

An Act

HOUSE BILL 12-1105

BY REPRESENTATIVE(S) Becker, Barker, Brown, Coram, Ferrandino, Fischer, Gerou, Holbert, Hullinghorst, Jones, Kerr A., Kerr J., Labuda, Nikkel, Pabon, Pace, Schafer S., Stephens, Todd, Vigil, Wilson, Hamner, Looper, Sonnenberg, Summers;
also SENATOR(S) Tochtrop, Aguilar, Bacon, Boyd, Guzman, Heath, Nicholson, Steadman, Williams S.

CONCERNING WIND ENERGY PROPERTY RIGHTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 30.7 to title 38 as follows:

ARTICLE 30.7 **Wind Energy**

38-30.7-101. Legislative declaration. THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE RIGHT TO WIND ENERGY IS AN INTEREST IN REAL PROPERTY APPURTENANT TO THE SURFACE ESTATE.

38-30.7-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "WIND ENERGY AGREEMENT" MEANS A LEASE, LICENSE, EASEMENT, OR OTHER AGREEMENT, WHETHER BY GRANT OR RESERVATION, TO DEVELOP OR PARTICIPATE IN THE INCOME FROM OR THE DEVELOPMENT OF WIND-POWERED ENERGY GENERATION.

(2) "WIND ENERGY DEVELOPER" MEANS THE OWNER OF THE SURFACE ESTATE OR THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER A WIND ENERGY AGREEMENT.

(3) "WIND ENERGY RIGHT" MEANS A PROPERTY INTEREST IN THE DEVELOPMENT OF WIND-POWERED ENERGY GENERATION.

38-30.7-103. Wind energy agreements - recording - termination - transfer. (1) A WIND ENERGY RIGHT IS NOT SEVERABLE FROM THE SURFACE ESTATE; EXCEPT THAT WIND ENERGY MAY BE DEVELOPED PURSUANT TO A WIND ENERGY AGREEMENT.

(2) A WIND ENERGY AGREEMENT IS AN INTEREST IN REAL PROPERTY. THE OWNER OF THE SURFACE ESTATE OR THE WIND ENERGY DEVELOPER SHALL RECORD A WIND ENERGY AGREEMENT OR A NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED. THE WIND ENERGY AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, AND THE LEGAL DESCRIPTION OF THE PROPERTY. THE WIND ENERGY AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT MUST BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT.

(3) (a) AFTER A WIND ENERGY AGREEMENT HAS TERMINATED, THE OWNER OF THE SURFACE ESTATE MAY REQUEST THE WIND ENERGY DEVELOPER TO RECORD A RELEASE OF THE WIND ENERGY AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE WIND ENERGY AGREEMENT IS LOCATED. THE RELEASE

MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ORIGINAL RECEPTION NUMBER OR BOOK AND PAGE NUMBER OF THE WIND ENERGY AGREEMENT. THE RELEASE MUST BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT. THE OWNER OF THE SURFACE ESTATE OR THE OWNER'S DESIGNEE SHALL MAKE THE REQUEST IN WRITING AND DELIVER IT PERSONALLY OR BY CERTIFIED MAIL, FIRST CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE WIND ENERGY DEVELOPER'S LAST-KNOWN ADDRESS. THE WIND ENERGY DEVELOPER SHALL RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF THE REQUEST.

(b) THE WIND ENERGY DEVELOPER SHALL RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF THE REQUEST. IF THE WIND ENERGY DEVELOPER FAILS TO RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF THE REQUEST, THE WIND ENERGY DEVELOPER IS LIABLE TO THE OWNER OF THE SURFACE ESTATE FOR ANY DAMAGES CAUSED BY THE WIND ENERGY DEVELOPER'S FAILURE TO RECORD THE RELEASE. A COPY OF THE WRITTEN REQUEST HAS THE SAME FORCE AND EFFECT AS THE ORIGINAL REQUEST IN AN ACTION FOR DAMAGES.

(4) NOTHING IN THIS ARTICLE ALTERS, AMENDS, DIMINISHES, OR INVALIDATES WIND ENERGY AGREEMENTS OR CONVEYANCES MADE OR ENTERED INTO PRIOR TO JULY 1, 2012, SO LONG AS A CONTRACT, LEASE, MEMORANDUM, OR OTHER NOTICE EVIDENCING THE ACQUISITION, CONVEYANCE, OR RESERVATION OF THE WIND ENERGY RIGHTS IS RECORDED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION BY SEPTEMBER 1, 2012.

(5) NOTHING IN THIS ARTICLE RESTRICTS THE TRANSFER OF A WIND ENERGY AGREEMENT, INCLUDING THE TRANSFER OF THE RIGHT OF THE OWNER OF THE SURFACE ESTATE TO RECEIVE PAYMENTS UNDER THE WIND ENERGY AGREEMENT.

38-30.7-104. Reversion of easements. (1) UNLESS THE OWNER OF THE SURFACE ESTATE AND WIND ENERGY DEVELOPER OTHERWISE AGREE, ALL EASEMENT INTERESTS ACQUIRED AFTER JULY 1, 2012, FOR THE PURPOSE

OF PRODUCING WIND ENERGY REVERT TO THE OWNER OF THE SURFACE ESTATE IF WIND ENERGY PRODUCTION HAS CEASED FOR A CONTINUOUS PERIOD OF FIFTEEN YEARS OR IF THE GENERATION OF ELECTRICITY BY A TURBINE HAS NOT COMMENCED WITHIN FIFTEEN YEARS AFTER THE EXECUTION OF A WIND ENERGY AGREEMENT. REVERSION OF AN INTEREST UNDER THIS SECTION DOES NOT TRANSFER ANY OBLIGATION TO RESTORE OR RECLAIM THE SURFACE ESTATE.

(2) THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT SHALL RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER WHERE THE LAND SUBJECT TO THE WIND ENERGY AGREEMENT IS LOCATED AN AFFIDAVIT STATING THAT THE GENERATION OF ELECTRICITY BY A TURBINE HAS COMMENCED. IF NO SUCH AFFIDAVIT IS RECORDED, THEN THE WIND ENERGY AGREEMENT EXPIRES BY ITS OWN TERMS. IF NO TERMS ARE GIVEN, THE WIND ENERGY AGREEMENT EXPIRES NO MORE THAN FIFTEEN YEARS AFTER THE EXECUTION OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ORIGINAL RECEPTION NUMBER OR BOOK AND PAGE NUMBER OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT.

38-30.7-105. Taxation. EQUIPMENT USED IN THE DEVELOPMENT OF WIND ENERGY IS EXEMPT FROM THE LEVY AND COLLECTION OF PERSONAL PROPERTY TAX UNTIL SUCH EQUIPMENT IS FIRST USED PURSUANT TO SECTION 39-3-118.5, C.R.S.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO