

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 produce energy from wind  
9 power on that property at a fixed price within a time period not to exceed five years on agreed  
10 terms. A wind option agreement is void and terminates if development to produce energy from  
11 wind power has not occurred on the property that is the subject of the agreement within five  
12 years after the wind option agreement commences.

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

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

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

21 **Wind easements - Creation - Term - Development required.** A property owner may  
22 grant a wind easement in the same manner and with the same effect as the conveyance of an  
23 interest in real property. The easement runs with the land benefited and burdened and  
24 terminates upon the conditions stated in the easement. However, the easement is void if no

1 development to produce energy from wind power associated with the easement has occurred  
2 within five years after the easement is created.

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

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

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

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