

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1363

2007 HOUSE NATURAL RESOURCES

HB 1363

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1363

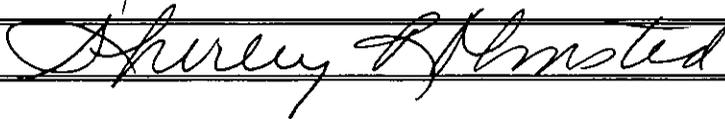
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1897

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on HB 1363.

Senator Constance Triplett, District 18, came forward to introduce the bill. She said that she was in favor of this bill because she sees this bill as a protection to the land owners who generally lease from the companies who put up the wind turbines. We are at a place in the development of wind energy now where we don't currently have too many of these facilities on the landscapes. As we add more and when they get past their life usefulness and need to be decommissioned, we do not want to see a lot of these rusting wind turbines on our landscape. This will put in place a process that will allow the Public Service Commission to monitor and manage the rules in an orderly way and provide for funds. My experience as a County Commissioner has made me realize that you really need things like this in place in the early stages of the development as it becomes difficult later to put something like this in place.

Senator Jon Nelson from District #7 also came forward to present this bill. See written testimony marked as item #1. The legwork for this bill has been done by the Public Service Commission and I thank Commissioner Wefald for that work.

Susan Wefald, President of the North Dakota Public Service Commission came forward in favor of HB 1363. See written testimony attached marked as Item #2.

Representative Hofstad asked if there was an instrument such as a bond in place right now. Do insurance companies sell them?

Commissioner Wefald said it was her understanding that there is. Other states require this as well other municipalities and sometimes the federal government requires a decommissioning bond.

Representative Solberg asked if the land owner is responsible for the cost and removing once it is no longer in service.

Commissioner Wefald said in sample easement agreement that she has reviewed, they differ by company. One company will say that if they do not do the steps as listed it becomes the landowner's responsibility. Another company said that if they do not do all these steps for some reason, they will then reimburse the landowner. I would like you to consider that if you were a farmer and you have these on your property, the cost to bring in a crane to decommission these facilities would be tens of thousands of dollars and you probably would have to borrow the money to get it done.

Representative Solberg said that you stated that North Dakota cannot require the companies that own the towers to decommission them in the event that they are no longer serviceable.

Commissioner Wefald said that at the current time the Commission has the ability if a wind farm has over 100 MW we can put that in the order. But as we have seen in recent years many of the wind farms that are being constructed in North Dakota are well under 100 MW. There is no policy for decommissioning on these.

Representative Drovdal asked if the landowner said that he wanted one of those towers left up for whatever reason we may never understand. Can the PSC waive that right at that time?

Commissioner Wefald said according to this bill they would be decommissioned within 12 months unless they can show that there is a new plan in place for this. She made reference to

Section 1, page 2, line 8 and read that portion of the bill. In my opinion that gives the commission the ability to say yes you have a plan to returning the turbine to service.

Representative Drovdal asked about the farmer that likes the looks of the wind tower and wants to leave it up on his land. Is there authority here to waive that?

Commissioner Wefald said no there is not because they have seen this problem occur in coal mines where one person wants to leave the spoil piles as they think it is a thing of beauty. When those spoil piles start to accumulate around the state and that land can no longer be used for agriculture, this becomes a problem for the state as a whole and not for just one land owner.

Representative Keiser said that there is no provision for the landowner to enter a contractual agreement. Could they be responsible for removing it under the guidelines of the bill?

Commissioner Wefald said that is not included in the bill. If members of the committee think that would be a good amendment, she would be open to that.

Representative Meyer asked if there is an average cost associated with the decommissioning of these turbines. Has that been determined?

Commissioner Wefald said she received estimated costs from Basin Electric and she would be glad to pass that memo on to her and the rest of the committee if that would be helpful to them. There may be some salvage value that comes from the concrete and steel that is in each tower. There still will be considerable cost with the decommissioning.

Chairman Porter said that he understood that in subsection 6 the lease may be more restrictive. What would happen if someone signed a lease three years ago and in that lease they agreed to take care of it in the future and were compensated for it. Would passing this bill as it stands trump that lease?

Commissioner Wefald said she would like the chance to think about that question and get back to the committee.

