

**2017 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1181**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1181  
1/20/2017  
27168

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to termination of wind option agreements, wind easements, and wind energy leases

Minutes:

**Chairman Porter:** Called the committee to order and the Clerk called roll. The hearing on HB 1181 was opened.

**Rep. Nathan Toman,** representative from Dist. 34 in Mandan. HB 1181 deals with termination of wind energy agreements. The purpose of this legislation and intent is to provide landowners with a process to clear the cloud off their title in the event of a company going bankrupt or defunct, or the development not being undertaken on a wind farm. Questions?

**Chairman Porter:** So we're clean on the termination component, if the wind farm is not developed, what is the current time frame of termination of that easement, what happens inside the bill with termination of that easement.

**Rep. Nathan Toman:** Currently on Page 1 in Subsection 2, is 5 years. In the instance that was brought forward to me it was less than 5 years when they were doing title work and they wanted to have that cloud cleaned off that title. So we added Subsection 3 which landowner or whoever is working for them has to provide the company 30 days' written notice and if the company does not object, then the county recorder can remove that or approve that removal. If there are some questions with that or there's a dispute who is going to arbitrate that dispute, that has come up since the drafting of this bill, but the intent has now been a back door to back out of agreements. So if the committee, or the testimony has any ideas on how to handle some of that, I'd be amenable to that.

**Chairman Porter:** So we're clear, current easement is 5 years inside of that if the company has 5 years to develop. Under this proposed bill that changes to a 30-day notice. Or is there still a time frame that if it isn't worked within so long then they can opt out in 30 days.

**Rep. Nathan Toman:** It states if any of the requirements other than Subsection 2 have not been met. So if they're meeting those requirements of the easement obviously that 30-day notice would not be valid. That is the intent.

**Rep. Keiser:** What are energy rights and how are they differentiated from a developer, owner or operator of the existing proposed farm?

**Rep. Nathan Toman:** I am not sure. The intent of this would be like the surface rights from the title, so I'm not sure if they're separate energy rights on a property or not.

**Chairman Porter:** Questions? Further testimony in support of HB1181? Seeing none, is there opposition to HB 1181?

**John Olson,** attorney, Bismarck. Lobbyist for Otter Tail Power, NextEra and Xcel. We're opposed to the bill. Let me say at the outset I think intent is ok. If somebody has abandoned a wind farm, or becomes bankrupt, or defunct, in words that Rep. Tomas said, we would have no problem if we were just targeting those kind of situations. This bill goes after every wind company, wind energy company that has a wind development so it applies to wind option agreements, easements, leases. When you read the bill, it says, "if any of the requirements or terms of the wind option agreement other than those provided, have not been fully met by the developer, owner or operator" etc, "the owner of the energy rights may provide to the developer, owner, operator, with a 30-day notice". As a lawyer, we get a little nervous how that notice would appear. Under our rules of civil procedure, we would have hopefully a requirement that notice would be served, and that there would be a receipt for it so you could prove the service. If you can't find a person to serve that notice on, our county newspapers are full of notices that run for three consecutive weeks giving notice of a summons, or notice of any other kind of legal notice that you can accomplish without personal service, you could accomplish that notice in that regard. So that's the biggest concern we have. The other thing about it is if there's a technical issue, with a wind option agreement, or lease, or easement, with an active wind development, this bill applies to that as well. Regardless of what the wind option agreement would say, and I'm not an expert on wind agreements, but I can tell you they're lengthy, they've been designed to accomplish a lot of things not only for the wind companies, but also for the landowners. They have rights too. We have statutes in the ND Century Code that provide for a lot of those rights that landowners have on those kind of agreements. This bill would trump the wind agreements. That would be a real big problem. For those reasons we are not comfortable with this bill nor the process it lays out. We would ask that it be defeated based upon those reasons. If you're talking about defunct and bankruptcy, that's a whole other area of law that needs to be developed in this bill that would allow the other wind companies that are active in the development of these wind projects, that they would be exempt from the bill.

**Rep. Keiser:** Right now, what remedy does a landowner have now to address a bankruptcy, a disappearance of the energy provider, or whatever contactor, what remedies do they now have to address this issue?

