

A SUSTAINABLE ENERGY POLICY

BY ROBERT B. NELSON

A lot has been written lately about our unhealthy reliance on foreign oil to meet energy demands. Historically, renewable energy, although promising, has not seen that promise fulfilled. This year however, the American Wind Energy Association (AWEA) announced that the U.S. wind energy industry will install about 2,500 megawatts (MW) of new wind power this year, a record amount that will help lower skyrocketing home heating and electric bills by reducing the demand for natural gas.

More than 2% of the nation's energy supply is now supplied by renewable sources. In contrast, renewable energy accounts for less than one percent of the needed electric supply in Michigan. That percentage may soon change significantly.

On October 25, 2005, three bills were reported out of the Michigan House Committee on Government Operations designed to promote the development of wind energy in Michigan. One of the bills, HB 4647 provides for tax credits for Michigan residents who generate power from small (less than 2 MW) wind turbines between tax years commencing after December 31, 2006 and ending before January 1, 2017. This proposed tax credit would mirror the federal production tax credit that was renewed by Congress as part of the 2005 Energy Act.

The other two bills (HBs 4648 and 4649) permit wind energy systems in all zoning classifications subject to certain requirements. While local governments may debate the propriety of the zoning bills, a major push to promote wind and other renewable energy in Michigan is long overdue. Michigan finds itself playing catch up in the alternative energy arena, despite recent efforts of the Michigan Public Service Commission to promote renewable energy.

The Commission has issued a series of orders designed to implement a renewable energy program in Michigan and on October 18, 2005, the Commission

approved eight contracts between Consumers Energy and renewable energy providers. This was the culmination of a four-year effort by Consumers Energy, renewable energy providers and the Commission to develop a meaningful renewable energy program in Consumers Energy's service territory. More than 75 MW of renewable energy will soon be helping to reduce this state's reliance on fossil fuels as a result of this program.

The Commission also approved a net metering program for all regulated electric utilities in March, 2005 so that renewable energy projects will be billed only for the net consumption used (the amount used less the amount generated). Despite these efforts by the Legislature and the Commission, Michigan is lagging in

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the development of renewable energy. What can we do to improve Michigan's standing in the alternative energy arena? In my judgment, there are two ways to do so:

1. Renewable Portfolio

Standards: In states where wind or solar resources are plentiful, utilities are often under mandate to supply a certain percentage of their power from green energy by a certain future date. In fact, 20 states and the District of Columbia have implemented "renewable portfolio standards." The percentages of renewable energy in the overall electric generation portfolio mandated by these standards ranges from 1.1% in Arizona to 30% in Maine. The deadlines extend until 2019.

Michigan has so far resisted this trend, even though several bills have been introduced in the Legislature to do so. Although the Congress rejected an attempt to establish national renewable portfolio standards in a close vote during debate on the 2005 Energy Bill, much of the argument made by opponents was that states were stepping up to this issue. Michigan should too. The Great Lakes Renewable Energy Association and the Michigan Sustainable Energy Coalition are promoting such legislation. Although

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greater use of renewable energy will benefit all Michigan citizens, legislation can be drafted that incorporates lessons from other states and will not unduly burden non-participating customers.

2. Voluntary Efforts: In the past, renewable energy initiatives have been largely promoted through federal tax incentives and mandates handed down by state government. Now, there are encouraging signs that the demand for sustainable energy is getting more and more support through voluntary means. Instead of focusing on the individual residential user, more

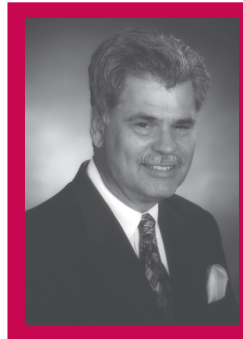
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emphasis is being placed on the commercial and industrial sectors.

Douglas Faulkner, acting assistant secretary for Energy Efficiency and Renewable Energy at the U.S. Department of Energy has stated: “The entry of commercial, industrial, and government purchasers into the renewable energy market has resulted in tremendous growth in the development of clean and limitless renewable energy resources.”

Faulkner’s comments were made at the 10th National Green Power Marketing Conference in Austin in October, 2005. While there, the Energy Department’s National Renewable Energy Lab released a report saying that voluntary power purchases accounted for 2,200 MW, which is an increase from 167 MW — 1,000% — over the last five years. The growth has been spurred by national retailers, universities and manufacturers, along with various government agencies.

The Fraser Law Firm has long been identified with the renewable energy industry, whether assisting clients in their pursuit of financing opportunities for wind energy or in assisting in the promotion of solar energy, which Dave Marvin did in the 1970s. We should continue to promote an industry that most American citizens are realizing can make a significant dent in our reliance on foreign oil.



Mr. Nelson practices in the Utilities Law Department at Fraser Trebilcock Davis & Dunlap, P.C. in the Lansing office. He served as Commissioner of the Michigan Public Service Commission from 1999 to 2005. He may be contacted at 517-377-0854 or at rnelson@fraserlawfirm.com.

