

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1509

Page 1, line 2, replace "a code of conduct" with "requirements" and after "for" insert "wind easement and"

Page 1, replace lines 6 through 20 with:

"Requirements for wind easements and wind energy leases."

1. In a wind easement and a wind energy lease, the easement and lease:

- a. Must be written in a clear and coherent manner using words with common and everyday meanings, be appropriately divided and captioned as to various subject matters, and be in at least fourteen-point type.
- b. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

Special message to property owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to _____ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

- c. Must be executed at least five business days after the easement or lease has been delivered to the property owner.
- d. May not contain a confidentiality clause keeping the terms of agreement or related negotiations confidential.
- e. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement.
- f. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind generation.
- g. May not make the property owner liable for any damages caused by the wind facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.
- h. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.

- i. Must contain a clear description of the development activities that will take place within five years in order to avoid termination under section 17-04-03 or 17-04-05.
 - j. Must allow the property owner to terminate the agreement if the wind generating facility has not operated for a period of at least three years.
 - k. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.
 - l. Must contain in any indemnity obligation on the property owner an indemnity obligation placed on the developer, owner, or operator of the wind energy facility of at least equal terms.
- 2. The owner of the wind generating facility shall carry property insurance on the facility and include the property owner as an additional insured on the policy and waive subrogation actions against the property owner.
 - 3. If the terms of the wind easement or wind energy lease are not in accordance with this section or the owner of the facility does not carry property insurance as required under subsection 2 as determined by a court as a matter of law, the court may reform the easement or lease in accordance with this section, void the easement or lease, or offer the relief as is requested by the property owner. The court shall award reasonable attorney's fees to the property owner in a successful action by the property owner under this section.
 - 4. If the lessee provides up to five thousand dollars reimbursement for actual attorney's fees and the wind easement or wind energy lease has the written approval of an attorney representing the property owner, the easement or lease is deemed not to violate this section."

Renumber accordingly