**9:44**

**John Olson:** That's a good question. I'm not able to fully answer that. Certainly they have remedies under the existing law. If it's a 5-year lease, and they don't execute on the project, it's gone that way. But I think the wind agreements themselves, probably address that in some detail. I think the statutes you have, I have not had the opportunity to review all those

statutes coming in here, but I know in prior legislative sessions, we've given landowners quite a bit of rights in terms of these wind agreements and easements and leases. I think there are those things out there. I'm just not able to define them specifically.

**Chairman Porter:** Further questions? Further testimony in opposition to HB 1181? Seeing none, we close the hearing on HB 1181.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1181  
2/10/2017  
28202

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to termination of wind option agreements, wind easements, and wind energy leases

### Minutes:

Attachment #1

**Chairman Porter:** Called the committee to order and the Clerk called roll. The hearing on HB 1181 was opened and Attachment #1 was passed out as Amendment 01002.

**John Olson:** NextEra Energy and Otter Tail Power Company that have wind interests and have been working on this bill, in consultation with Rep. Toman and other companies that have wind interests. The statutes we're looking at are part of Chapter 17.04, entitled, Wind Energy Property Rights. Now we're going into that chapter and amending several of those statutes. Currently you can have a wind option agreement on wind option agreement of Sec. 1 of 17.04 but that wind option agreement cannot exceed 5 years. That's it. It's void in 5 years if there's no certificate of site compatibility if there's no transmission interconnection request in process. That tracks with the same thing on wind easements and wind leases. They're dead after 5 years to if there's no A and B certificate or the interconnection request on file. In Section 6, if a facility hasn't operated for a period of at least 3 years, that can take away the validity of that wind farm agreement unless lease payments are being made. That could also occur. What we tried to do with this amendment to the bill, which came in from our testimony from before, is pretty much wide open. There were inadequate notice provisions, and I think Rep. Toman indicated this is not for active wind farms that (? Inaudible) deal with the defunct, bankrupt, abandoned wind farms. That's what this amendment tries to do.

Let's call them 3 different options. The (1) the wind agreements options at the top. What we're trying to do there is we're saying even though the agreement isn't valid after 5 years, we're providing for a notice of termination. That notice of termination, if it isn't effective, void after the 5 years, can be filed with the county recorder. Basically it's a method of curing title, clearing up title to the property. The same is true with the second two which relates to the easements and to the lease.

The easement, we say that a wind easement is presumed to be abandoned if a period of 24 consecutive months have passed with no construction or operation of the wind facility. If the operator 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 24-month period, then the owner of the energy can trigger that notice, and that proceed to termination of that easement. We provide that the owner may provide by certified mail, we proof of service, or other personal delivery to the owner of the wind easement, and then that 60-day notice is in effect. If with the 60 days there's an objection served and filed with the landowner, then that terminates. We're still back with the other protections under the section we outlined before. If there's no objection, then the owner may file that Notice of Termination with the county recorder and it becomes effective. That's basically the same thing that happens under the 3<sup>rd</sup> section with the lease agreement. We're trying to cure title, trying to get at the fact that the wind farm has been abandoned, defunct, or whatever. There might be issues that come up with the landowner that's watching for an opportunity to file something based upon certain technical requirements of the law. I think we've accomplished the intent of the landowner, the opportunity to clear up title to his property with the filing of these documents.

**Chairman Porter:** Questions?

**Shane Goettle, MDU Resources:** The one part we were looking for a change, middle of page 2, replace lines 19-28 with, "wind easement", not option. Would like the committee to extend the 24 months to a minimum of 4 years, but would like 5 years. **9:27**

**Rep. Heinert:** the next line says if the operator doesn't file a plan with the PSC. Are you saying even within the 24 months you don't think he could file the plan?

**Goettle:** There are situations when you've got it going and it's takes a little longer to get that plan together. There's a lot of work when you are looking at the design of a farm, picking out the exact locations. Some of that may take longer than 2 years.

**Chairman Porter:** Outlining of the steps is a fluid document between the company and PSC. If you're staying fluid, then that 24 month period never kicks in. It's only if you're sitting idle and don't file a plan does the clock start ticking. Why can't you file your plan and keep it current so there's a distinct difference between the landowner saying nothing's going on on my property, and the company saying we're fluid and doing what we're supposed to do inside of the PSC.

