

Judge throws out part of wind farm law



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A Lancaster County judge has declared unconstitutional part of a 2010 law that gave tax credits to a wind farm in Knox County.

District Judge Paul Merritt Jr. said the law, created by LB1048, wrongly allowed the Elkhorn Ridge Wind Farm to apply for credits on taxes it paid in 2009.

"The fact that the effect of the tax credit is to reduce Elkhorn Ridge's previously paid 2009 property taxes lends to the conclusion that (the law) grants a 'special favor' to a particular individual," Merritt wrote. "The tax credit ... is not available to any taxpayer other than Elkhorn Ridge and will not affect any county other than Knox County."

When the 2010 law took effect, Elkhorn Ridge was the state's only private wind farm.

LB1084 was aimed at helping private wind farms reduce start-up costs. Under the old law, wind turbines were subject to personal property tax. The law did away with that and instituted a so-called nameplate capacity tax, which was calculated based on the how much electricity was generated.

According to court records, it paid nearly \$1.6 million in personal property tax in 2009. But under the new law, Elkhorn Ridge would

pay about \$285,000 a year.

The 2010 law included a provision allowing Elkhorn Ridge to claim future credits under the new system for the taxes it paid in 2009.

The Knox County Board mounted the legal challenge.

The board's lawyer, David Domina of Omaha, said the part of the law that was struck down would have "crippled the county because its taxation caps would have disallowed

any compensatory revenue raising effort and left the schools, towns and county short of funds for the five-year approximate term of the refund.

"Knox County, like all political subdivisions, is greatly limited in its budgeting and revenue raising power. As a result, the personal property taxes actually paid were not a windfall to it," Domina said.

LB1084 was introduced by Sen. Chris Langemeier of Schuyler. Langemeier said at the time that he wanted to encourage investment in private wind farms, which could sell the energy they generate to other states while protecting the state's public-power industry.