

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0461.01 Duane Gall x4335

HOUSE BILL 15-1121

HOUSE SPONSORSHIP

Becker J.,

SENATE SPONSORSHIP

Sonnenberg,

House Committees
Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 CONCERNING AGREEMENTS BETWEEN LANDOWNERS AND WIND
102 ENERGY DEVELOPERS, AND, IN CONNECTION THEREWITH,
103 CLARIFYING THE RIGHTS AND DUTIES OF PARTIES TO THOSE
104 AGREEMENTS AND THE EFFECTS OF RECORDING AN AGREEMENT
105 IN COUNTY LAND RECORDS.

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>.)

Current law declares that the right to wind energy is a property right appurtenant to the surface estate and governs the creation of

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.

agreements between an owner of surface rights and a wind energy developer.

The bill amends and adds relevant definitions, including the definition of a wind energy developer of record, which is the wind energy developer named in an agreement that is recorded in county land records.

The bill also specifies that:

- ! Like other agreements affecting the title to real property, until a wind energy agreement is recorded, it is not binding on anyone other than the parties and those with notice of the agreement.
- ! Rights under a recorded wind energy agreement executed on or after July 1, 2012, expire after 15 years unless the agreement provides otherwise or unless wind-powered energy generation has occurred on the subject property.
- ! Once a wind energy developer has determined to begin construction of generating facilities under a wind energy agreement, the developer may record an affidavit stating when construction will begin. If no affidavit is recorded, the developer's rights will expire after 15 years unless the agreement provides otherwise.
- ! A wind energy agreement, as well as any release due to the termination or expiration of rights under the agreement, must be recorded in both the grantor and grantee indices and under the names of all parties.
- ! If a recorded wind energy agreement expires or is terminated, the wind energy developer of record is required to record a release. If the developer fails to do so within a specified period, the developer and any transferee of the developer's rights under the agreement are jointly and severally liable for any damages to the surface owner that result from the failure to record the release.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** article 30.7
3 of title 38 as follows:

4 **ARTICLE 30.7**

5 **Wind Energy**

6 **38-30.7-101. Legislative declaration.** The general assembly finds
7 and declares that ~~the right to~~ A wind energy RIGHT is an interest in real

1 property appurtenant to the surface estate.

2 **38-30.7-102. Definitions.** As used in this article, unless the
3 context otherwise requires:

4 (1) "Wind energy agreement" OR "AGREEMENT" means a lease,
5 license, easement, or other agreement ~~whether by grant or reservation,~~
6 BETWEEN THE OWNER OF A SURFACE ESTATE AND A WIND ENERGY
7 DEVELOPER to develop ~~or participate in the income from or the~~
8 ~~development of~~ wind-powered energy generation.

9 (2) "Wind energy developer" means the ~~owner of the surface~~
10 ~~estate or the~~ lessee, easement holder, licensee, or ~~contracting~~ SIMILAR
11 party under a wind energy agreement.

12 (3) "WIND ENERGY DEVELOPER OF RECORD" MEANS THE WIND
13 ENERGY DEVELOPER NAMED IN A RECORDED WIND ENERGY AGREEMENT
14 OR, IF THE WIND ENERGY AGREEMENT HAS BEEN TRANSFERRED BY A
15 RECORDED DOCUMENT, THE MOST RECENT TRANSFEREE OF THE RIGHTS OF
16 THE ORIGINAL WIND ENERGY DEVELOPER IDENTIFIED IN THE RECORDED
17 DOCUMENT.

18 ~~(3)~~ (4) "Wind energy right" means ~~a property interest in the~~
19 ~~development of wind-powered energy generation~~ THE RIGHT OF THE
20 OWNER OF A SURFACE ESTATE, EITHER DIRECTLY OR THROUGH A WIND
21 ENERGY DEVELOPER UNDER A WIND ENERGY AGREEMENT, TO CAPTURE
22 AND EMPLOY THE KINETIC ENERGY OF THE WIND.