**Goettle:** The danger in that is the company might file a preliminary plan that's not quite ready to avoid this situation. Sometimes it takes a lot longer than 24 months to get that plan together.

**Rep. Roers Jones:** During the time when you have the easement, is the landowner receiving the payment?

**Goettle:** Yes they are.

**12:00**

**Rep. Roers Jones:** How much land is this affecting? Is this going to affect their ability to refinance property or use sections of property while you're determining which specific locations where you might want to put a wind tower?

**Goettle:** I'm not an expert on the dynamics of the landowner's use and financing. Obviously that in exchange there's an inconvenience to the landowner and value to them. It could affect farming practices, some of their ability to finance, etc., that's incorporated into those payments.

**Chairman Porter:** Questions? Testimony? Committee, we have the proposed amendments in front of us for HB 1181.

**Rep. Anderson:** I'll move adopt Amendment 01002 on HB 1181.

**Rep. Roers Jones:** second

**Chairman Porter:** Discussion?

**Rep. Devlin:** we have a number of wind farms in our area. I certainly think Mr. Goettle brings a valid point to the argument. I'm not so sure that we should be extending that 24 months.

**Chairman Porter:** I think we should adopt 01002 and then have a specific discussion on that as a further amendment if that's where we want to go as a committee. Discussion? All those in favor say Aye. Opposed? Voice vote, motion carries.

In regards to that center block, looking at the 24-month period, we can discuss that. I look at it that it sat idle for 2 years, and now a notice is being given that it's idle and want to do something different with my land, or sell my land with a clear title. The company then has the ability to update their plan if they haven't been. The way to avoid it is to keep your plan updated and not just sit on the easement for 5 years. I personally don't have an issue with that.

**Rep. Bosch:** Does the plan get filed at the time the easement is taken out? I'm trying to understand the steps to when the plan is filed. Does that happen initially or down the road?

**Chairman Porter:** Mr. Olson, can you walk us through the steps?

**Olson:** I'm not sure what the PSC is looking at. I don't know if they come in with a plan, or what the operation is.

**Rep. Heinert:** In the law it says 24 consecutive months. If at the 23rd month, the company files something with PSC, that would stop the process, correct?

**Olson:** that's the way I would read it. Plus, they have the opportunity to file an objection.

**Rep. Bosch:** The initial plan would be a large piece of work to get done. An amendment to the plan or updated plan would be a different thing. I think the timing of that makes a difference.

**Olson:** Good point. The language itself is contemplating that. It says outlining the steps and schedule for continuing construction or operation of the facility within the 24-month period.

The language is designed to, come in with an update within that 24 months to keep this statute from triggering.

**Rep. Keiser:** we have to look at the entire law, not just a section. Whether is 24-36-60 months, whatever, there's a requirement the lease payments are being made to the property owner during that period, because that's a different trigger to cancel a contract, correct?

**Olson:** I believe that is correct. Lease payments are covered in Section 6. If they're not making the lease payments that's another matter.

**Rep. Keiser:** The two go hand in hand. If I sign a contract and I'm leasing the land, and you're making a payment on the lease, I'm less concerned if you're doing construction or not as long as I'm being paid according to the contract. So putting this language does address the title issue if there is one. Other than that, the month, I don't know what the value of 24 months is if I'm making the lease payment, thank you. If I'm not making the lease payment, I've got you. So why we're doing this other than to clear the title is critical. But the months maybe should be different than what we've got if the lease payments are being made.

**Rep. Bosch:** If you're the landowner and accepting payments, you can't have it both ways.

**Rep. Roers Jones:** You might not want to file a plan before it's ready. Would there be a negative consequence to filing an incomplete plan?

**Olson:** No I don't think so. It doesn't have to be as formal as whatever the PSC would require. Outlining what's going on for those 2 years and continuing to work out what they need to work out to keep that wind option agreement valid and the easements or leases valid, so they don't expire otherwise under the 5 years. Those wind option agreements are pretty comprehensive there may be other rights to landowners.

**Rep. Roers Jones:** We have option, easement, lease. The easement is much more comprehensive or involves much more land until you determine the site. Is the concern this easement is typing up more land than will ultimately needed for the wind tower? Is that why the landowner would want this resolved quicker?

