

Sixty-fifth  
Legislative Assembly  
of North Dakota

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

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

1       **17-04-03. Wind easements - Creation - Term - Development required.**

2       1. A property owner may grant a wind easement in the same manner and with the same  
3       effect as the conveyance of an interest in real property.

4       2. The easement runs with the land benefited and burdened and terminates upon the  
5       conditions stated in the easement. ~~However, the, however:~~

6       a. The easement is void if the following have not occurred with respect to the  
7       property that is the subject of the easement within five years after the easement  
8       commences:

9       1- (1) A certificate of site compatibility or conditional use permit has been issued, if  
10       required; and

11       2- (2) A transmission interconnection request is in process and not under  
12       suspension.

13       b. A wind easement is presumed to be abandoned if a period of thirty-six  
14       consecutive months has passed with no construction or operation of the wind  
15       farm facility. If the operator of the wind farm facility does not file a plan with the  
16       public service commission outlining the steps and schedule for continuing  
17       construction or operation of the facility within the thirty-six month period, the  
18       owner of the energy rights may provide, by certified mail or other personal  
19       delivery to the owner of the wind easement, a sixty-day written notice of the intent  
20       to terminate the easement. If, within sixty days of the receipt of the notice of the  
21       intent to terminate, the owner of the easement fails to provide a written objection  
22       to the notice by certified mail or other personal delivery, the owner of the energy  
23       rights may file a notice of termination with the county recorder in the county in  
24       which the real property is located. Termination of the easement becomes  
25       effective ~~with~~when the notice of termination is filed and recorded with the county  
26       recorder.

27       **SECTION 3. AMENDMENT.** Section 17-04-05 of the North Dakota Century Code is  
28       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       4. 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. A wind lease is presumed to be abandoned if a period of thirty-six consecutive months  
9       has passed with no construction or operation of the wind farm facility. If the operator of  
10       the wind farm facility does not file a plan with the public service commission outlining  
11       the steps and schedule for continuing construction or operation of the facility within the  
12       thirty-six month period, the owner of the energy rights may provide, by certified mail or  
13       other personal delivery to the owner of the wind easement, a sixty-day written notice of  
14       the intent to terminate the lease. If, within sixty days of the receipt of the notice of the  
15       intent to terminate, the owner of the lease fails to provide a written objection to the  
16       notice by certified mail or other personal delivery, the owner of the energy rights may  
17       file a notice of termination with the county recorder in the county in which the real  
18       property is located. Termination of the easement becomes effective ~~with~~when the  
19       notice of termination is filed and recorded with the county recorder.