

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 12-0377.01 Chuck Brackney x2295

**HOUSE BILL 12-1105**

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**HOUSE SPONSORSHIP**

**Becker,**

**SENATE SPONSORSHIP**

**Tochtrop,**

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

Local Government

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**A BILL FOR AN ACT**

101 **CONCERNING WIND ENERGY PROPERTY RIGHTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill establishes a nonseverable wind energy right in real property.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
3rd Reading Unamended  
April 10, 2012

SENATE  
Amended 2nd Reading  
April 9, 2012

HOUSE  
3rd Reading Unamended  
March 1, 2012

HOUSE  
Amended 2nd Reading  
February 29, 2012

1           **SECTION 1.** In Colorado Revised Statutes, **add** article 30.7 to  
2 title 38 as follows:

3   **ARTICLE 30.7**

4   **Wind Energy**

5           **38-30.7-101. Legislative declaration.** THE GENERAL ASSEMBLY  
6 FINDS AND DECLARES THAT THE RIGHT TO WIND ENERGY IS AN INTEREST  
7 IN REAL PROPERTY APPURTENANT TO THE SURFACE ESTATE.

8           **38-30.7-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
9 CONTEXT OTHERWISE REQUIRES:

10           (1) "WIND ENERGY AGREEMENT" MEANS A LEASE, LICENSE,  
11 EASEMENT, OR OTHER AGREEMENT, WHETHER BY GRANT OR RESERVATION,  
12 TO DEVELOP OR PARTICIPATE IN THE INCOME FROM OR THE DEVELOPMENT  
13 OF WIND-POWERED ENERGY GENERATION.

14           (2) "WIND ENERGY DEVELOPER" MEANS THE OWNER OF THE  
15 SURFACE ESTATE OR THE LESSEE, EASEMENT HOLDER, LICENSEE, OR  
16 CONTRACTING PARTY UNDER A WIND ENERGY AGREEMENT.

17           (3) "WIND ENERGY RIGHT" MEANS A PROPERTY INTEREST IN THE  
18 DEVELOPMENT OF WIND-POWERED ENERGY GENERATION.

19           **38-30.7-103. Wind energy agreements - recording -**  
20 **termination - transfer.** (1) A WIND ENERGY RIGHT IS NOT SEVERABLE  
21 FROM THE SURFACE ESTATE; EXCEPT THAT WIND ENERGY MAY BE  
22 DEVELOPED PURSUANT TO A WIND ENERGY AGREEMENT.

23           (2) A WIND ENERGY AGREEMENT IS AN INTEREST IN REAL  
24 PROPERTY. THE OWNER OF THE SURFACE ESTATE OR THE WIND ENERGY  
25 DEVELOPER SHALL RECORD A WIND ENERGY AGREEMENT OR A NOTICE OR  
26 MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN THE OFFICE  
27 OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND

1 SUBJECT TO THE AGREEMENT IS LOCATED. THE WIND ENERGY  
2 AGREEMENT OR NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY  
3 AGREEMENT MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE  
4 ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR  
5 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, AND THE  
6 LEGAL DESCRIPTION OF THE PROPERTY. THE WIND ENERGY AGREEMENT OR  
7 NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT MUST  
8 BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE  
9 NAME OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE,  
10 EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND  
11 ENERGY AGREEMENT.


12 (3) (a) AFTER A WIND ENERGY AGREEMENT HAS TERMINATED, THE  
13 OWNER OF THE SURFACE ESTATE MAY REQUEST THE WIND ENERGY  
14 DEVELOPER TO RECORD A RELEASE OF THE WIND ENERGY AGREEMENT OR  
15 NOTICE OR MEMORANDUM EVIDENCING A WIND ENERGY AGREEMENT IN  
16 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE  
17 THE LAND SUBJECT TO THE WIND ENERGY AGREEMENT IS LOCATED. THE  
18 RELEASE MUST INCLUDE THE NAME OF THE OWNER OF THE SURFACE  
19 ESTATE, THE NAME OF THE LESSEE, EASEMENT HOLDER, LICENSEE, OR  
20 CONTRACTING PARTY UNDER THE WIND ENERGY AGREEMENT, THE LEGAL  
21 DESCRIPTION OF THE PROPERTY, AND THE ORIGINAL RECEPTION NUMBER  
22 OR BOOK AND PAGE NUMBER OF THE WIND ENERGY AGREEMENT. THE  
23 RELEASE MUST BE INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES  
24 UNDER THE NAME OF THE OWNER OF THE SURFACE ESTATE AND THE  
25 LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER  
26 THE WIND ENERGY AGREEMENT. THE OWNER OF THE SURFACE ESTATE OR  
27 THE OWNER'S DESIGNEE SHALL MAKE THE REQUEST IN WRITING AND

1 DELIVER IT PERSONALLY OR BY CERTIFIED MAIL, FIRST CLASS POSTAGE  
2 PREPAID, RETURN RECEIPT REQUESTED, TO THE WIND ENERGY  
3 DEVELOPER'S LAST-KNOWN ADDRESS. THE WIND ENERGY DEVELOPER  
4 SHALL RECORD THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF  
5 THE REQUEST.     

