

Wind Energy Property Rights

This Act creates a property right in the development of wind energy. The Act provides that the property right is an interest in real property. It is attached to the surface estate and cannot be severed from the surface estate. This Act allows wind energy property rights to be developed through wind energy agreements. A wind energy agreement (or a notice of an agreement) must be recorded with the county clerk. The Act clarifies that wind energy becomes personal property when it is converted into electricity.

Submitted as:

Wyoming

[SEA 003 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Wind Energy Rights Act.”

2
3 Section 2. [*Definitions.*]

4 As used in this Act:

5 (1) “Wind energy agreement” means a lease, license, easement or other agreement, whether
6 by grant or reservation, to develop or participate in the income from or the development of wind
7 powered energy generation;

8 (2) “Wind energy developer” means the owner of the surface estate or the lessee, easement
9 holder, licensee or contracting party under a wind energy agreement, and

10 (3) “Wind energy right” means a property right in the development of wind powered energy
11 generation.

12
13 Section 3. [*Declaration of Wind Energy Rights.*]

14 (a) Wind energy rights shall be regarded as an interest in real property and appurtenant to the
15 surface estate.

16 (b) Wind energy rights shall not be severed from the surface estate, except that wind energy
17 may be developed pursuant to a wind energy agreement.

18 (c) A wind energy agreement is an interest in real property. A wind energy agreement or a
19 notice or memorandum evidencing a wind energy agreement shall be recorded in the office of the
20 county clerk where the land subject to the agreement is located and shall include a description of the
21 land subject to the agreement.

22 (d) After a wind energy agreement has terminated, the surface owner may request the wind
23 energy developer to record a release of the wind energy agreement in the office of the county clerk
24 where the land subject to the wind energy agreement is located. The request shall be in writing and
25 delivered to the wind energy developer by personal service or registered mail at the wind energy
26 developer's last known address. The wind energy developer shall record the release within [twenty
27 (20) days] after receipt of the request. If the wind energy developer fails to record the release within
28 [twenty (20) days] after the receipt of the request, the wind energy developer shall be liable to the
29 surface owner for all damages caused by the wind energy developer's failure. A copy of the written
30 request shall have the same force and effect as the original in an action for damages.

1 (e) Wind energy becomes personalty at the point of conversion into electricity.

2 (f) Nothing in this Act shall alter, amend, diminish or invalidate wind energy agreements or
3 conveyances made or entered into prior to [insert date] provided that a contract, lease, memorandum
4 or other notice evidencing the acquisition, conveyance or reservation of the wind energy rights is
5 recorded in accordance with subsection (c) of this section no later than [insert date].
6

7 Section 4. [*Dominance of Mineral Estate.*]

8 Nothing in this Act shall be construed to change the common law as of [insert date] as it
9 relates to the rights belonging to, or the dominance of, the mineral estate.
10

11 Section 5. [*Compensation for Taking of Wind Energy Rights.*]

12 Nothing in this Act diminishes the right of the owner of the surface estate to receive
13 compensation under [insert citation] for the taking of wind energy rights incidental to the exercise of
14 eminent domain.
15

16 Section 6. [*No Restriction on Transfer of Wind Energy Agreement.*]

17 Nothing in this Act shall be construed to restrict the transfer of a wind energy agreement,
18 including the transfer of the surface owner's right to receive payments under the wind energy
19 agreement.
20

21 Section 7. [*Reversion of Easements.*]

22 Unless otherwise agreed between the surface owner and wind energy developer, all easement
23 interests acquired after [insert date] for the purpose of producing wind energy shall revert to the
24 owner of the surface estate if wind energy production has ceased for a continuous period of 10 years
25 or if the generation of electricity by a turbine has not commenced within 20 after the execution of a
26 wind energy agreement. Reversion of an interest under this section does not transfer any obligation
27 to restore or reclaim the surface estate.
28

29 Section 8. [*Severability.*] Insert severability clause.
30

31 Section 9. [*Repealer.*] Insert repealer clause.
32

33 Section 10. [*Effective Date.*] Insert effective date.