

HOUSE BILL NO. 295

INTRODUCED BY R. COOK

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

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

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

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

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

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

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

27 (4) "Wind energy right" means an interest in real property on and over which the wind resource is located  
28 and flows that is appurtenant to the real property. ~~All incidents of ownership regarding rights, rents, and royalties~~  
29 ~~may be exercised by the owner of the real property.~~

30 (5) "Wind option agreement" means a written agreement in which the owner of real property grants a

1 wind energy developer an exclusive right to obtain a wind easement through a wind energy agreement.

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

5 (2) The wind easement runs with the real property on and over which the wind resource flows.

6 (3) A wind easement terminates under the terms and conditions outlined in the wind easement.

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8 **NEW SECTION. Section 4. Severance of wind energy rights limited.** (1) A wind energy right in the  
9 wind resource located on and flowing over the real property ~~and, INCLUDING WITHOUT LIMITATION A ROYALTY, IF~~  
10 ~~APPLICABLE,~~ associated with the production of wind energy may not be severed from the real property even though  
11 a wind easement may be created pursuant to [sections 1 through 8].

12 (2) Nothing in this section may be construed to prohibit or limit the right of a seller of the real property  
13 to retain any payments associated with an existing wind option agreement or wind energy agreement. ALL  
14 INCIDENTS OF OWNERSHIP REGARDING RIGHTS, RENTS, AND ROYALTIES MAY BE EXERCISED BY THE OWNER OF THE REAL  
15 PROPERTY.

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17 **NEW SECTION. Section 5. Wind option agreements -- contents and requirements -- notarization.**

18 (1) A wind option agreement executed after [the effective date of this act] must contain but is not limited to:

19 (a) the names and addresses of the parties to the wind option agreement;

20 (b) a legal description of the real property subject to the wind option agreement;

21 (c) the specified term beyond which the wind option agreement terminates and the real property is  
22 released from the obligations outlined in the wind option agreement;

23 (d) compensation for the owner of the real property on and over which the wind resource flows; and

24 (e) other terms and conditions agreed upon by the owner of the real property and the wind energy  
25 developer.

26 (2) A wind option agreement must be notarized.

27 (3) A wind option agreement may not exceed 20 years unless extended by agreement of the parties.

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29 **NEW SECTION. Section 6. Wind energy agreement -- contents and requirements -- notarization.**

30 (1) A wind energy agreement executed after [the effective date of this act] must contain but is not limited to:

- 1 (a) the names and addresses of the parties to the wind energy agreement;
- 2 (b) a legal description of the real property subject to the wind easement and contained in the wind energy
- 3 agreement;
- 4 (c) the obligations of the owner of the real property to ensure the undisturbed flow of wind on and over
- 5 the real property, including restrictions placed upon vegetation, structures, and other objects that would impair
- 6 or obstruct the wind flow on and over the real property;
- 7 (d) a specified term including the date on which the wind energy agreement or wind easement
- 8 terminates;
- 9 (e) provisions to compensate the owner of the real property for the wind easement;
- 10 (f) provisions ensuring that the owner of the real property is not liable for any property tax associated with
- 11 the wind energy project or other equipment related to the development of the wind energy project during the term
- 12 of the wind energy agreement;
- 13 (g) provisions ensuring that the property owner is not liable for damages caused by the construction or
- 14 operation of the wind energy project and equipment, including liability or damages to the owner of the real
- 15 property or to third parties during the term of the wind energy agreement;
- 16 (h) provisions obligating the wind energy developer to comply with federal, state, and local laws and
- 17 regulations; and
- 18 (i) conditions upon which the wind energy agreement may be terminated prior to its termination date.
- 19 (2) A wind energy agreement must be notarized.
- 20 (3) If the terms of the wind energy agreement do not contain the requirements listed in subsection (1),
- 21 a court may void the wind energy agreement or order any relief allowed by law.

22

23 **NEW SECTION. Section 7. Wind energy agreements -- grandfather clause.** [Sections 1 through 8]

24 may not be construed to alter, amend, diminish, or invalidate wind energy rights acquired by contract, agreement,

25 or lease prior to [the effective date of this act].

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27 **NEW SECTION. Section 8. Preservation of property rights.** [Sections 1 through 8] may not be

28 construed to:

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

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

3 (3) apply within the exterior boundaries of any federally recognized Indian reservation within the state  
4 of Montana unless the governing body of the tribe adopts a wind energy rights law and enters into a cooperative  
5 agreement with the state.

6 (4) NOTWITHSTANDING THE PROVISIONS OF [SECTIONS 1 THROUGH 8] OR A WIND ENERGY AGREEMENT, THE REAL  
7 PROPERTY OWNER RETAINS THE RIGHT TO GRANT EASEMENTS OR RIGHTS-OF-WAY FOR ALL ELECTRIC POWER LINES TO  
8 BE LOCATED ON THE PROPERTY.

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

11 **"70-17-203. Covenants that run with land.** (1) Except as provided in 70-1-522, every covenant  
12 contained in a grant of an estate in real property that is made for the direct benefit of the property or some part  
13 of the property then in existence runs with the land.

14 (2) Subsection (1) includes:

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

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

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

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

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24 NEW SECTION. Section 10. Repealer. The following section of the Montana Code Annotated is  
25 repealed:

26 70-17-303. Wind energy easement.

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

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2           **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 8] are intended to be  
3 codified as an integral part of Title 70, chapter 17, and the provisions of Title 70, chapter 17, apply to [sections  
4 1 through 8].

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

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

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

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