23 (5) "WIND-POWERED ENERGY GENERATION" MEANS THE
24 GENERATION OF ELECTRICITY BY MEANS OF A TURBINE OR OTHER DEVICE
25 THAT CAPTURES AND EMPLOYS THE KINETIC ENERGY OF THE WIND.

26 **38-30.7-103. Wind energy agreements - recording -**
27 **termination - transfer.** (1) A wind energy right is not severable from the

1 surface estate ~~except that wind energy may be developed pursuant to a~~
2 ~~wind energy~~ BUT, LIKE OTHER RIGHTS TO USE THE SURFACE ESTATE, MAY
3 BE CREATED, TRANSFERRED, ENCUMBERED, OR MODIFIED BY agreement.

4 (2) (a) A wind energy agreement is ~~an interest in real property.~~
5 ~~The owner of the surface estate or the wind energy developer shall record~~
6 ~~a wind energy agreement or a notice or memorandum evidencing a wind~~
7 ~~energy agreement~~ SUBJECT TO STATUTORY AND OTHER RULES OF LAW TO
8 THE SAME EXTENT AS OTHER AGREEMENTS CREATING INTERESTS IN OR
9 RIGHTS TO USE REAL PROPERTY.

10 (b) A WIND ENERGY AGREEMENT MAY BE RECORDED in the office
11 of the county clerk and recorder in the county where the land subject to
12 the agreement is located. ~~The wind energy agreement or notice or~~
13 ~~memorandum evidencing a wind energy agreement must include the name~~
14 ~~of the owner of the surface estate, the name of the lessee, easement~~
15 ~~holder, licensee, or contracting party under the wind energy agreement,~~
16 ~~and the legal description of the property. The wind energy agreement or~~
17 ~~notice or memorandum evidencing a wind energy agreement must be~~
18 ~~indexed~~ UNTIL SO RECORDED, THE WIND ENERGY AGREEMENT IS NOT
19 VALID AS AGAINST ANY PERSON WITH RIGHTS IN OR TO THE LAND SUBJECT
20 TO THE AGREEMENT WHOSE INTEREST IS FIRST RECORDED, EXCEPT AS
21 BETWEEN THE PARTIES TO THE WIND ENERGY AGREEMENT AND THOSE
22 HAVING NOTICE OF THE AGREEMENT.

23 (c) THE COUNTY CLERK AND RECORDER SHALL INDEX A WIND
24 ENERGY AGREEMENT in both the grantor and grantee indices under the
25 ~~name of the owner of the surface estate and the lessee, easement holder,~~
26 ~~licensee, or contracting~~ NAMES OF EACH party ~~under~~ TO the wind energy
27 agreement.

1 (d) THE PROVISIONS OF THIS SUBSECTION (2) APPLY EQUALLY TO
2 ANY MODIFICATION, ASSIGNMENT, OR ENCUMBRANCE OF A WIND ENERGY
3 AGREEMENT.

4 (3) (a) After a wind energy agreement has EXPIRED OR HAS BEEN
5 terminated, THE WIND ENERGY DEVELOPER OF RECORD SHALL RECORD A
6 RELEASE IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE
7 COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED.

8 (b) IF THE WIND ENERGY DEVELOPER OF RECORD FAILS TO RECORD
9 A RELEASE IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE
10 COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED, the
11 owner of the surface estate OR THE OWNER'S AGENT may request the wind
12 energy developer OF RECORD to record a release of the wind energy
13 agreement. ~~or notice or memorandum evidencing a wind energy~~
14 ~~agreement in the office of the county clerk and recorder in the county~~
15 ~~where the land subject to the wind energy agreement is located. The~~
16 ~~release must include the name of the owner of the surface estate, the name~~
17 ~~of the lessee, easement holder, licensee, or contracting party under the~~
18 ~~wind energy agreement, the legal description of the property, and the~~
19 ~~original reception number or book and page number of the wind energy~~
20 ~~agreement. The release must be indexed in both the grantor and grantee~~
21 ~~indices under the name of the owner of the surface estate and the lessee,~~
22 ~~easement holder, licensee, or contracting party under the wind energy~~
23 ~~agreement. The owner of the surface estate or the owner's designee shall~~
24 ~~make the request in writing and deliver it~~ THE REQUEST MUST BE IN
25 WRITING AND MUST BE DELIVERED personally or by certified mail, first
26 class postage prepaid, return receipt requested, to the ~~wind energy~~
27 ~~developer's~~ last-known address OF THE WIND ENERGY DEVELOPER OF

