

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Wind energy property right.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to property; providing wind energy rights
2 are real property appurtenant to the surface estate;
3 defining terms; providing for lease of wind energy rights;
4 specifying requirements of and relating to such leases;
5 providing factors for the adjudication of disputes
6 regarding conflicts; providing for reversion of interests;
7 and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 34-27-101 through 34-27-107 are
12 created to read:

13

14 **34-27-101. Short title.**

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2 This act may be cited as the "Wind Energy Rights Act".

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4 **34-27-102. Definitions.**

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6 (a) As used in this act:

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8 (i) "Leaseholder" means a lessee of a wind
9 energy lease, his personal representative, successor or
10 assign;

11

12 (ii) "Wind energy right" means a property right
13 in the development of wind for energy production;

14

15 (iii) "Wind energy developer" means the owner of
16 the surface estate or the leaseholder of a wind energy
17 lease;

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19 (iv) "Wind energy lease" means an agreement to
20 lease a wind energy right;

21

22 (v) "This act" means W.S. 34-27-101 through
23 34-27-107.

1

2 **34-27-103. Declaration of wind energy rights.**

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4 (a) Wind energy rights shall be regarded as an
5 interest in real property and shall be appurtenant to the
6 surface estate.

7

8 (b) Wind energy rights shall be vested in the owner
9 of the surface estate.

10

11 (c) Wind energy rights shall not be severed from the
12 surface estate, except that wind energy rights may be
13 leased.

14

15 (d) A wind energy lease is a recordable interest and
16 shall be recorded in the office of the county clerk where
17 the land subject to the lease is located.

18

19 (e) A wind energy lease shall comply with the
20 following:

21

22 (i) The term of a wind energy lease shall not
23 exceed seventy-five (75) years;

1

2 (ii) A wind energy lease shall be void if the
3 collection of wind energy by a turbine has not commenced
4 within five (5) years after the execution of the wind
5 energy lease;

6

7 (iii) A wind energy lease that shall have
8 expired by its own terms shall only be renewed by a written
9 agreement, signed by the parties to the agreement, and
10 recorded as provided in subsection (d) of this section;

11

12 (iv) Payments to the lessor shall be made
13 annually; and

14

15 (v) After a wind energy lease has terminated,
16 the lessor may request the leaseholder to record a release
17 of the wind energy lease in the office of the county clerk
18 where the land subject to the lease is located. The
19 request shall be in writing and delivered to the
20 leaseholder by personal service or registered mail at the
21 leaseholder's last known address. The leaseholder shall
22 record the release within twenty (20) days after receipt of
23 the request. If the leaseholder fails to record the

1 release within twenty (20) days after the receipt of the
2 request, the leaseholder shall be liable to the lessor for
3 all damages caused by the leaseholder's failure. A copy of
4 the written request shall have the same force and effect as
5 the original in an action for damages.

6

7 (f) Wind energy becomes personal property at the
8 point where it is collected by a turbine.

9

10 (g) Disputes regarding alleged interference with wind
11 energy rights shall be adjudicated by giving consideration
12 to the following:

13

14 (i) The date on which the wind energy lease was
15 recorded;

16

17 (ii) The date on which the wind energy developer
18 commenced generation of electricity;

19

20 (iii) Priority in time shall have the better
21 right; and

22

1 (iv) The ability of a wind energy developer to
2 reasonably accommodate other wind energy development.

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***** STAFF COMMENTS *****

7 In preparing this bill draft, questions arose as to the
8 amount of protection to give a prior developer of wind
9 energy and how to define when development begins to afford
10 protection to the prior developer. One means of protecting
11 a prior developer is to provide that, as with a water
12 right, the extent of a wind energy right is determined
13 according to the beneficial use of the right. Beneficial
14 use, however, may not be an appropriate gauge for wind
15 energy rights if the committee deems that wind energy
16 rights should vest in the surface owner without the owner
17 having to lease his wind energy rights or actually produce
18 electricity himself.

19

20 The subsection above provides protection to a prior
21 developer by setting forth factors to be considered in
22 adjudicating disputes. Another option to protect wind
23 energy rights is to require a developer to file a notice of
24 development with the county clerk. Akin to oil and gas
25 leases, due diligence in development could be used along
26 with "first in time" as the primary factor in adjudicating
27 alleged interference.

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29

30 34-27-104. Dominance of mineral estate.

31 Nothing in this act shall be construed to change the common
32 law as of July 1, 2011 as it relates to the rights
33 belonging to, or the dominance of, the mineral estate.

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1 **34-27-105. Compensation for taking of wind energy**
2 **rights.**

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4 Nothing in this act diminishes the right of the owner of
5 the surface estate to receive compensation for the taking
6 of wind energy rights under the exercise of eminent domain,
7 regardless of whether the owner has entered into a wind
8 energy lease.

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10 **34-27-106. No restriction on transfer of wind energy**
11 **lease.**

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13 Nothing in this act shall be construed to restrict the
14 transfer of a wind energy lease, including the transfer of
15 the lessor's right to receive payments under the lease.

16

17 **34-27-107. Reversion of easements.**

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19 All easement interests acquired after July 1, 2011 for the
20 purpose of producing wind energy shall revert to the owner
21 of the surface estate if wind energy production has ceased
22 for a continuous period of five (5) years or if the
23 collection of wind energy by a turbine has not commenced

1 within five (5) years after the execution of a wind energy
2 lease.

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4 **Section 2.** This act is effective July 1, 2011.

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6

(END)