

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

**REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 12-0377.01 Chuck Brackney x2295

**HOUSE BILL 12-1105**

---

**HOUSE SPONSORSHIP**

**Becker,**

**SENATE SPONSORSHIP**

**Tochtrop,**

---

**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

---

**A BILL FOR AN ACT**

101 **CONCERNING WIND ENERGY PROPERTY RIGHTS.**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill establishes a nonseverable wind energy right in real property.

---

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

HOUSE  
3rd Reading Unamended  
March 1, 2012

HOUSE  
Amended 2nd Reading  
February 29, 2012

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

3   **ARTICLE 30.7**

4   **Wind Energy**

5           **38-30.7-101. Legislative declaration.** THE GENERAL ASSEMBLY  
6 FINDS AND DECLARES THAT THE RIGHT TO WIND ENERGY IS AN INTEREST  
7 IN REAL PROPERTY APPURTENANT TO THE SURFACE ESTATE.

8           **38-30.7-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
9 CONTEXT OTHERWISE REQUIRES:

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

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

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

19           **38-30.7-103. Wind energy agreements - recording -**  
20 **termination - transfer.** (1) A WIND ENERGY RIGHT IS NOT SEVERABLE  
21 FROM THE SURFACE ESTATE; EXCEPT THAT WIND ENERGY MAY BE  
22 DEVELOPED PURSUANT TO A WIND ENERGY AGREEMENT.

23           (2) A WIND ENERGY AGREEMENT IS AN INTEREST IN REAL  
24 PROPERTY. THE OWNER OF THE SURFACE ESTATE OR THE WIND ENERGY  
25 DEVELOPER SHALL RECORD A WIND ENERGY AGREEMENT OR A NOTICE OR  
26 MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN THE OFFICE  
27 OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND


1 SUBJECT TO THE AGREEMENT IS LOCATED. THE WIND ENERGY AGREEMENT  
2 OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT  
3 MUST INCLUDE A LEGAL DESCRIPTION OF THE LAND SUBJECT TO THE  
4 AGREEMENT.

5 (3) AFTER A WIND ENERGY AGREEMENT HAS TERMINATED, THE  
6 OWNER OF THE SURFACE ESTATE MAY REQUEST THE WIND ENERGY  
7 DEVELOPER TO RECORD A RELEASE OF THE WIND ENERGY AGREEMENT IN  
8 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE  
9 THE LAND SUBJECT TO THE WIND ENERGY AGREEMENT IS LOCATED. THE  
10 OWNER OF THE SURFACE ESTATE SHALL MAKE THE REQUEST IN WRITING  
11 AND DELIVER THE REQUEST TO THE WIND ENERGY DEVELOPER BY  
12 PERSONAL SERVICE OR REGISTERED MAIL AT THE WIND ENERGY  
13 DEVELOPER'S LAST-KNOWN ADDRESS. THE WIND ENERGY DEVELOPER  
14 SHALL RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF  
15 THE REQUEST. IF THE WIND ENERGY DEVELOPER FAILS TO RECORD THE  
16 RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF THE REQUEST, THE  
17 WIND ENERGY DEVELOPER IS LIABLE TO THE OWNER OF THE SURFACE  
18 ESTATE FOR ANY DAMAGES CAUSED BY THE WIND ENERGY DEVELOPER'S  
19 FAILURE TO RECORD THE RELEASE. A COPY OF THE WRITTEN REQUEST HAS  
20 THE SAME FORCE AND EFFECT AS THE ORIGINAL REQUEST IN AN ACTION  
21 FOR DAMAGES.




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

1 SEPTEMBER 1, 2012.

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

6 

7 **38-30.7-104. Reversion of easements.** UNLESS THE OWNER OF  
8 THE SURFACE ESTATE AND WIND ENERGY DEVELOPER OTHERWISE AGREE,  
9 ALL EASEMENT INTERESTS ACQUIRED AFTER JULY 1, 2012, FOR THE  
10 PURPOSE OF PRODUCING WIND ENERGY REVERT TO THE OWNER OF THE  
11 SURFACE ESTATE IF WIND ENERGY PRODUCTION HAS CEASED FOR A  
12 CONTINUOUS PERIOD OF TEN YEARS AND IF THE GENERATION OF  
13 ELECTRICITY BY A TURBINE HAS NOT COMMENCED WITHIN TEN YEARS  
14 AFTER THE EXECUTION OF A WIND ENERGY AGREEMENT. REVERSION OF AN  
15 INTEREST UNDER THIS SECTION DOES NOT TRANSFER ANY OBLIGATION TO  
16 RESTORE OR RECLAIM THE SURFACE ESTATE.

17 **38-30.7-105. Taxation.**    EQUIPMENT USED IN THE  
18 DEVELOPMENT OF WIND ENERGY IS EXEMPT FROM THE LEVY AND  
19 COLLECTION OF PERSONAL PROPERTY TAX UNTIL SUCH EQUIPMENT IS FIRST  
20 USED PURSUANT TO SECTION 39-3-118.5, C.R.S.

21 **SECTION 2. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly (August  
24 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a  
25 referendum petition is filed pursuant to section 1 (3) of article V of the  
26 state constitution against this act or an item, section, or part of this act  
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in  
2 November 2012 and, in such case, will take effect on the date of the  
3 official declaration of the vote thereon by the governor.