Mr. Brad Crabtree of the Spring Valley Township came forward in support of HB 1363. See attached written testimony marked as Item #3. Decommissioning has been a concern for this area. We asked what would happen when a wind farm reaches the end of its life. One of the provisions in our zoning ordinance in the condition of receiving a permit, we require the wind developer to be responsible for decommissioning and restoration of the site to its previous condition. They feel good about their ordinance as it was the first one that he knows of in North Dakota. They felt very strongly that this was not the appropriate responsibility of the township. This is really an issue for an agency like the PSC with resources to be responsible for this. Some of the older turbines in the country and in Denmark are disappearing and being replaced by newer technology. The energy business is uncertain and most wind farms will be prosperous for the lifetime of the wind farm, but some may fail. Short of a lawsuit, there is no clear pathway for getting a bankrupt wind farm to decommission. People will begin to feel differently about these wind turbines as there gets to be more and more of them on the landscape. If we are to maximize our wind energy development, the public has to support the industry. We need to learn our lesson from the oil and gas development in North Dakota. One of the major challenges the oil and gas developers had with the land owners was the fact that their track record for oil and gas development on private land was so bad. It may not be bad today, because I think we have learned our lesson but it had a clear impact on the industry. This bill is important for the long term development of this industry. He urged a do pass on this bill.

Representative Meyer asked what the average life expectancy was of a wind tower.

Mr. Crabtree said with the experience in California, northern Germany and Denmark it is shorter than the contract for those wind projects. The technology is changing so rapidly that for every dollar invested in the new technology you get relatively more output. In some cases it has been as little or 8 to 10 years. That may level off after a few years. Most contracts are for 20 to 25 years.

Representative Solberg asked if this bill would assure a landowner that he won't be responsible for decommissioning a wind site or wind tower.

Mr. Crabtree said in his view this legislation would accomplish that. It would also put the process of the development in the hands of the PSC and there would be ample opportunity for public input into the industry.

Representative Kelsh asked if the state of California has decommissioning requirements similar to these.

Mr. Crabtree said he did not have the answer to that. The provisions are very sensible and he thought it was what a responsible wind farm developer and owner would propose.

Representative Kelsh asked if this bill passes would his township rescind that part of the ordinance.

Mr. Crabtree said they would have the ability within their township to waive that requirement.

Representative Charging said that he had mentioned the wind farms possibly could go into bankruptcy. Can this possibly fall back on the landowner?

Mr. Crabtree said he would hope that the PSC would assess those risks and would decide what would be the appropriate action to take.

Representative Damschen asked if his ordinance has any affect on the county or your township.

Mr. Crabtree said that is a complicated issue. The short answer would be no. It has been recorded in newspapers that our zoning is responsible for the wind farm however that was strictly a regulatory decision made in Minnesota. Ottertail Power said they would back that up. **Representative Keiser** asked how available this type of bond would be and the cost 12 years from now would be a lot more.

Mr. Crabtree said that question was beyond his pay grade. Perhaps Commissioner Wefald could answer that.

Commissioner Wefald said that she would do research on that and get that information for the committee.

Representative Keiser said it was a very important question because if we are going to require a bond and you can't get one or you can't afford one or it prohibits development, is the bond really going to provide the protection.

Commissioner Wefald said that is why in the bill it says the commission can take another financial insurance because there may be other things we may require other than a bond.

Representative Keiser said but it may be prohibitive also and that is what we need to investigate.

Chairman Porter said a couple of sessions ago they changed the siting requirement that pretty much took the authority of the PSC away on anything under 100 MW. Inside that siting provision all the things you are talking about exist where a bond can be required. Why wouldn't we just put the siting requirement back in and bring in the PSC from ground zero with the entire establishment of a wind energy project?

Mr. Crabtree said he appreciates that question. There is another bill that will be coming to this committee that will ask the PSC to study the wind siting issue more broadly and report back to the legislative council. He said he was scheduled to testify on that bill. We believe that basic

ground rules are good for industry and good for those who are affected by industry. He believes that it was a serious mistake to move the threshold to 100 MW and it will have consequences not just about siting issues but for a lot of things. These are very large projects that will affect the landscape. Wind energy is getting a free pass to go to state agencies and getting regulatory approval for siting and to allow for public input. He might suggest a tiered approach where a small wind farm maybe 10 to 12 MW would have to approach the PSC and have a minimum threshold of oversight on siting issues, concerns over wind rights, and basic decommissioning things and then maybe a 50 MW would have another level of oversight and then 100 MW that developer would have to show that they have dealt with the variety of concerns for a large wind farm. He thinks this would not create a regulatory burden on some of the smaller wind farms. He also does not want to create a regulatory burden on future wind farms that might be locally owned. It takes a lot more effort for a locally owned project off the ground and if they have to go to the commission for a big regulatory review that costs a lot of money, that alone could kill a project. I am not suggesting a one size fits all, but a tiered approach may work.

