

**Testimony of Kansas Department of Wildlife and Parks
Neutral Testimony on Senate Bill 395
An Act Concerning Wind Generation Facilities;
Relating to Construction and Setback Requirements
To
The Senate Committee on Utilities**

**By Secretary Brad Loveless
Kansas Department of Wildlife and Parks**

February 9-10, 2022

The Kansas Department of Wildlife and Parks (KDWP) is neutral with expressed concerns for certain provisions of Senate Bill 353. The bill, cited as the industrial turbine health and safety standards act, establishes construction and setback requirements for the placement of wind generation facilities. **KDWP stands as a neutral conferee expressing concerns with, and provides suggestions to, the bill as written.**

“Public hunting area” and “public park” is too broad.

KDWP is concerned with language in the bill under Section 1, subsections (E) and (F) that provides a setback distance from “public hunting areas” and “public parks,” respectively. These terms are undefined and, if unaddressed, may cause confusion for developers and the public alike.

KDWP has enrolled hundreds of thousands of acres of private ground into access programs to expand hunting and fishing opportunities for the public. These Walk-In Hunting Areas (WiHA) and Walk-In Fishing Areas (WiFA) are so numerous and spread out throughout the state that if the setback provisions were to apply to these locations almost any conceivable wind facility development would be disqualified under the bill. The same rationale can be applied to a small number of properties owned by KDWP that are not actively managed by personnel. Such owned but not managed properties would include several parcels deeded to the state of Kansas by the U.S. Bureau of Land Management after the 1980’s farm crises.

KDWP personnel believe it may be clearer, and would definitely be less expansive, to apply the setback requirement to: i) land owned and managed by the Kansas Department of Wildlife and Parks, or ii) land owned by a third party and managed by the Kansas Department of Wildlife and Parks pursuant to the terms of a written agreement. For additional clarification, this would not extend the setback requirement to land that is leased by KDWP for the purpose of public hunting or fishing access, pursuant to the WiHA or WiFA programs. This new definition would encompass wildlife areas managed by KDWP’s Public Lands Division, state parks owned by USACE but managed by KDWP’s Parks Division, and other properties KDWP actively manages for outside entities, such as Little Jerusalem Badlands State Park that is owned by the Nature Conservancy.

Amend the 5,280-foot setback to three miles.

In November of 2017, KDWP updated the agency's Position Statement on Wind Energy and Wildlife Issues in Kansas. The position statement has been published publicly on the KDWP website since its approval, and its setback recommendation has been approved by the last three governors. Within this position statement, KDWP provides wind energy developers seven (7) recommendations. A few of these recommendations specifically focus on topics included within this current legislation.

Those recommendations, for the construction of wind power facilities contained in this legislation, direct new wind turbines be sited: i) on previously altered landscapes, ii) outside the "Tallgrass Heartland" wind moratorium area, iii) to avoid large intact native prairies, and iv) to avoid wildlife migration corridors and migration staging areas. Additionally, as provided in the position statement, **KDWP recommends that wind turbines not be sited within three (3) miles of KDWP "managed properties,"** and requests the bill be amended to expand the setback requirement from one to three miles.

Position statement rationale for three-mile setback.

The basis for the three-mile setback recommendation is to provide a single, consistent criteria for all KDWP lands that would be conservative for the range of species that may use those areas. Biologically, KDWP focused on several species of greatest conservation need known to occur on multiple KDWP properties across the state. Those species included Greater and Lesser Prairie-Chickens, Whooping Cranes, and migratory bats--all of which may be disproportionately impacted by the construction of utility-scale wind facilities near or within their known habitats. Please see below.

- Whooping cranes use many of our public lands as migratory stopover habitat. During these stopovers, they are known to forage within several miles of the stopover location. Foraging flights from stopover habitat are at lower than migratory altitude which may cause cranes to spend more time at "rotor swept area" altitudes when they are using habitats near/within KDWP managed areas--increasing risk of collisions with turbines.
- During migratory flights, whooping cranes may take several miles to reach migratory altitude which also places them at increased risks of collision with tall anthropogenic structures in those areas.
- Recent USGS-led research has documented displacement of whooping cranes from formerly used migratory stopover habitat within approximately 3 miles of newly constructed utility-scale wind facilities.
- Prairie-chickens have a well-documented aversion to tall anthropogenic structures.
- Much of the research relative to prairie-chickens and wind turbines has documented changes to at least some portion of the prairie-chicken life history (brood rearing area displacement, lek attendance declines, vocalization changes, etc.).
- There is an existing US Fish and Wildlife Service 3-mile buffer requirement between wind turbines and proposed prairie-chicken mitigation areas. Our recommendation mirrors this existing federal requirement.
- Some counties (Barton, Sumner) have voluntarily imposed a similar setback requirement through local zoning ordinances.

Kansas does not have a robust bat occurrence dataset. However, KDWP biologists understand, from USDA-led studies, many migratory bat species pass through the state each year, and many of these species are well-documented as being disproportionately killed by collisions with wind turbines. Many of our public lands also provide well-managed migratory roosting and foraging habitats for these species. Placement of turbines near KDWP lands may exacerbate the risk of collision for these species as well.

KDWP appreciates the Committee's consideration to these concerns, and respectfully requests the above-mentioned amendments.