A PRIMER ON LOBBYING

By MICHAEL KELLY

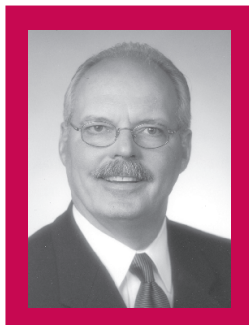
Lobbyists can be traced back to the days of Abraham Lincoln’s presidency. When President Lincoln would walk through the lobby of the Willard Hotel on his way home from work, special interest groups would waylay the President and practice the art of persuasion. These individuals would often voice their concerns or give their encouragement on certain pending legislation or would propose new ideas of their own. Today, lobbyists mingle outside of the doors of session in the Capitol building, but the process is still generally the same.

The term “lobbying” is defined in part under MCL 4.415(5)(2) as: “...communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action.” In short, lobbying is the ability to articulate a particular point of view to decision makers in the governmental process. These decision makers range from legislators, to the Governor, to Directors of any of the State Departments.

A common misconception about lobbying is that the firms that employ the individuals to present clients’ ideas before the government are the actual “lobbyists”. This is, in fact, untrue. MCL 4.415, Section (5), subsection (4) defines “Lobbyist” as “...any of the following: (a) a person whose expenditures for lobbying are more than \$1,000 in value in any 12-month period. (b) a person whose expenditures for lobbying are more than \$250 in value in any 12-month period, if the amount is expended on lobbying a single public official.” The lobbyist in the situation is actually the client. The individual relaying the client’s needs to the governmental entity is a “lobbyist agent”. MCL 4.415,

Section (5), subsection (5) defines “Lobbyist agent” as “...a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250 in any 12-month period for lobbying.” Simply stated, the individual receiving money from the client for services rendered in influencing governmental entities is the actual firm, or lobbyist agent. Each member of Fraser Consulting, LLC is a lobbyist agent in this capacity. Every client that requires active lobbying must register as a lobbyist in order to follow all state laws on the matter.

A lobbyist agent, such as those of us at Fraser Consulting, LLC, is the conduit between the client and the decision maker. It is our full time profession which we use to become personally acquainted with legislators, their staff, and all decision makers who will make a difference when the time comes to call on them for information or a vote. In these times of term limits, lobbying has become even more important, and it is our aim to make sure everyone is informed of how certain legislation will affect the individuals of our great state. At Fraser Consulting, LLC we encourage our clients’ active participation in the process and in relaying their needs to our lobbyist agents so that our clients’ needs may be met. We have come a long way since the days of President Lincoln, and we continue to strive to further the link between constituents and decision makers.



Mr. Kelly is a lobbyist agent with Fraser Consulting, LLC, which is housed in the Lansing office. He may be contacted at 517-377-0820, or mkelly@fraserlawfirm.com.

PECORA JOINS THE FRASER LAW FIRM

Vincent M. Pecora has joined the Fraser Law Firm as an associate. He is practicing in the Business Department at the Lansing Office. Mr. Pecora J.D. from the University of Notre Dame Law School and a B.A. from the University of Michigan.

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ATTORNEY ACTIVITIES OF NOTE

■ Nan Casey will be speaking at the Institute for Continued Legal Education’s Annual Family Law Institute. Her topic will be “Parenting Plans and Teenagers” and will focus on the question, “How much impact should a teenager have on his visitation/parenting with the non-custodial parent.” Because opinions vary greatly from Judge to Judge - some will let the teen determine the schedule, while other Judges will set a schedule and make the teen conform to it, Ms. Casey will help attendees discover how to effectively represent their client.

■ John Miller will be joining the MSU College of Law as an Adjunct Professor. He will be teaching a class on Partnership Taxation during the Spring 2006 semester. The class will focus on tax issues associated with the formation, operation, termination and liquidation of partnerships and LLCs, as well as the sale of partnership and LLC interests, related party transactions and classification problems.

■ Ed Castellani was a speaker at the November 8th, Michigan Association of Certified Public Accountants Annual Auto Dealer Conference on the subject Annual Update on Sales, Use and Single Business Tax.

■ Robert Nelson spoke to the attendees of the Institute of Public Utilities at the Kellogg Center in East Lansing on the subject of “Cooperative Federalism”.

■ Ed Castellani was a speaker at the Michigan Society of Association Executives’ Annual Law Conference on the Junk Fax Prevention Act of 2005. Mr. Castellani also served on a panel with two CPAs from Plante Moran on Legal and Tax Considerations in Today’s Complex Association Structures.

■ Brian Morley was a speaker at the Michigan Court Officers, Deputy Sheriffs and Process Servers Association’s Annual Fall Training Seminar on Mobile Home Claim & Deliveries.

■ Toni Harris was a speaker at the Michigan Society of Association Executives’ Annual Law Conference on Copyrights and Trademarks.

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