Mr. Bob Graveline with the Utilities Shareholders of North Dakota came forward in support of HB 1363. They support the concept and need to address wind towers. He passed some pictures from California marked as Item #4. This a picture of a wind farm in California taken by his friend in California. As you drive through very few are working. I don't know if you would like to see this in North Dakota but he certainly wouldn't. When the bloom is off the windows, and when the next best energy project comes along, someone is going to be responsible for decommissioning those towers. He certainly does agree with the concept.

Kathy Aas from Xcel Energy and they also support this bill because it puts a process in place to handle a long term impact in an emerging industry.

Mary Mitchell from Dakota Resource Council came forward in support of this bill. She said they thought it was a common sense bill.

Chairman Porter asked for opposition on this bill. Seeing none the hearing was closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1363

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1982

Committee Clerk Signature

Shirley Olmsted

Minutes:

Chairman Porter asked the committee to take out HB 1363. I guess we will not be able to do this one as we are waiting for some information on bonds from Commissioner Wefald. There were no proposed amendments on this one.

Representative Keiser asked if they could discuss this as a committee for a few minutes.

Chairman Porter said yes.

Representative Keiser said he didn't know if there was any merit in having an amendment that would allow the farmers to enter into a contract where they would assume the responsibility for dismantling. If there would be then we should consider it at this time. The farmer has a lot of equipment and they may say I will take it down. They don't have any liability and they don't have to buy a bond or do anything. I don't know if that is an issue or not.

Chairman Porter said one thing that he found interesting in the whole discussion was a session or two ago we removed the siting provision from wind energy because they didn't want to go through the regulatory process of having the PSC involved and they thought that was just a huge regulatory oversight and bottleneck that was going to slow down and limit the wind energy production. Now we are coming back at a session or two later and we are picking little things out that were already in the law as far as requirements on the projects. We are picking

things that may or may not even be readily available as a product on the market. I just think that if this is the road we are choosing then maybe we should just seriously look at taking off that 100 MW siting restriction and put it back to the way that it was and let all the projects go through siting through the commission and let them do it the same way as any other facet of energy such as the power plants is required to do.

Representative Keiser said that he thinks there is some merit to that but he also take into consideration the comments made that it may be appropriate to have a tiered system if you were to do that for a small, middle sized, and then the larger facilities are. It doesn't make sense if it is a very small thing to go through a 50 thousand dollar siting requirement. To me there is no value there but for a 300 million dollar thing siting is very important.

Chairman Porter asked **Mr. Crabtree** to step forward again.

Chairman Porter said that in your comments when we were talking about the siting requirements, you mentioned a study or looking into a tiered level of siting. Is that an actual study resolution?

Mr. Crabtree said what he hasn't learned to do is to remember all these bill numbers.

Although he was involved in this bill I don't remember the number. Is it HB 1456 introduced by Representative Nelson.

Chairman Porter said we have that bill in front of us now.

Mr. Crabtree said he was working through the North Dakota Renewable Energy partnership and working with individuals talking about what might be done this session proactively to address some of these issues. The advice I got across the board was that there had not been enough preparation with legislators and talking about these things before the session.

