

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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

Local Government

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.

SENATE
Am ended 2nd Reading
April 9, 2012

HOUSE
3rd Reading Unam ended
March 1, 2012

HOUSE
Am ended 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
2 AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY
3 AGREEMENT MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE
4 ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR
5 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, AND THE
6 LEGAL DESCRIPTION OF THE PROPERTY. THE WIND ENERGY AGREEMENT OR
7 NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT MUST
8 BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE
9 NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE,
10 EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND
11 ENERGY AGREEMENT.


12 (3) (a) AFTER A WIND ENERGY AGREEMENT HAS TERMINATED, THE
13 OWNER OF THE SURFACE ESTATE MAY REQUEST THE WIND ENERGY
14 DEVELOPER TO RECORD A RELEASE OF THE WIND ENERGY AGREEMENT OR
15 NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN
16 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE
17 THE LAND SUBJECT TO THE WIND ENERGY AGREEMENT IS LOCATED. THE
18 RELEASE MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE
19 ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR
20 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, THE LEGAL
21 DESCRIPTION OF THE PROPERTY, AND THE ORIGINAL RECEPTION NUMBER
22 OR BOOK AND PAGE NUMBER OF THE WIND ENERGY AGREEMENT. THE
23 RELEASE MUST BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES
24 UNDER THE NAME OF THE OWNER OF THE SURFACE ESTATE AND THE
25 LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER
26 THE WIND ENERGY AGREEMENT. THE OWNER OF THE SURFACE ESTATE OR
27 THE OWNER'S DESIGNEE SHALL MAKE THE REQUEST IN WRITING AND

1 DELIVER IT PERSONALLY OR BY CERTIFIED MAIL, FIRST CLASS POSTAGE
2 PREPAID, RETURN RECEIPT REQUESTED, TO THE WIND ENERGY
3 DEVELOPER'S LAST-KNOWN ADDRESS. THE WIND ENERGY DEVELOPER
4 SHALL RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF
5 THE REQUEST.

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

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

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

25 
26 **38-30.7-104. Reversion of easements.** (1) UNLESS THE OWNER
27 OF THE SURFACE ESTATE AND WIND ENERGY DEVELOPER OTHERWISE

1 AGREE, ALL EASEMENT INTERESTS ACQUIRED AFTER JULY 1, 2012, FOR THE
2 PURPOSE OF PRODUCING WIND ENERGY REVERT TO THE OWNER OF THE
3 SURFACE ESTATE IF WIND ENERGY PRODUCTION HAS CEASED FOR A
4 CONTINUOUS PERIOD OF FIFTEEN YEARS OR IF THE GENERATION OF
5 ELECTRICITY BY A TURBINE HAS NOT COMMENCED WITHIN FIFTEEN YEARS
6 AFTER THE EXECUTION OF A WIND ENERGY AGREEMENT. REVERSION OF AN
7 INTEREST UNDER THIS SECTION DOES NOT TRANSFER ANY OBLIGATION TO
8 RESTORE OR RECLAIM THE SURFACE ESTATE.

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

27 **38-30.7-105. Taxation.** ■ ■ ■ EQUIPMENT USED IN THE

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

4 **SECTION 2. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2012 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.