

SENATE BILL NO. 2239

Introduced by

Senators Erbele, Klein, Seymour

Representatives Brandenburg, S. Kelsh, Kretschmar

1 A BILL for an Act to create and enact a new section to chapter 9-01, three new sections to
2 chapter 47-05, and a new section to chapter 47-16 of the North Dakota Century Code, relating
3 to wind option agreements, easements, and leases.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 9-01 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Wind option agreement - Definition - Termination.** A wind option agreement is a
8 contract in which the owner of property gives another the right to develop the potential to
9 produce energy from wind power on that property at a fixed price within a time period not to
10 exceed five years on agreed terms. A wind option agreement is void and terminates if
11 development of the potential to produce energy from wind power has not occurred on the
12 property that is the subject of the agreement within five years after the wind energy agreement
13 commences.

14 **SECTION 2.** A new section to chapter 47-05 of the North Dakota Century Code is
15 created and enacted as follows:

16 **Wind easement - Definition.** For purposes of sections 3 and 4 of this Act, the term
17 wind easement means a right, whether stated in the form of a restriction, easement, covenant,
18 or condition, in a deed, will, or other instrument executed by or on behalf of an owner of land or
19 airspace for the purpose of ensuring adequate exposure of a wind power system to the winds.

20 **SECTION 3.** A new section to chapter 47-05 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Wind easements - Creation - Term - Development required.** A property owner may
23 grant a wind easement in the same manner and with the same effect as the conveyance of an
24 interest in real property. The easement runs with the land benefited and burdened and

1 terminates upon the conditions stated in the easement. However, the easement is void if no
2 development of the potential to produce energy from wind power associated with the easement
3 has occurred within five years after the easement is created.

4 **SECTION 4.** A new section to chapter 47-05 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Severance of wind energy rights limited.** Except for a wind easement created under
7 section 3 of this Act, an interest in a resource located on a tract of land and associated with the
8 production or potential production of energy for wind power on the tract of land may not be
9 severed from the surface estate.

10 **SECTION 5.** A new section to chapter 47-16 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Wind energy leases - Termination.** A lease for wind energy purposes is void and
13 terminates if development of the potential to produce energy from wind power has not occurred
14 on the leasehold within five years after the lease commences.