Heeding that advice, I worked with Representative Nelson and it seems be a logical step to ask the PSC to study this and report back to all of you as a body. He would like the

opportunity to talk to some people about what are some issues that every commercial wind farm ought to address. The two that immediately come to mind are setbacks and wind rights issues so that one person's economic development and business opportunity is not infringing on another person's right. That is taken care of through state law and regulation in Minnesota and they don't have these conflicts. I think some of these issues about the decommissioning of these wind farms and one or two other things perhaps on a 10 MW wind farm or larger ought to be dealt with and I think the PSC could deal with that in a very expeditious way and not create a lot of cost. If you go to a 50 MW wind farm and today you are talking about 25 turbines and they need to be maybe 2000 to 3000 feet apart from up winds and down winds along the prevailing winds and you are talking about possibly involving many square miles. The project in my county and the McPhearson County in South Dakota will be one of the largest wind farms in the United States. It is something close to 200 MW. That leaves a huge impact on the land and involves lots of property owners and communities. That to me merits a full exploration by the commission of various impacts and whatever they might be. I don't envision that as being particularly burdensome but it does cost about one hundred thousand dollars. Again the project in Dickey and McPhearson County is going to be a two hundred plus million dollar project so spending one hundred thousand dollars to give the state government and the public an opportunity for input strikes me as reasonable.

Representative Keiser said he takes those comments to heart but I also hope that the industries recognize that it is at this session that we are beginning to put together a comprehensive energy policy for the state of North Dakota and it seems that this is one part of it. We should make an effort to address it if possible. Is there a bill in the senate that we could use as a vehicle that would give you more time?

Mr. Crabtree said he is not sure what the process is but may I make an observation. House Bill 1456 could be amended to ask the commission not to do the study but initiate a ruling in accordance with their procedures. I think that would address these siting issues and then individuals like myself as a landowner and township official I could provide input into that process, Florida Power and PPM and other major developers could supply input, Xcel and other REC's could provide input and I personally have the confidence in the wisdom of our Public Service Commission to take that input and come up with something that is rational. Then you would have an element of the policy going forward. We just wouldn't know the outcome of the rule making would be but I would certainly feel comfortable with that.

Representative Damschen asked if we were a little early in the stages of understanding the technology and have that line in there.

Mr. Crabtree asked if he meant in terms of a study.

Representative Damschen said no when a wind farm goes down. What is a reasonable life?

Mr. Crabtree said he certainly doesn't intend to speak for Commissioner Wefald but my sense is all that is required is a plan. A plan could allow for some more time for those turbines to become operational.

Representative Damschen said he realized that but he supposed by the time their life span is considered depleted the technology would be such that they could have a plan.

Mr. Crabtree said so far there have been no wind farm bankruptcies except for a farm in California. That was very early and one of the first wind farms in the world so it was all very experimental. So far what is happening is the technology is accelerating so fast that reaching the end of their life is really an economic life and not a mechanical life.

Representative Charging said she thought we should have some more time. I am sure we all feel that way. To me this is a protection and we need to protect the landowners.

Mr. Crabtree said personally he agreed with her. I feel that all we need is one or two bad projects and I don't want to get into the details of what happened in our small community. I don't want to push my point of view on the committee because I think that is well know for those of you that saw the articles in the newspapers and there is no reason to rehash that here. It has been extraordinarily divisive and there weren't even turbines put up. I have neighbors that feel absolutely violated by what happened and these are people who have been working for wind development for four or five years now with another developer. My concern is not as a landowner per se. My land was not affected by these siting. In a big state with very few people, you only need a handful of people to go through a bad experience and be bitter about it to completely transform an issue. I think if we don't have some protection in some you can hardly build wind farms in some parts of the US now because of esthetic and other property value considerations. We are one of the few states where it is open country to build wind farms and so far everyone is welcoming them. That could change in a heartbeat if something is done wrong.

Chairman Porter thanked Mr. Crabtree and moved on to another bill.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1363

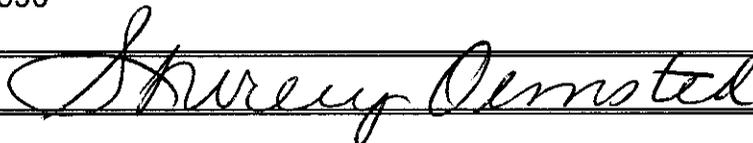
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2590

Committee Clerk Signature



Minutes:

Chairman Porter opened the discussion on HB 1363. This bill has a fiscal note with no fiscal impacts noted. We had a question for Commissioner Wefald and I will pass out her response. Basically the question that we asked was in regard to the availability of a commercial bond for a wind farm and her answer was that there are commercial bonds available and that the price range would be somewhere between twelve and fourteen dollars per thousand so for a 90 MW facility it would be somewhere between a hundred and twenty and one hundred forty per tower. That is where we are at on the bill. See attached testimony marked as Item #1.

