

# ENERGY

## CHAPTER 158

### HOUSE BILL NO. 1181

(Representatives Toman, Klemin, Longmuir, Pollert, Steiner, Streyle)  
(Senators Cook, Klein, Schaible)

AN ACT to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North Dakota Century Code, relating to termination of wind option agreements, wind easements, and wind energy leases.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms.
2. A wind option agreement is void and terminates if the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:
  1. a. A certificate of site compatibility or conditional use permit has been issued, if required; and
  2. b. A transmission interconnection request is in process and not under suspension.
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- (1) A certificate of site compatibility or conditional use permit has been issued, if required; and
  - 2- (2) A transmission interconnection request is in process and not under suspension.
- b. A wind easement is presumed to be abandoned if a period of thirty-six consecutive months has passed with no construction or operation of the wind farm facility. If the operator of the wind farm facility does not file a plan with the public service commission outlining the steps and schedule for continuing construction or operation of the facility within the thirty-six month period, the owner of the energy rights may provide, by certified mail or other personal delivery to the owner of the wind easement, a sixty-day written notice of the intent to terminate the easement. If, within sixty days of the receipt of the notice of the intent to terminate, the owner of the easement fails to provide a written objection to the notice by certified mail or other personal delivery, the owner of the energy rights may file a notice of termination with the county recorder in the county in which the real property is located. Termination of the easement becomes effective when the notice of termination is filed and recorded with the county recorder.

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

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

1. A lease for wind energy purposes is void and terminates if the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:
  - 1- a. A certificate of site compatibility or conditional use permit has been issued, if required; and
  - 2- b. A transmission interconnection request is in process and not under suspension.
2. A wind lease is presumed to be abandoned if a period of thirty-six consecutive months has passed with no construction or operation of the wind farm facility. If the operator of the wind farm facility does not file a plan with the public service commission outlining the steps and schedule for continuing construction or operation of the facility within the thirty-six month period, the owner of the energy rights may provide, by certified mail or other personal delivery to the owner of the wind easement, a sixty-day written notice of the intent to terminate the lease. If, within sixty days of the receipt of the notice of the intent to terminate, the owner of the lease fails to provide a written objection to the notice by certified mail or other personal delivery, the owner of the energy rights may file a notice of termination with the county recorder in the county in which the real property is located. Termination of the easement becomes effective when the notice of termination is filed and recorded with the county recorder.

Approved April 13, 2017

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