

HOUSE BILL NO. 1181

Introduced by

Representatives Toman, Klemin, Longmuir, Pollert, Steiner, Streyle

Senators Cook, Klein, Schaible

1 A BILL for an Act to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North
2 Dakota Century Code, relating to termination of wind option agreements, wind easements, and
3 wind energy leases.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 17-04-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **17-04-01. Wind option agreement - Definition - Termination.**

8 1. A wind option agreement is a contract in which the owner of property gives another the
9 right to produce energy from wind power on that property at a fixed price within a time
10 period not to exceed five years on agreed terms.

11 2. A wind option agreement is void and terminates if the following have not occurred with
12 respect to the property that is the subject of the wind option agreement within five
13 years after the wind option agreement commences:

14 4- a. A certificate of site compatibility or conditional use permit has been issued, if
15 required; and

16 2- b. A transmission interconnection request is in process and not under suspension.

17 3. If any of the requirements or terms of the wind option agreement, other than those
18 provided in subsection 2, have not been met fully by the developer, owner, or operator
19 of the existing or proposed wind farm facility, the owner of the energy rights may
20 provide to the developer, owner, or operator of the existing or proposed wind farm
21 facility a thirty-day written notice of the intent to terminate the wind option agreement.
22 If, within thirty days of the mailing of the notice of the intent to terminate, the
23 developer, owner, or operator fails to provide a written objection to the notice, the
24 owner of the energy rights may file an affidavit of termination in the office of the county

1 recorder in the county in which the real property affected by the wind option
2 agreement is located. Termination of the wind option agreement becomes effective
3 when the affidavit of termination is filed and recorded with the county recorder.

4 **SECTION 2. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **17-04-03. Wind easements - Creation - Term - Development required.**

- 7 1. A property owner may grant a wind easement in the same manner and with the same
8 effect as the conveyance of an interest in real property.
- 9 2. The easement runs with the land benefited and burdened and terminates upon the
10 conditions stated in the easement. ~~However, the, however:~~
- 11 a. The easement is void if the following have not occurred with respect to the
12 property that is the subject of the easement within five years after the easement
13 commences:
- 14 ~~4-~~ (1) A certificate of site compatibility or conditional use permit has been issued, if
15 required; and
- 16 ~~2-~~ (2) A transmission interconnection request is in process and not under
17 suspension.
- 18 b. If any of the requirements or terms of the easement, other than those provided in
19 subdivision a, have not been fully met by the developer, owner, or operator of the
20 existing or proposed wind farm facility, the owner of the energy rights may
21 provide to the developer, owner, or operator of the existing or proposed wind farm
22 facility a thirty-day written notice of the intent to terminate the easement. If, within
23 thirty days of the mailing of the notice of the intent to terminate, the developer,
24 owner, or operator fails to provide a written objection to the notice, the owner of
25 the energy rights may file an affidavit of termination in the office of the county
26 recorder in the county in which the real property affected by the easement is
27 located. Termination of the easement becomes effective when the affidavit of
28 termination is filed and recorded with the county recorder.

29 **SECTION 3. AMENDMENT.** Section 17-04-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **17-04-05. Wind energy leases - Termination.**

2 1. A lease for wind energy purposes is void and terminates if the following have not
3 occurred with respect to the property that is the subject of the lease within five years
4 after the lease commences:

5 ~~1.~~ a. A certificate of site compatibility or conditional use permit has been issued, if
6 required; and

7 ~~2.~~ b. A transmission interconnection request is in process and not under suspension.

8 2. If any of the requirements or terms of a lease for wind energy purposes, other than
9 those provided in subsection 1, have not been fully met by the developer, owner, or
10 operator of the existing or proposed wind farm facility, the owner of the energy rights
11 may provide to the developer, owner, or operator of the existing or proposed wind farm
12 facility a thirty-day written notice of the intent to terminate the lease. If, within thirty
13 days of the mailing of the notice of the intent to terminate, the developer, owner, or
14 operator fails to provide a written objection to the notice, the owner of the energy rights
15 may file an affidavit of termination in the office of the county recorder in the county in
16 which the real property affected by the lease is located. Termination of the lease
17 becomes effective when the affidavit of termination is filed and recorded with the
18 county recorder.