Representative Clark asked if that was a one time cost.

Chairman Porter said it sounded like that was per year. On page 2 of her testimony is states that.

Representative DeKrey said this bothers me that the landowner can't enter into an agreement with a company and use that tower for something else after they decommission it. If you had a radio system on your farm, this would be a great place to put an antenna if you weren't going to use the wind tower. The way I understand this bill, it isn't even an option.

Chairman Porter said that question was posed to Commissioner Wefald. You would have to petition back to the Commission and tell them that you really want it. The other point of

concern on this is that it wasn't that many sessions ago that we took away the siting requirements for wind farms that would have handled this situation through the PSC and did we do the right thing by taking that away.

Representative Damschen said there seems to be some disagreement on these restrictions and bonding requirements. There is one side that says it doesn't discourage wind development and the other says it does. We need to be careful before we put a lot of power in the regulating authority and also be careful that we don't discourage wind development right now.

Representative Meyer said on the comment that Representative DeKrey just made. On her fourth page Commissioner Wefald comments about decommissioning. I am asking if you can petition the commission if you do not want the decommissioning to take place. Is there a provision for this petition?

Chairman Porter said he believes that you could petition the commission but you couldn't have any freedom to make an agreement with the owner of the wind tower and yourself as the owner of the land. You would have to pull in a third party on the PSC.

Representative Meyer said but you could petition, right?

Chairman Porter agreed. He asked for further discussion on HB 1363.

Representative Damschen made a motion for a do not pass on HB 1363.

Representative Hofstad seconded the motion.

Chairman Porter asked for discussion. Hearing none, the clerk was asked to call the roll on a do not pass on HB 1363. Let the record show 11 yes, 2 no, with 1 absent. The **do not pass on HB 1363** prevails. **Representative Hofstad** will carry the bill to the floor.

FISCAL NOTE
Requested by Legislative Council
01/15/2007

Bill/Resolution No.: HB 1363

1A. **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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill requires decommissioning of commercial wind farms and wind turbines, and provides a mechanism in the Public Service Commission for ensuring that decommissioning. We do not expect any fiscal impact out of the ordinary course of business.

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.*

n/a

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.*

n/a

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 is also included in the executive budget or relates to a continuing appropriation.*

n/a

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/16/2007

Date: 2-1-07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1363

House Natural Resources _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Not Pass - pre votes

Motion Made By Damschen Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman - Rep Damschen	✓		Rep. Hunskor	✓	
Rep. Charging	✓		Rep. Keish		✓
Rep. Clark	✓		Rep. Meyer		✓
Rep. DeKrey	✓		Rep. Solberg	✓	
Rep. Drovdal	✓				
Rep. Hofstad	✓				
Rep. Keiser					
Rep. Nottestad	✓				

Total Yes 11 No 2

Absent 1

Floor Assignment Hofstad

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2007 3:53 p.m.

Module No: HR-23-2047
Carrier: Hofstad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1363: Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1363 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1363

Item #1

TESTIMONY- HB 1363
REP. JON NELSON DISTRICT 7

Good Morning Mr. Chairman and members of the House Natural Resource Committee. I am pleased to appear before you this morning to introduce HB 1363.

First of all, I would like to thank Commissioner Susan Wefald and her staff for developing a policy for an orderly and responsible decommissioning of wind energy facilities.

Commissioner Wefald has brought together members of local sub divisions, wind energy industry and advocates of wind energy development, utilities, and other stakeholders in the process and from that formed consensus in the development of this policy.

I will defer to Commissioner Wefald to walk you through the details of the bill. I would also like to introduce Mr. Brad Crabtree who is a township officer in Spring Valley Township in Dickey County to testify on this matter as well.

With the passage of HB 1363 the state of North Dakota and its citizens can expect the wind energy industry to remain a responsible steward as it continues to grow and provide a responsible and orderly policy when the turbines reaches its useful life expectancy.

I would respectfully ask you for a Do-Pass recommendation for HB 1363 and will stand for any questions you might have. Thank you.

Item # 2

H. B. 1363

**Presented by: Susan Wefald, President
Public Service Commission**

**Before: House Natural Resources
Honorable Todd Porter**

Date: January 25, 2007

TESTIMONY

Mr. Chairman and Members of the Committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The testimony that I am presenting is my own testimony, and not that of the whole Public Service Commission.

