



AN ACT GENERALLY REVISING WIND EASEMENTS AND WIND ENERGY RIGHTS; DEFINING WIND ENERGY RIGHTS AS PROPERTY RIGHTS; PROVIDING WIND ENERGY RIGHTS ARE APPURTENANT TO THE SURFACE ESTATE; PROVIDING FOR WIND EASEMENTS; PROVIDING FOR WIND OPTION AGREEMENTS AND WIND ENERGY AGREEMENTS AND THEIR MINIMUM REQUIREMENTS; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; AMENDING SECTION 70-17-203, MCA; REPEALING SECTION 70-17-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Short title.** [Sections 1 through 8] may be cited as the "Wind Energy Rights Act".

**Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Wind easement" means the right granted by the owner of real property to a wind energy developer guaranteeing the developer the right to use the real property legally described in a wind energy agreement and the wind resource located on and flowing over its surface to develop a wind energy project. A wind easement is an interest in real property.

(2) "Wind energy agreement" means any wind energy lease, license, or any other written document entered into between the owner of the real property and the wind energy developer that contains the wind easement.

(3) "Wind energy developer" means the person that enters into a wind option agreement or wind energy agreement with the owner of the real property for the purpose of developing a wind energy project.

(4) "Wind energy right" means an interest in real property on and over which the wind resource is located and flows that is appurtenant to the real property.

(5) "Wind option agreement" means a written agreement in which the owner of real property grants a wind energy developer an exclusive right to obtain a wind easement through a wind energy agreement.

**Section 3. Wind easement creation -- terms.** (1) A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.

- (2) The wind easement runs with the real property on and over which the wind resource flows.
- (3) A wind easement terminates under the terms and conditions outlined in the wind easement.

**Section 4. Severance of wind energy rights limited.** (1) A wind energy right in the wind resource located on and flowing over the real property, including without limitation a royalty, if applicable, associated with the production of wind energy may not be severed from the real property even though a wind easement may be created pursuant to [sections 1 through 8].

(2) Nothing in this section may be construed to prohibit or limit the right of a seller of the real property to retain any payments associated with an existing wind option agreement or wind energy agreement.

**Section 5. Wind option agreements -- contents and requirements -- notarization.** (1) A wind option agreement executed after [the effective date of this act] must contain but is not limited to:

- (a) the names and addresses of the parties to the wind option agreement;
- (b) a legal description of the real property subject to the wind option agreement;
- (c) the specified term beyond which the wind option agreement terminates and the real property is released from the obligations outlined in the wind option agreement;
- (d) compensation for the owner of the real property on and over which the wind resource flows; and
- (e) other terms and conditions agreed upon by the owner of the real property and the wind energy developer.

- (2) A wind option agreement must be notarized.
- (3) A wind option agreement may not exceed 20 years unless extended by agreement of the parties.

**Section 6. Wind energy agreement -- contents and requirements -- notarization.** (1) A wind energy agreement executed after [the effective date of this act] must contain but is not limited to:

- (a) the names and addresses of the parties to the wind energy agreement;
- (b) a legal description of the real property subject to the wind easement and contained in the wind energy agreement;

(c) the obligations of the owner of the real property to ensure the undisturbed flow of wind on and over the real property, including restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the wind flow on and over the real property. Structures do not include equipment necessary to access minerals as they relate to the rights belonging to or the dominance of the mineral estate pursuant to [section 8].

(d) a specified term including the date on which the wind energy agreement or wind easement terminates;

(e) provisions to compensate the owner of the real property for the wind easement;

(f) provisions ensuring that the owner of the real property is not liable for any property tax associated with the wind energy project or other equipment related to the development of the wind energy project during the term of the wind energy agreement;

(g) provisions addressing property owner and wind energy developer liability during the construction and operation of the wind energy project and equipment;

(h) provisions obligating the wind energy developer to comply with federal, state, and local laws and regulations; and

(i) conditions upon which the wind energy agreement may be terminated prior to its termination date.

(2) A wind energy agreement must be notarized.

(3) If the terms of the wind energy agreement do not contain the requirements listed in subsection (1), a court may void the wind energy agreement or order any relief allowed by law.

**Section 7. Wind energy agreements -- grandfather clause.** [Sections 1 through 8] may not be construed to alter, amend, diminish, or invalidate wind energy rights acquired by contract, agreement, or lease prior to [the effective date of this act].

**Section 8. Preservation of property rights.** [Sections 1 through 8] may not be construed to:

(1) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate; or

(2) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights.

(3) Notwithstanding the provisions of [sections 1 through 8] or a wind energy agreement, the real

property owner retains the right to grant easements or rights-of-way for all electric power lines to be located on the property.

**Section 9.** Section 70-17-203, MCA, is amended to read:

**"70-17-203. Covenants that run with land.** (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209; and

(c) wind easements pursuant to [sections 1 through 8].

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

**Section 10. Repealer.** The following section of the Montana Code Annotated is repealed:

70-17-303. Wind energy easement.

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 12. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 70, chapter 17, and the provisions of Title 70, chapter 17, apply to [sections 1 through 8].

**Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 15. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0295, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 295  
INTRODUCED BY R. COOK

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