**Olson:** As a lawyer, you want to be pretty specific with regards to that specific land. In Section 6, even if lease payments are being made, if the wind option agreement is done after 5 years, no construction, no continuation of proceeding with that wind project, 5 years is the ceiling of the landowners rights in that chapter.

**Rep. Heinert:** Is there a difference on payment after the towers are installed?

**Olson:** I don't know. It's all subject to those agreements. Some are paid periodically different than others.

**Chairman Porter:** Some leases are 1 time lump sum, some an annual payment, some a combination of both. It's basically a private contract between the company and the individual that's leased out the property.

**Rep. Heinert:** My thought is if there's a difference in the lease from when there's a tower, and no tower on it, pushing it forward to complete it.

**Olson:** Or they better get busy getting a new agreement or extension for that landowner.

**Goettle:** It occurs to us about the question about the lease payments being made, that our problem is less with the time frame than with the presumption of abandonment with a fixed period of time has passed. If that land owner is getting payments under that contract and not a default on the payments, why would it be deemed to be abandoned? The additional concept, there also maybe ought to be some showing of the default in the obligations under the contract. That would apply to both easement conditions as well middle block as well as the lease conditions down below. That's more the problem we have than with the time frame, it's the presumption of abandonment when all the obligations are being fulfilled.

**Rep. Heinert:** I'm going back to my question about the landowner's payment. In your presentation with MDU, the contracts they're writing, are they the same payment with or without a tower or is there a differentiation in payments until the tower actually gets placed on the property?

**Goettle:** I don't know the answer to that question.

**Chairman Porter:** Committee, I'm just reading. Basically in the bill you have the law. Page 1, Sub 2, the conditions if option that a wind agreement is voided; Section 2 is the easement, is the same thing, the easement is void and the wind energy lease is terminated. The intent of the bill is to give the landowner the ability to clear title with the recorder's office. I don't know the amendment supersedes because the lease is still current and it's a contract. If it is in default, and there is a default, the person that has that on the title of their land, if it's month 25, can go in and clear title. If it's still being paid, then it's not in default, and they can't clear their title even if something's not being built. It puts an extra hoop in they have to keep their plan updated with the PSC. The amendment we put on this bill deals strictly clearing the landowner's title if the lease is in default. Rep. Heinert the answer to your question is company by company, private contract thing, every company does it differently.

**30:46**

**Rep. Heinert:** I was trying to get out of that the property rights of the owner in reference to the lease. If they tie up their land for 5 years but nothing's being done on it, they have a new wind farm that would like to lease that land for a larger amount, but their stuck for 5 years because the payments are being made. I don't agree with the payments being made, but I do disagree with the fact that nothing is being done in reference to the plan to put up the wind farm. I'm struggling with back and forth whether or not to support this.

**Chairman Porter:** Because of the complication of the wind farms when we first did this language in regards to wind energy property rights, I opposed putting a contract into the Century Code. I didn't think it was something that deserved to be in the Century Code when it's a contract between private parties. On the other side of that we put the 5 years in because of the complexity of the leases and size and to get all the work done, we felt a reasonable period of time was 5 years. The thing we didn't see and do, is if a company goes bankrupt

after signing, the contract is void, the landowner doesn't have a way to clear their title until month 61. This gives the landowner the ability to clear title prior to month 61. That's really what this amendment does, is give the landowner the ability, if the rest of this falls apart, in month 25, to clear their title.

**Rep. Keiser:** If you sign a lump sum payment up front, for 5 years, that's a contract. You' are violating that contract with this legislation. It's not as simple as it sounds.

**Chairman Porter:** Mr. Olson, in regards Rep. Keiser's comment, to the lump sum up front, the company goes bankruptcy, goes through the bankruptcy courts, inside of that process, is everything released, is everything picked up for pennies on the dollar from another company. Where is the asset of the wind lease, because it's been paid for by this now defunct company, how is that asset dealt with inside of the bankruptcy of whether or not the landowner is free and clear or has to wait for that to expire?

**Olson:** I think that depends on what kind of bankruptcy, reorganization or total liquidation, Chapter 11 or 7. There can be reorganization where certain relief the court can order. If Chapter 11, the assets a dealt with. Lease payments have nothing to do with this section. They could have been paid up front. Still if these conditions are not met, there's still a trigger of that termination. The principle advantage of these provisions is to allow a filing of a document with the county recorder to clear title. In that sense, whether is 24, 36, 48 months really doesn't matter. If 5 years go by, those other conditions aren't met, everything is void.