I am delighted that wind energy development is taking place in North Dakota. Last week the Commission was involved with a hearing in Ashley, North Dakota regarding transmission for 90 MW of wind development that will be constructed in North Dakota this year. Near Bismarck we can see two 50 MW wind farms, one near Wilton and one near Center. Minnesota Power announced this week it will be purchasing an additional 48 MW of wind power from Oliver Wind II, which means that an *additional* 32, one and a half MW wind turbines, will be located near Center.

These wind energy conversion facilities consist of huge towers that support the wind turbines. The towers are over 250 feet tall (taller than our capital building) and require huge cranes for construction. They are constructed of cement and steel. The turbine blades can be over 80 feet long. This bill addresses the decommissioning of these huge commercial wind energy conversion facilities when they are no longer needed and useful.

We do not want ghost towns of derelict wind towers littering our prairies when technology moves to new ways of doing business. We have all seen how wind energy technology has changed in the past 20 years. Already, 600 foot tall turbines with 200 foot blades, producing 5 MW of energy are being designed for use in Europe.

Let me lead you through the different sections of this bill.

First the Definitions:

Commercial wind energy conversion facility – This definition is meant to include all commercial size wind facilities in North Dakota.

Wind Turbine: For example, this definition would include the turbine constructed next to Interstate 94 near Valley City and the two wind turbines near Minot on Highway 83. These three turbines each generate approximately 900 kilowatts, or just under one MW.

The next section gives jurisdiction to the Public Service Commission. It is similar to jurisdiction given to the Industrial Commission for oil and gas industry decommissioning and states that the Commission may prescribe some type of bond or financial assurance for decommissioning.

Now we will move on to "Decommissioning of commercial wind energy conversion facilities."

Section 1, states that a commercial wind energy conversion facility must be decommissioned "if no electricity is generated for a continuous period of 12 months, unless a plan is developed and submitted to the commission outlining the steps and schedule for returning the turbine for service." The period of time included in this bill came from model ordinances in other states.

Section 2 and 3 includes language very similar to language used in Florida Power and Light easement agreements with landowners.

Section 4 states that the Commission **may** require a performance bond and that we could not even consider requiring a bond without a rulemaking proceeding. This section allows the Commission to thoughtfully consider the ramifications of requiring a bond or other financial assurance and if one is considered necessary, determining the correct time in the life cycle of the wind energy conversion facility to put it in place. For example, the Commission could consider waiting until the facility is 15 or 20 years old before putting in place some type of financial assurance for decommissioning.

Section 5 gives the Commission the authority to take action to decommission a facility if the owner or operator of the facility does not complete decommissioning.

Section 6 preserves landowner easement rights for having stricter provisions for decommissioning than are included in this chapter.

Why is this bill needed?

- Sample easement agreements show that responsibilities for decommissioning these huge wind energy conversion facilities will fall to the landowner if the company for some reason does not choose to act.
- Sample 40 year easement agreements show that wind energy conversion facilities could stand abandoned for years before decommissioning may occur.
- Our state has required reclamation of coal mines and removal of oil field structures. We have learned that owner operators of these facilities should be the responsible party for reclamation.
- Companies will know that the state expects the owner operator of wind energy conversion facilities to decommission wind energy conversion facilities in a timely manner.

This completes my testimony. I will be glad to answer any questions that the Committee may have.

**House Bill 1363: Decommissioning of Commercial Wind Energy Facilities
Testimony to the House Natural Resources Committee**

January 25, 2007

**Brad Crabtree
Spring Valley Township
Dickey County, ND
(701) 647-2041
crabtree@drtel.net**

Item #3

Chairman Porter and Committee members, thank you for the opportunity to testify on behalf of HB 1363. My name is Brad Crabtree, and I testify on this bill as an officer of Spring Valley Township in Dickey County.

Located in the heart of North Dakota's greatest wind resource, our Township became the first location in the state with two different wind developers pursuing adjacent wind developments. Concerns over wind turbine siting issues led our Township officers and residents to develop the state's first zoning ordinance for commercial wind farms in 2005.

