

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 3, 2012  
Date

Committee on Local Government.

After consideration on the merits, the Committee recommends the following:

HB12-1105 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar:

- 1 Amend reengrossed bill, page 3, line 1, strike everything after  
2 "LOCATED."
  
- 3 Page 3, strike lines 2 through 4 and substitute "THE WIND ENERGY  
4 AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY  
5 AGREEMENT MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE  
6 ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR  
7 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, AND THE  
8 LEGAL DESCRIPTION OF THE PROPERTY. THE WIND ENERGY AGREEMENT OR  
9 NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT MUST  
10 BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE  
11 NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE,  
12 EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND  
13 ENERGY AGREEMENT."
  
- 14 Page 3, line 5, after "(3)" insert "(a)".
  
- 15 Page 3, line 7, after "AGREEMENT" insert "OR NOTICE OR MEMORANDUM  
16 EVIDENCING A WIND ENERGY AGREEMENT".
  
- 17 Page 3, line 9, after "LOCATED." insert "THE RELEASE MUST INCLUDE THE  
18 NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF THE LESSEE,  
19 EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND  
20 ENERGY AGREEMENT, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE

1 ORIGINAL RECEPTION NUMBER OR BOOK AND PAGE NUMBER OF THE WIND  
2 ENERGY AGREEMENT. THE RELEASE MUST BE INDEXED IN BOTH THE  
3 GRANTOR AND GRANTEE INDICES UNDER THE NAME OF THE OWNER OF THE  
4 SURFACE ESTATE AND THE LESSEE, EASEMENT HOLDER, LICENSEE, OR  
5 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT."

6 Page 3, line 10, after "ESTATE" insert "OR THE OWNER'S DESIGNEE".

7 Page 3, strike lines 11 and 12 and substitute "AND DELIVER IT  
8 PERSONALLY OR BY CERTIFIED MAIL, FIRST CLASS POSTAGE PREPAID,  
9 RETURN RECEIPT REQUESTED, TO THE WIND ENERGY".

10 Page 3, line 15, strike everything after "REQUEST."

11 Page 3, strike lines 16 through 21 and substitute:

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

20 Page 4, strike lines 7 through 16 and substitute:

21 "**38-30.7-104. Reversion of easements.** (1) UNLESS THE OWNER  
22 OF THE SURFACE ESTATE AND WIND ENERGY DEVELOPER OTHERWISE  
23 AGREE, ALL EASEMENT INTERESTS ACQUIRED AFTER JULY 1, 2012, FOR THE  
24 PURPOSE OF PRODUCING WIND ENERGY REVERT TO THE OWNER OF THE  
25 SURFACE ESTATE IF WIND ENERGY PRODUCTION HAS CEASED FOR A  
26 CONTINUOUS PERIOD OF FIFTEEN YEARS OR IF THE GENERATION OF  
27 ELECTRICITY BY A TURBINE HAS NOT COMMENCED WITHIN FIFTEEN YEARS  
28 AFTER THE EXECUTION OF A WIND ENERGY AGREEMENT. REVERSION OF AN  
29 INTEREST UNDER THIS SECTION DOES NOT TRANSFER ANY OBLIGATION TO  
30 RESTORE OR RECLAIM THE SURFACE ESTATE.

31 (2) THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING  
32 PARTY UNDER THE WIND ENERGY AGREEMENT SHALL RECORD IN THE  
33 OFFICE OF THE COUNTY CLERK AND RECORDER WHERE THE LAND SUBJECT  
34 TO THE WIND ENERGY AGREEMENT IS LOCATED AN AFFIDAVIT STATING  
35 THAT THE GENERATION OF ELECTRICITY BY A TURBINE HAS COMMENCED.  
36 IF NO SUCH AFFIDAVIT IS RECORDED, THEN THE WIND ENERGY AGREEMENT

1 EXPIRES BY ITS OWN TERMS. IF NO TERMS ARE GIVEN, THE WIND ENERGY  
2 AGREEMENT EXPIRES NO MORE THAN FIFTEEN YEARS AFTER THE  
3 EXECUTION OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST  
4 INCLUDE THE NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF  
5 THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY  
6 UNDER THE WIND ENERGY AGREEMENT, THE LEGAL DESCRIPTION OF THE  
7 PROPERTY, AND THE ORIGINAL RECEPTION NUMBER OR BOOK AND PAGE  
8 NUMBER OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST BE  
9 INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAME  
10 OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE, EASEMENT  
11 HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY  
12 AGREEMENT."

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