.

I would also encourage this committee to consider developing a comprehensive set of State requirements for any industrial energy development, that protect landowners, the county in which they are being built, and the State. And provide a comprehensive set of regulation for end of lifecycle removal of the energy development.

I trust this committee understand the long-term impact to not only the landowner participating in a development, but also to the land belonging to their neighbors, who by the way, may choose to not participate in a development but still materially affected by the decision of adjoining landowners.

Respectfully submitted, Bill Scopp.