In crafting that ordinance, we struggled with the issue of wind farm decommissioning. Some wind developers did not, in our opinion, provide adequate provisions for decommissioning in their private, confidential contracts with landowners. We required, as a condition of issuing a permit, that commercial wind developers to take responsibility for decommissioning and restoration of the area to its previous condition. While we believe that our local ordinance is sound, we feel strongly that this complex issue is best regulated by a state agency such as the Public Service Commission with the proper expertise and resources to do so, rather than left to a township with 32 residents. Therefore, we appreciate Rep. Nelson's and Commissioner Wefald's leadership on this issue.

Decommissioning will not be an issue with all wind projects. Having made a substantial infrastructure investment in a wind project, owners will likely choose to repower a wind farm with larger and more efficient turbines, when the original turbines reach the end of their useful life. This is happening now with older wind farms in places like California and Denmark.

However, the energy business is uncertain. Most wind farm owners will likely prosper, but some may fail. Our zoning ordinance, and state policy, does nothing to protect the Township and its landowners in the event that a wind farm owner files for bankruptcy—short of legal action with uncertain prospects for recovery sufficient to restore the land. This bill's performance bond provision provides a backstop to protect landowners and local governments from this risk.

As strong advocates of wind energy development, we want the state to avoid creating unnecessary regulatory barriers to the industry. Yet, if we build thousands of megawatts of new wind farms in North Dakota over the next couple of decades, as I hope we do, these developments will have a significant impact on private lands and on the landscape as a whole. To maintain public support and goodwill, it is essential that sensible and measured regulatory steps are taken to ensure that the wind industry is seen as a good neighbor and that we avoid the many mistakes that were made in the early years of oil and gas development on private lands.

This bill helps a new industry start off on the right foot and thus benefits the private sector, local governments and landowners alike. I urge a do-pass recommendation on HB 1363.

Item # 4





Public Service Commission
State of North Dakota

Item #1

COMMISSIONERS

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January 25, 2007

Honorable Todd Porter, Chairman
Natural Resources Committee
North Dakota House
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill ~~4500~~ *1363 (Wrong #)*

Dear Chairman Porter:

Following is the information you requested.

Is a performance bond mandated by this bill? No.

What is the cost of a performance bond? Cost of the bond depends on many factors including the size of the wind farm, the amount of exposure per wind turbine, the financial health of the owner-operator, and the bond form. (See example below.)

Is it possible to get a performance bond to cover decommissioning costs? Yes. (See example below.)

Example

Minnesota PUC has estimated in one order that decommissioning costs could be \$10,000-\$30,000 per turbine. This was for a 100 MW facility siting in 2006.

Information was obtained from Rollin Mehlhoff at Vaaler Insurance. This was an estimate from Roland, since no bond of this type has been issued in North Dakota. (Vaaler Insurance has issued insurance for wind towers in North Dakota)

Let's assume that there is a 90 MW facility with decommissioning costs estimated at \$10,000 per turbine:

If a bond was issued on a one year basis, and renewable each year, the bond might cost \$12 – 14.00 per thousand, for a company with a good financial status. Therefore, the owner operator might need to pay \$120 - \$140 per year per wind tower for a performance bond. Therefore, if a company had a wind farm with 60 turbines each generating 1.5 MW, the bond cost would be:

60 turbines x \$120 = \$7200 for \$600,000 for "performance of reclamation bond" per year for the 90 MW facility *(may not be needed in early years of a project)*
Or

60 turbines x \$140 = \$8400 for \$600,000 for "performance of reclamation bond" per year for the 90 MW facility *(may not be needed in early years of a project)*

Under HB 1363, the Commission would need to conduct a rulemaking to put any requirements for performance bonds in place. Under HB 1363, the commission is required to consider the anticipated life of the project, the estimated decommissioning costs in current dollars, the method and schedule for updating the costs of decommissioning and restoration, the method of ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the project will be decommissioned and the site restored when adopting rules that detail the bond requirements and when determining the amount of any required bond.

Question: What effect would this bill have on easement agreements that have already been signed? We believe this section of law would supercede previously signed easement agreements, since the state would now have power over decommissioning that would take place after this bill takes effect.

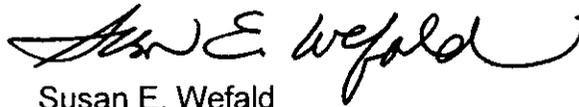
Question: What performance bonding requirements are in place in the state of California for decommissioning of wind energy conversion facilities? I received the following information from Commissioner Dian Grueneich, California Public Utilities Commission: "Unfortunately I haven't been able to locate any information. All wind permitting is done at the local level so we suspect requirements vary. There are no (state) guidelines or requirements."