1 RECORD. WITHIN NINETY DAYS AFTER RECEIVING THE REQUEST, the wind
2 energy developer OF RECORD shall record the release ~~within ninety days~~
3 ~~after the receipt of the request~~ IN THE OFFICE OF THE COUNTY CLERK AND
4 RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT
5 IS LOCATED.

6 (c) THE RELEASE MUST IDENTIFY THE WIND ENERGY AGREEMENT
7 WITH REASONABLE CLARITY, INCLUDING THE NAMES OF THE PARTIES, THE
8 LEGAL DESCRIPTION OF THE LAND SUBJECT TO THE AGREEMENT, AND THE
9 APPLICABLE RECORDING INFORMATION OF THE AGREEMENT. THE COUNTY
10 CLERK AND RECORDER SHALL INDEX THE RELEASE IN BOTH THE GRANTOR
11 AND GRANTEE INDICES UNDER THE NAMES OF EACH PARTY IDENTIFIED IN
12 THE RELEASE.

13 ~~(b) (d) (I) The wind energy developer shall record the release~~
14 ~~within ninety days after the receipt of the request.~~ If the wind energy
15 developer OF RECORD fails to record the release REQUIRED BY THIS
16 SUBSECTION (3) within ninety days after ~~the receipt of~~ RECEIVING the
17 request, the wind energy developer OF RECORD is liable to the owner of
18 the surface estate for any damages caused by the ~~wind energy developer's~~
19 ~~failure. to record the release.~~ A copy of the written request has the same
20 ~~force and effect as the original request in an action for damages.~~

21 (II) IF THE INTEREST OF THE WIND ENERGY DEVELOPER OF RECORD
22 HAS BEEN TRANSFERRED BY AN INSTRUMENT THAT HAS NOT BEEN
23 RECORDED, THE TRANSFEREE SHALL EITHER:

24 (A) RECORD THE INSTRUMENT BY WHICH THE TRANSFEREE
25 ACQUIRED THE INTEREST AND THEREAFTER RECORD THE RELEASE
26 REQUIRED BY THIS SUBSECTION (3); OR

27 (B) CAUSE THE WIND ENERGY DEVELOPER OF RECORD TO RECORD

1 THE RELEASE REQUIRED BY THIS SUBSECTION (3).

2 (III) THE WIND ENERGY DEVELOPER OF RECORD AND EVERY
3 TRANSFEREE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d)
4 ARE JOINTLY AND SEVERALLY LIABLE FOR ANY DAMAGES CAUSED BY THE
5 FAILURE OF THE WIND ENERGY DEVELOPER OF RECORD TO RECORD THE
6 RELEASE, AS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), OR
7 OF A TRANSFEREE TO COMPLY WITH SUBPARAGRAPH (II) OF THIS
8 PARAGRAPH (d).

9 (4) Nothing in this article alters, amends, diminishes, or
10 invalidates wind energy agreements or conveyances made or entered into
11 prior to July 1, 2012. ~~so long as a contract, lease, memorandum, or other~~
12 ~~notice evidencing the acquisition, conveyance, or reservation of the wind~~
13 ~~energy rights is recorded in accordance with subsection (2) of this section~~
14 ~~by September 1, 2012.~~

15 (5) Nothing in this article restricts the transfer of ANY INTEREST
16 OF A PARTY TO a wind energy agreement, including the transfer of the
17 right of the owner of the surface estate to receive payments under the
18 wind energy agreement.

