

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2239  
(Senators Erbele, Klein, Seymour)  
(Representatives Brandenburg, S. Kelsh, Kretschmar)

AN ACT to create and enact a new section to chapter 9-01, three new sections to chapter 47-05, and a new section to chapter 47-16 of the North Dakota Century Code, relating to wind option agreements, easements, and leases.

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

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

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

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

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

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

**Wind easements - Creation - Term - Development required.** A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. However, the easement is void if no development to produce energy from wind power associated with the easement has occurred within five years after the easement is created.

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

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

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

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

\_\_\_\_\_  
President of the Senate

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Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2239.

Senate Vote:    Yeas    46        Nays    0        Absent    1

House Vote:    Yeas    61        Nays    23       Absent    10

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State