Question: What if a landowner wanted the responsibility to decommission the wind energy conversion facility? This bill puts the full responsibility for decommissioning on the owner-operator. Decommissioning can be expensive. For example, \$800,000 was added to the cost of the new Bank of North Dakota

building to allow for destruction of the old hotel on the site in Bismarck. Owner-operators should not be allowed to shift decommissioning costs onto a landowner, even upfront costs. The bill does not allow and should not allow "any agreement" that would be signed between the owner – operator and the landowner that decommissioning does not need to occur. Also, in some cases, the owner-operator might purchase land for wind energy development, and thus the bill should not allow the "landowner" to make the determination that decommissioning does not need to take place.

If you have any questions, please do not hesitate to call or e-mail me at swefald@nd.gov.

Best regards,



Susan E. Wefald
President

c: Representative Chuck Damschen, Vice Chair Representative Darrell D. Nottestad
Representative Dawn Marie Charging Representative Lyle Hanson
Representative Donald L. Clark Representative Robert Hunskor
Representative Duane DeKrey Representative Scot Kelsh
Representative Dave Drovdal Representative Shirley Meyer
Representative Curt Hofstad Representative Dorvan Solberg
Representative George J. Keiser

Attachment

Wefald, Susan E.

From: Ron Rebenitsch [ronreb@bepc.com]

Date: Wednesday, November 15, 2006 5:10 PM

To: Wefald, Susan E.

Subject: RE: Draft Legislation regarding Decommissioning of Commercial Wind energy Conversion Systems

Susan;

Didn't see any major issues with either proposed option. Would like to offer a few observations that might be of interest.

- 1) Although the definition is for commercial wind projects only, I'm not aware of a specific size at which a project becomes "commercial". You may want to consider a minimum size turbine (or project), since small wind turbines are not much of an issue, compared to larger ones.
- 2) Financial surety would be easier for large companies than for small developers. This may be viewed by small developers as a financial hurdle they would face, while larger companies would more easily take this in stride. I've asked our Finance Dept to get me some costs for bonding, but have not yet received that info.
- 3) While our original landowner lease agreements (provided by a developer at that time) specified 3 feet depth for reclamation, we would have no objection to a 48" depth. When we assumed the first project from the developer in SD, we debated whether or not we should use 48", but since the developer had already reached agreement with the landowner, we just left it as negotiated. The Minot project then simply re-used the same agreement. We would concur with the 48" depth.
- 4) Actual Decommissioning Cost: I did a bit of pondering on the possible costs for actual decommissioning. At this point, my thoughts below are, at best, a guess, and depend on variable circumstances. Allow me to speculate as follows:

The steel tower weighs about 135 tons, plus the nacelle weighs about 50 tons. Porter Bros. tells me the salvage value of steel is running about \$80 to \$100/ton. They pay contract labor about \$15/ton to cut up the steel for scrap processing. That suggests the salvage value of the tower's steel is about \$10-15,000. The cost of removing the concrete to four feet and landfilling the blades would probably cost several thousand, leaving no significant net revenue.

That leaves crane mobilization as the primary cost. Although if only takes a day to disassemble a tower, the cost of mobilization would be \$30,000 to \$50,000. Economy of scale would play a big part in this cost. If only one or two turbines are decommissioned, the cost per turbine is high. If a few dozen turbines are decommissioned, the cost per turbine is low. (also a better salvage price is probable for such a large quantity) Alternatively, if the turbine can be collapsed by just removing the nuts on the base bolts and jacking the tower over, a large crane wouldn't be necessary, but the savings would probably be offset by safety issues.

To complicate matters further, if the wind energy is still viable in 20 years (which we fully expect), and the towers can be re-used, the value of the towers for other projects would be high. A new tower is now about \$300,000, so a used tower could be worth as much as \$200,000 in today's dollars. That would make decommissioning a profitable venture.

To summarize decommissioning costs; "It all depends...!" (I would prefer to give you a more definite answer on this item, but this is the best I can offer at the moment.)

Ron Rebenitsch, PE
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