19 **38-30.7-104. Expiration of rights under wind energy**
20 **agreements.** (1) ~~Unless the owner of the surface estate and wind energy~~
21 ~~developer otherwise agree, all easement interests acquired after July 1,~~
22 ~~2012, for the purpose of producing wind energy revert to the owner of the~~
23 ~~surface estate if wind energy production has ceased~~ EXCEPT AS
24 OTHERWISE PROVIDED IN A WIND ENERGY AGREEMENT OR AN AMENDMENT
25 TO THE AGREEMENT, ALL RIGHTS OF A WIND ENERGY DEVELOPER TO USE
26 REAL PROPERTY FOR WIND ENERGY DEVELOPMENT OR PRODUCTION UNDER
27 A WIND ENERGY AGREEMENT ENTERED INTO ON OR AFTER JULY 1, 2012,

1 EXPIRE IF NO WIND-POWERED ENERGY GENERATION HAS OCCURRED UNDER
2 THE AGREEMENT for a continuous period of fifteen years. ~~or if the~~
3 ~~generation of electricity by a turbine has not commenced within fifteen~~
4 ~~years after the execution of a wind energy agreement. Reversion of an~~
5 ~~interest~~ THE EXPIRATION OF RIGHTS under this section does not transfer
6 MODIFY any obligation to restore or reclaim the surface estate THAT IS
7 CONTAINED IN THE AGREEMENT OR IMPOSED BY LAW.

8 (2) ~~The lessee, easement holder, licensee, or contracting party~~
9 ~~under~~ AT ANY TIME AFTER A WIND ENERGY DEVELOPER HAS DETERMINED
10 TO COMMENCE CONSTRUCTION OF WIND ENERGY GENERATING FACILITIES
11 UNDER A RECORDED WIND ENERGY AGREEMENT, the wind energy
12 ~~agreement shall~~ DEVELOPER MAY record in the office of the county clerk
13 and recorder where the land subject to the ~~wind energy~~ agreement is
14 located an affidavit stating ~~that the generation of electricity by a turbine~~
15 ~~has~~ THE DATE ON WHICH SUCH CONSTRUCTION commenced OR IS
16 EXPECTED TO COMMENCE. If no such affidavit is recorded, then the wind
17 energy agreement expires ~~by~~ IN ACCORDANCE WITH its own terms ~~If no~~
18 ~~terms are given, the wind energy agreement expires no more than~~ OR, IF
19 NO EXPIRATION DATE IS SPECIFIED, fifteen years after the ~~execution~~
20 RECORDING of the wind energy agreement. The affidavit must ~~include the~~
21 ~~name of the owner of the surface estate, the name of the lessee, easement~~
22 ~~holder, licensee, or contracting party under~~ IDENTIFY the wind energy
23 agreement WITH REASONABLE CLARITY, INCLUDING THE NAMES OF THE
24 PARTIES, the legal description of the property ~~and the original reception~~
25 ~~number or book and page number of~~ SUBJECT TO THE AGREEMENT, AND
26 THE APPLICABLE RECORDING INFORMATION OF the ~~wind energy~~ agreement.
27 The COUNTY CLERK AND RECORDER SHALL INDEX THE affidavit ~~must be~~

1 indexed in both the grantor and grantee indices under the ~~name of the~~
2 ~~owner of the surface estate and the lessee, easement holder, licensee, or~~
3 ~~contracting party under the wind energy agreement~~ NAMES OF ALL
4 PARTIES IDENTIFIED IN THE AFFIDAVIT.

5 **38-30.7-105. Taxation.** Equipment used in the development of
6 wind energy is exempt from the levy and collection of personal property
7 tax until ~~such~~ THE equipment is first used pursuant to section 39-3-118.5,
8 C.R.S.

9 **SECTION 2. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2016 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.