

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~~

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

3. If the requirements of subsection 2 are not met by the owner of the wind option agreement, the owner of the energy rights may provide to the owner of the wind option agreement a notice of termination, by certified mail or other personal delivery, and file the notice with the county recorder in the county in which the real property is located. Termination of the wind option agreement is effective five years after the wind option commences.

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

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

1. A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.
2. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. ~~However, the, however:~~
 - a. The easement is void if the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:
 1. A certificate of site compatibility or conditional use permit has been issued, if required; and
 2. A transmission interconnection request is in process and not under suspension.
 - b. ~~If any of the requirements or terms of the easement, other than those provided in subdivision a, have not been fully met by the developer, owner, or operator of the existing or proposed wind farm facility, the owner of the energy rights may provide to the developer, owner, or operator of the existing or proposed wind farm facility a thirty day written notice of the intent to terminate the easement. If, within thirty days of the mailing of the notice of the intent to terminate, the developer, owner, or operator fails to provide a written objection to the notice, the 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 easement is~~
2 ~~located. Termination of the easement becomes effective when the affidavit of~~
3 ~~termination is filed and recorded with the county recorder.~~ A wind easement is
4 presumed to be abandoned if a period of thirty-six consecutive months has
5 passed with no construction or operation of the wind farm facility. If the operator
6 of the wind farm facility does not file a plan with the public service commission
7 outlining the steps and schedule for continuing construction or operation of the
8 facility within the thirty-six month period, the owner of the energy rights may
9 provide, by certified mail or other personal delivery to the owner of the wind
10 easement, a sixty-day written notice of the intent to terminate the easement. If,
11 within sixty days of the receipt of the notice of the intent to terminate, the owner
12 of the easement fails to provide a written objection to the notice by certified mail
13 or other personal delivery, the owner of the energy rights may file a notice of
14 termination with the county recorder in the county in which the real property is
15 located. Termination of the easement becomes effective with the notice of
16 termination is filed and recorded with the county recorder.

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

19 **17-04-05. Wind energy leases - Termination.**

- 20 1. A lease for wind energy purposes is void and terminates if the following have not
21 occurred with respect to the property that is the subject of the lease within five years
22 after the lease commences:
- 23 4. a. A certificate of site compatibility or conditional use permit has been issued, if
24 required; and
- 25 2. b. A transmission interconnection request is in process and not under suspension.
- 26 2. ~~If any of the requirements or terms of a lease for wind energy purposes, other than~~
27 ~~those provided in subsection 1, have not been fully met by the developer, owner, or~~
28 ~~operator of the existing or proposed wind farm facility, the owner of the energy rights~~
29 ~~may provide to the developer, owner, or operator of the existing or proposed wind farm~~
30 ~~facility a thirty day written notice of the intent to terminate the lease. If, within thirty~~
31 ~~days of the mailing of the notice of the intent to terminate, the developer, owner, or~~

1 ~~operator fails to provide a written objection to the notice, the owner of the energy rights~~
2 ~~may file an affidavit of termination in the office of the county recorder in the county in~~
3 ~~which the real property affected by the lease is located. Termination of the lease~~
4 ~~becomes effective when the affidavit of termination is filed and recorded with the~~
5 ~~county recorder.~~A wind lease is presumed to be abandoned if a period of thirty-six
6 consecutive months has passed with no construction or operation of the wind farm
7 facility. If the operator of the wind farm facility does not file a plan with the public
8 service commission outlining the steps and schedule for continuing construction or
9 operation of the facility within the thirty-six month period, the owner of the energy
10 rights may provide, by certified mail or other personal delivery to the owner of the wind
11 easement, a sixty-day written notice of the intent to terminate the lease. If, within sixty
12 days of the receipt of the notice of the intent to terminate, the owner of the lease fails
13 to provide a written objection to the notice by certified mail or other personal delivery,
14 the owner of the energy rights may file a notice of termination with the county recorder
15 in the county in which the real property is located. Termination of the easement
16 becomes effective with the notice of termination is filed and recorded with the county
17 recorder.