

**DRAFT ONLY  
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INTRODUCTION**

SENATE FILE NO. \_\_\_\_\_

Wind energy property rights.

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 wind energy agreements;  
4 specifying requirements for agreements; specifying factors  
5 for the adjudication of disputes regarding conflicts;  
6 specifying applicability of act; providing for reversion of  
7 interests; 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) "Wind energy right" means a property right  
9 in the development of wind for energy production;

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11 (ii) "Wind energy developer" means the owner of  
12 the surface estate or the lessee, easement holder,  
13 licensee, or contracting party under a wind energy  
14 agreement;

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16 (iii) "Wind energy agreement" means a lease,  
17 license or agreement to develop a wind energy right;

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19 (iv) "This act" means W.S. 34-27-101 through  
20 34-27-107.

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22 **34-27-103. Declaration of wind energy rights.**

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1           (a) Wind energy rights shall be regarded as an  
2 interest in real property and appurtenant to the surface  
3 estate. All incidents of ownership regarding executive  
4 rights, rents, royalties and development shall be exercised  
5 by the owner of the surface estate.

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7           (b) Wind energy rights shall not be severed from the  
8 surface estate, except that wind energy may be developed  
9 pursuant to a wind energy agreement.

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11           (c) A wind energy agreement is an interest in real  
12 property. A wind energy agreement shall:

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14           (i) Be recorded in the office of the county  
15 clerk where the land subject to the agreement is located;  
16 and

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18           (ii) Shall include a description of the land  
19 subject to the agreement.

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21           (d) After a wind energy agreement has terminated, the  
22 surface owner may request the wind energy developer to  
23 record a release of the wind energy agreement in the office

1 of the county clerk where the land subject to the wind  
2 energy agreement is located. The request shall be in  
3 writing and delivered to the wind energy developer by  
4 personal service or registered mail at the wind energy  
5 developer's last known address. The wind energy developer  
6 shall record the release within twenty (20) days after  
7 receipt of the request. If the wind energy developer fails  
8 to record the release within twenty (20) days after the  
9 receipt of the request, the wind energy developer shall be  
10 liable to the surface owner for all damages caused by the  
11 wind energy developer's failure. A copy of the written  
12 request shall have the same force and effect as the  
13 original in an action for damages.

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15 (e) Wind energy becomes personal property at the  
16 point of conversion into electricity.

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18 (f) Disputes regarding alleged interference with wind  
19 energy rights shall be adjudicated by giving consideration  
20 to the following:

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22 (i) The date on which the wind energy agreement  
23 was recorded;

1

2

(ii) The date on which the wind energy developer

3

commenced generation of electricity;

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(iii) Priority in time shall have the better

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right; and

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(iv) The ability of a wind energy developer to

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reasonably accommodate other wind energy development.

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(g) Nothing in this act shall alter, amend, diminish

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or invalidate wind energy rights acquired by contract or

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lease prior to April 1, 2011 provided that a contract or

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lease evidencing the acquisition of the wind energy rights

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is recorded in accordance with subsection (c) of this

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section no later than April 1, 2012.

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

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Nothing in this act shall be construed to change the common

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law as of April 1, 2011 as it relates to the rights

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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 incidental to the exercise of eminent  
7 domain, regardless of whether the owner has entered into a  
8 wind energy agreement.

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

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

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18           **34-27-107. Reversion of easements.**

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20 All easement interests acquired after April 1, 2011 for the  
21 purpose of producing wind energy shall revert to the owner  
22 of the surface estate if wind energy production has ceased  
23 for a continuous period of five (5) years or if the

1 generation of electricity by a turbine has not commenced  
2 within five (5) years after the execution of a wind energy  
3 agreement.

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5       **Section 2.** This act is effective April 1, 2011.

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(END)