

## CHAPTER 19

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**PROPERTY**


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**HOUSE BILL 15-1121**

BY REPRESENTATIVE(S) Becker J., Coram, Fields, Kraft-Tharp, Mitsch Bush, Rosenthal, Saine, Young;  
also SENATOR(S) Sonnenberg, Crowder, Lambert, Woods.

**AN ACT**

**CONCERNING AGREEMENTS BETWEEN LANDOWNERS AND WIND ENERGY DEVELOPERS, AND, IN CONNECTION THEREWITH, CLARIFYING THE RIGHTS AND DUTIES OF PARTIES TO THOSE AGREEMENTS AND THE EFFECTS OF RECORDING AN AGREEMENT IN COUNTY LAND RECORDS.**

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

**SECTION 1.** In Colorado Revised Statutes, **amend** article 30.7 of title 38 as follows:

**ARTICLE 30.7**  
**Wind Energy**

**38-30.7-101. Legislative declaration.** The general assembly finds and declares that ~~the right to~~ a wind energy RIGHT is an interest in real property appurtenant to the surface estate.

**38-30.7-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Wind energy agreement" OR "AGREEMENT" means a lease, license, easement, or other agreement ~~whether by grant or reservation,~~ BETWEEN THE OWNER OF A SURFACE ESTATE AND A WIND ENERGY DEVELOPER to develop ~~or participate in the income from or the development of~~ wind-powered energy generation.

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

(3) "WIND ENERGY DEVELOPER OF RECORD" MEANS THE WIND ENERGY

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

DEVELOPER NAMED IN A RECORDED WIND ENERGY AGREEMENT OR, IF THE WIND ENERGY AGREEMENT HAS BEEN TRANSFERRED BY A RECORDED DOCUMENT, THE MOST RECENT TRANSFEREE OF THE RIGHTS OF THE ORIGINAL WIND ENERGY DEVELOPER IDENTIFIED IN THE RECORDED DOCUMENT.

~~(3)~~ (4) "Wind energy right" means ~~a property interest in the development of wind-powered energy generation~~ THE RIGHT OF THE OWNER OF A SURFACE ESTATE, EITHER DIRECTLY OR THROUGH A WIND ENERGY DEVELOPER UNDER A WIND ENERGY AGREEMENT, TO CAPTURE AND EMPLOY THE KINETIC ENERGY OF THE WIND.

(5) "WIND-POWERED ENERGY GENERATION" MEANS THE GENERATION OF ELECTRICITY BY MEANS OF A TURBINE OR OTHER DEVICE THAT CAPTURES AND EMPLOYS THE KINETIC ENERGY OF THE WIND.

**38-30.7-103. Wind energy agreements - recording - termination - transfer.**

(1) A wind energy right is not severable from the surface estate ~~except that wind energy may be developed pursuant to a wind energy~~ BUT, LIKE OTHER RIGHTS TO USE THE SURFACE ESTATE, MAY BE CREATED, TRANSFERRED, ENCUMBERED, OR MODIFIED BY agreement.

(2) (a) A wind energy agreement is ~~an interest in real property. The owner of the surface estate or the wind energy developer shall record a wind energy agreement or a notice or memorandum evidencing a wind energy agreement~~ SUBJECT TO STATUTORY AND OTHER RULES OF LAW TO THE SAME EXTENT AS OTHER AGREEMENTS CREATING INTERESTS IN OR RIGHTS TO USE REAL PROPERTY.

(b) A WIND ENERGY AGREEMENT MAY BE RECORDED in the office of the county clerk and recorder in the county where the land subject to the agreement is located. ~~The wind energy agreement or notice or memorandum evidencing a wind energy agreement must include the name of the owner of the surface estate, the name of the lessee, easement holder, licensee, or contracting party under the wind energy agreement, and the legal description of the property. The wind energy agreement or notice or memorandum evidencing a wind energy agreement must be indexed~~ UNTIL SO RECORDED, THE WIND ENERGY AGREEMENT IS NOT VALID AS AGAINST ANY PERSON WITH RIGHTS IN OR TO THE LAND SUBJECT TO THE AGREEMENT WHOSE INTEREST IS FIRST RECORDED, EXCEPT AS BETWEEN THE PARTIES TO THE WIND ENERGY AGREEMENT AND THOSE HAVING NOTICE OF THE AGREEMENT.