**Chairman Porter:** I think Rep. Keiser point is very valid. Inside of what we're doing here, in essence is taking a 5-year contract and adding a 24-month reporting period towards expiration toward that contract. 2 parties reached a 5-year agreement, and adding additional conditions inside of that 5-year agreement that has to be met. We're changing the game inside of that to say if you haven't met these conditions also, they can clear title irrespective if they got the lump sum payment for the full 5 years.

**Rep. Marschall:** I'm thinking this would cause the company to keep their feet to the fire. Keep them working towards the final goal. Say the company does go bankrupt, the property owners want to see about getting clear title, I'm envisioning quite complicated depending on what chapter bankruptcy they go through and who's responsible. If nobody wants to pipe up and claim responsibility for this, then the owner can use this to file, someone will pipe up and object to this. It's a way of getting people to be responsible for this agreement.

**Chairman Porter:** discussion? Do we look at moving the goal post to the ½ way point of the lease – if they haven't done anything, they have to refile papers and documents to reaffirm their position by the 30<sup>th</sup> month.

**Rep. Keiser:** (no mic on – inaudible) I would make a move for 36 months, 3 years. 30 months is one of those technical mistakes you would make.

**Chairman Porter:** are you doing that in both? The bottom 2 sections

**Rep. Keiser:** in both

**Rep. Roers Jones:** second

**Chairman Porter:** We have a motion from Rep. Keiser, you would change 24 months to 36 months, I guess it's in 2 places for each of them. In the middle one it's Line 2 and Line 6, and then Page 3, Lines 9-18 Line 1 and Line 5. I have a motion and a second from Rep. Roers Jones. Discussion? All those in favor say Aye. Opposed? Voice vote, motion carries.

We have a further amended bill.

**Rep. Roers Jones:** I will make a motion for a Do Pass Recommendation as Amended.

**Rep. Marschall:** Second

**Chairman Porter:** We have a motion for a Do Pass Recommendation as Amended from Rep. Roers Jones, a second from Rep. Marschall. Any discussion? Roll call vote:

Yes 9      No 4      Absent 1      Carrier is Rep. Roers Jones

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 3 with:

"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."

Page 2, line 18, remove "If any of the requirements or terms of the easement, other than those provided in"

Page 2, replace lines 19 through 28 with:

"A wind easement is presumed to be abandoned if a period of twenty-four 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 twenty-four 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 with the notice of termination is filed and recorded with the county recorder."

Page 3, line 8, remove "If any of the requirements or terms of a lease for wind energy purposes, other than"

Page 3, replace lines 9 through 18 with:

"A wind lease is presumed to be abandoned if a period of twenty-four 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 twenty-four 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 with the notice of termination is filed and recorded with the county recorder."

Renumber accordingly

February 10, 2017

2/16/17 D.A.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 3 with:

"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."

Page 2, line 18, remove "If any of the requirements or terms of the easement, other than those provided in"

Page 2, replace lines 19 through 28 with:

"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 with the notice of termination is filed and recorded with the county recorder."

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2/10/17 DJ

property is located. Termination of the easement becomes effective with the notice of termination is filed and recorded with the county recorder."

Renumber accordingly

Date: 2-10-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1181

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment 01002
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Anderson    Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*Vote  
vote  
carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

01002

Date: 2-10-17

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1181

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended 36 mths in bottom 2 pg 2 19-28 Pg 3 9-18 2 places     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider     \_\_\_\_\_

Motion Made By Rep. Keiser    Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*Verce  
Vote  
carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*36 mths in bottom 2 pg 2 19-28 Pg 3 -9-18 2 places*

Date: 2-10-17

Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1181

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0414.01003 .02000

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Roers Jones Seconded By Rep Marschall

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor		✓
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson		✓	Rep. Roers Jones	✓	
Rep. Bosch		✓	Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	AB	
Rep. Heinert	✓				
Rep. Keiser		✓	Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep Roers - Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1181: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1181 was placed on the Sixth order on the calendar.

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 3 with:

"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."