6 (b) THE WIND ENERGY DEVELOPER SHALL RECORD THE RELEASE  
7 WITHIN NINETY DAYS AFTER THE RECEIPT OF THE REQUEST. IF THE WIND  
8 ENERGY DEVELOPER FAILS TO RECORD THE RELEASE WITHIN NINETY DAYS  
9 AFTER THE RECEIPT OF THE REQUEST, THE WIND ENERGY DEVELOPER IS  
10 LIABLE TO THE OWNER OF THE SURFACE ESTATE FOR ANY DAMAGES  
11 CAUSED BY THE WIND ENERGY DEVELOPER'S FAILURE TO RECORD THE  
12 RELEASE. A COPY OF THE WRITTEN REQUEST HAS THE SAME FORCE AND  
13 EFFECT AS THE ORIGINAL REQUEST IN AN ACTION FOR DAMAGES.

14 (4) NOTHING IN THIS ARTICLE ALTERS, AMENDS, DIMINISHES, OR  
15 INVALIDATES WIND ENERGY AGREEMENTS OR CONVEYANCES MADE OR  
16 ENTERED INTO PRIOR TO JULY 1, 2012, SO LONG AS A CONTRACT, LEASE,  
17 MEMORANDUM, OR OTHER NOTICE EVIDENCING THE ACQUISITION,  
18 CONVEYANCE, OR RESERVATION OF THE WIND ENERGY RIGHTS IS  
19 RECORDED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION BY  
20 SEPTEMBER 1, 2012.

21 (5) NOTHING IN THIS ARTICLE RESTRICTS THE TRANSFER OF A WIND  
22 ENERGY AGREEMENT, INCLUDING THE TRANSFER OF THE RIGHT OF THE  
23 OWNER OF THE SURFACE ESTATE TO RECEIVE PAYMENTS UNDER THE WIND  
24 ENERGY AGREEMENT.

25   
26 **38-30.7-104. Reversion of easements.** (1) UNLESS THE OWNER  
27 OF THE SURFACE ESTATE AND WIND ENERGY DEVELOPER OTHERWISE

1 AGREE, ALL EASEMENT INTERESTS ACQUIRED AFTER JULY 1, 2012, FOR THE  
2 PURPOSE OF PRODUCING WIND ENERGY REVERT TO THE OWNER OF THE  
3 SURFACE ESTATE IF WIND ENERGY PRODUCTION HAS CEASED FOR A  
4 CONTINUOUS PERIOD OF FIFTEEN YEARS OR IF THE GENERATION OF  
5 ELECTRICITY BY A TURBINE HAS NOT COMMENCED WITHIN FIFTEEN YEARS  
6 AFTER THE EXECUTION OF A WIND ENERGY AGREEMENT. REVERSION OF AN  
7 INTEREST UNDER THIS SECTION DOES NOT TRANSFER ANY OBLIGATION TO  
8 RESTORE OR RECLAIM THE SURFACE ESTATE.

9 (2) THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING  
10 PARTY UNDER THE WIND ENERGY AGREEMENT SHALL RECORD IN THE  
11 OFFICE OF THE COUNTY CLERK AND RECORDER WHERE THE LAND SUBJECT  
12 TO THE WIND ENERGY AGREEMENT IS LOCATED AN AFFIDAVIT STATING  
13 THAT THE GENERATION OF ELECTRICITY BY A TURBINE HAS COMMENCED.  
14 IF NO SUCH AFFIDAVIT IS RECORDED, THEN THE WIND ENERGY AGREEMENT  
15 EXPIRES BY ITS OWN TERMS. IF NO TERMS ARE GIVEN, THE WIND ENERGY  
16 AGREEMENT EXPIRES NO MORE THAN FIFTEEN YEARS AFTER THE  
17 EXECUTION OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST  
18 INCLUDE THE NAME OF THE OWNER OF THE SURFACE ESTATE, THE NAME OF  
19 THE LESSEE, EASEMENT HOLDER, LICENSEE, OR CONTRACTING PARTY  
20 UNDER THE WIND ENERGY AGREEMENT, THE LEGAL DESCRIPTION OF THE  
21 PROPERTY, AND THE ORIGINAL RECEPTION NUMBER OR BOOK AND PAGE  
22 NUMBER OF THE WIND ENERGY AGREEMENT. THE AFFIDAVIT MUST BE  
23 INDEXED IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAME  
24 OF THE OWNER OF THE SURFACE ESTATE AND THE LESSEE, EASEMENT  
25 HOLDER, LICENSEE, OR CONTRACTING PARTY UNDER THE WIND ENERGY  
26 AGREEMENT.

27 **38-30.7-105. Taxation.** ■ ■ ■ EQUIPMENT USED IN THE

1 DEVELOPMENT OF WIND ENERGY IS EXEMPT FROM THE LEVY AND  
2 COLLECTION OF PERSONAL PROPERTY TAX UNTIL SUCH EQUIPMENT IS FIRST  
3 USED PURSUANT TO SECTION 39-3-118.5, C.R.S.

4           **SECTION 2. Act subject to petition - effective date.** This act  
5 takes effect at 12:01 a.m. on the day following the expiration of the  
6 ninety-day period after final adjournment of the general assembly (August  
7 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a  
8 referendum petition is filed pursuant to section 1 (3) of article V of the  
9 state constitution against this act or an item, section, or part of this act  
10 within such period, then the act, item, section, or part will not take effect  
11 unless approved by the people at the general election to be held in  
12 November 2012 and, in such case, will take effect on the date of the  
13 official declaration of the vote thereon by the governor.