

# Appendix II: Wind Energy Rights Act

ORIGINAL SENATE  
FILE NO. 0022

ENROLLED ACT NO. 3, SENATE

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING  
2011 GENERAL SESSION

AN ACT relating to property; providing wind energy rights are real property appurtenant to the surface estate; defining terms; providing for wind energy agreements; specifying requirements for agreements; specifying applicability of act; providing for reversion of interests; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 34-27-101 through 34-27-107 are created to read:

## CHAPTER 27 WIND ENERGY RIGHTS

### **34-27-101. Short title.**

This act may be cited as the "Wind Energy Rights Act."

### **34-27-102. Definitions.**

(a) As used in this act:

(i) "Wind energy agreement" means a lease, license, easement or other agreement, whether by grant or reservation, to develop or participate in the income from or the development of wind powered energy generation;

(ii) "Wind energy developer" means the owner of the surface estate or the lessee, easement holder, licensee or contracting party under a wind energy agreement;

(iii) "Wind energy right" means a property right in the development of wind powered energy generation;

(iv) "This act" means W.S. 34-27-101 through 34-27-107.

**34-27-103. Declaration of wind energy rights.**

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

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

(c) A wind energy agreement is an interest in real property. A wind energy agreement or a notice or memorandum evidencing a wind energy agreement shall:

(i) Be recorded in the office of the county clerk where the land subject to the agreement is located; and

(ii) Shall include a description of the land subject to the agreement.

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

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

(f) Nothing in this act shall alter, amend, diminish or invalidate wind energy agreements or conveyances made or entered into prior to April 1, 2011 provided that a contract, lease, memorandum or other notice evidencing the acquisition, conveyance or reservation of the wind energy rights is recorded in accordance with subsection (c) of this section no later than July 1, 2011.

**34-27-104. Dominance of mineral estate.**

Nothing in this act shall be construed to change the common law as of April 1, 2011 as it relates to the rights belonging to, or the dominance of, the mineral estate.

**34-27-105. Compensation for taking of wind energy rights.**

Nothing in this act diminishes the right of the owner of the surface estate to receive compensation under W.S. 1-26-701 through 1-26-714 for the taking of wind energy rights incidental to the exercise of eminent domain.

**34-27-106. No restriction on transfer of wind energy agreement.**

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

**34-27-107. Reversion of easements.**

Unless otherwise agreed between the surface owner and wind energy developer, all easement interests acquired after April 1, 2011 for the purpose of producing wind energy shall revert to the owner of the surface estate if wind energy production has ceased for a continuous period of ten (10) years or if the generation of electricity by a turbine has not commenced within twenty (20) years after the execution of a wind energy agreement. Reversion of an interest under this section does not transfer any obligation to restore or reclaim the surface estate.

**Section 2.** This act is effective April 1, 2011.

(END)