Page 2, line 18, remove "If any of the requirements or terms of the easement, other than those provided in"

Page 2, replace lines 19 through 28 with:

"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 with the notice of termination is filed and recorded with the county recorder."

Page 3, line 8, remove "If any of the requirements or terms of a lease for wind energy purposes, other than"

Page 3, replace lines 9 through 18 with:

"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 with the notice of termination is filed and recorded with the county recorder."

Renumber accordingly

**2017 SENATE ENERGY AND NATURAL RESOURCES**

**HB 1181**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1181  
3/9/2017  
Job # 28957

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Pam Deven*

**Explanation or reason for introduction of bill/resolution: Relating to termination of wind option agreements; wind easements, and wind energy leases.**

**Minutes:**

**Chairwoman Unruh:** Open hearing on HB 1181:

**Representative Nathan Toman,** Dist. 34, Mandan, ND: To provide landowners clear title in the event of a bankrupt or defunct wind farm. Explained all the sections.

**Chairwoman Unruh:** Any more in support?

**John Olson,** NextEra Energy: We worked with Representative Toman and other wind interests weighed in as well. We have no problem with the language as it appears in the bill.

**Chairwoman Unruh:** Any questions? Any more in support? Any opposition? Any agencies?

**Hearing is closed.**

# 2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee  
Fort Lincoln Room, State Capitol

HB 1181  
3/23/2017  
Job #29592

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Minutes:

**Chairwoman Unruh:** I read through HB 1181 with LC to get a grasp of what the changes were. The House seemed OK. Any other concerns?

**Sen. Oban:** I do remember Representative Toman saying that on page 2, line 25, 'with' needs to be changed to 'when'. And on page 3, line 18 same change. I so move.

**Sen. Oban:** I move to amend.

**Sen. Armstrong:** I second.

**Chairwoman Unruh:** Morgan will make the change. Any discussion? All in favor, say Yes; any opposed, same sign. Motion passed.

**Chairwoman Unruh:** In front of us we have amended engrossed HB 1181.

**Sen. Schaible:** I move a Do Pass as amended.

**Sen. Cook:** I second.

**Chairwoman Unruh:** Any discussion. Call the roll: YES 7 NO 0 -0- absent

**Sen. Schaible** will carry the bill.

17.0414.02001  
Title.03000

Adopted by the Senate Energy and Natural  
Resources Committee

March 23, 2017

CJ  
3/23-2017  
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1181

Page 2, line 25, replace the first "with" with "when"

Page 3, line 18, replace "with" with "when"

Renumber accordingly

3/23/17

Date:

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1181  
engrossed

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: change 'when' to 'when' with pg 2, line 25 + also pg. 3, line 18

insert 'when'

- Recommendation:
- Adopt Amendment
  - Do Pass     Do Not Pass     Without Committee Recommendation
  - As Amended     Rerefer to Appropriations
  - Place on Consent Calendar
- Other Actions:     Reconsider     \_\_\_\_\_

Motion Made By Sen. Oban    Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Jessica Unruh			Sen. Erin Oban		
Vice Chair Curt Kreun					
Sen. Kelly Armstrong					
Sen. Dwight Cook					
Sen. Jim Roers					
Sen. Don Schaible					
<i>Wice Late</i>					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*all year amend. passed*

3/23/17

Date:  
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1181  
*engrossed*

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: Change 'with' to "when" pg 2, line 25  
and pg. 3, line 18

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider

Motion Made By Sen. Schaible Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Chairman Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Schaible

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1181, as engrossed: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1181 was placed on the Sixth order on the calendar.**

Page 2, line 25, replace the first "with" with "when"

Page 3, line 18, replace "with" with "when"

Renumber accordingly

**2017 TESTIMONY**

**HB 1181**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, remove lines 17 through 24

Page 2, replace lines 1 through 3 with:

"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."

Page 2, line 18, remove "If any of the requirements or terms of the easement, other than those provided in"

Page 2, replace lines 19 through 28 with:

"A wind easement is presumed to be abandoned if a period of twenty-four 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 twenty-four 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 with the notice of termination is filed and recorded with the county recorder."

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property is located. Termination of the easement becomes effective with the notice of termination is filed and recorded with the county recorder."

Renumber accordingly