(c) THE COUNTY CLERK AND RECORDER SHALL INDEX A WIND ENERGY AGREEMENT in both the grantor and grantee indices under ~~the name of the owner of the surface estate and the lessee, easement holder, licensee, or contracting~~ NAMES OF EACH party ~~under~~ TO the wind energy agreement.

(d) THE PROVISIONS OF THIS SUBSECTION (2) APPLY EQUALLY TO ANY MODIFICATION, ASSIGNMENT, OR ENCUMBRANCE OF A WIND ENERGY AGREEMENT.

(3) (a) After a wind energy agreement has EXPIRED OR HAS BEEN terminated, THE WIND ENERGY DEVELOPER OF RECORD SHALL RECORD A RELEASE IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED.

~~(b) IF THE WIND ENERGY DEVELOPER OF RECORD FAILS TO RECORD A RELEASE IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED, the owner of the surface estate OR THE OWNER'S AGENT may request the wind energy developer OF RECORD to record a release of the wind energy agreement. or notice or memorandum evidencing a wind energy agreement in the office of the county clerk and recorder in the county where the land subject to the wind energy agreement is located. The release must include the name of the owner of the surface estate, the name of the lessee, easement holder, licensee, or contracting party under the wind energy agreement, the legal description of the property, and the original reception number or book and page number of the wind energy agreement. The release must be indexed in both the grantor and grantee indices under the name of the owner of the surface estate and the lessee, easement holder, licensee, or contracting party under the wind energy agreement. The owner of the surface estate or the owner's designee shall make the request in writing and deliver it~~ THE REQUEST MUST BE IN WRITING AND MUST BE DELIVERED personally or by certified mail, first class postage prepaid, return receipt requested, to the wind energy developer's last-known address of the WIND ENERGY DEVELOPER OF RECORD. WITHIN NINETY DAYS AFTER RECEIVING THE REQUEST, the wind energy developer OF RECORD shall record the release ~~within ninety days after the receipt of the request~~ IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY WHERE THE LAND SUBJECT TO THE AGREEMENT IS LOCATED.

(c) THE RELEASE MUST IDENTIFY THE WIND ENERGY AGREEMENT WITH REASONABLE CLARITY, INCLUDING THE NAMES OF THE PARTIES, THE LEGAL DESCRIPTION OF THE LAND SUBJECT TO THE AGREEMENT, AND THE APPLICABLE RECORDING INFORMATION OF THE AGREEMENT. THE COUNTY CLERK AND RECORDER SHALL INDEX THE RELEASE IN BOTH THE GRANTOR AND GRANTEE INDICES UNDER THE NAMES OF EACH PARTY IDENTIFIED IN THE RELEASE.

~~(b) (d) (I) The wind energy developer shall record the release within ninety days after the receipt of the request. If the wind energy developer OF RECORD fails to record the release REQUIRED BY THIS SUBSECTION (3) within ninety days after the receipt of RECEIVING the request, the wind energy developer OF RECORD is liable to the owner of the surface estate for any damages caused by the wind energy developer's failure. to record the release. A copy of the written request has the same force and effect as the original request in an action for damages.~~

(II) IF THE INTEREST OF THE WIND ENERGY DEVELOPER OF RECORD HAS BEEN TRANSFERRED BY AN INSTRUMENT THAT HAS NOT BEEN RECORDED, THE TRANSFEREE SHALL EITHER:

(A) RECORD THE INSTRUMENT BY WHICH THE TRANSFEREE ACQUIRED THE INTEREST AND THEREAFTER RECORD THE RELEASE REQUIRED BY THIS SUBSECTION (3); OR

(B) CAUSE THE WIND ENERGY DEVELOPER OF RECORD TO RECORD THE RELEASE REQUIRED BY THIS SUBSECTION (3).

(III) THE WIND ENERGY DEVELOPER OF RECORD AND EVERY TRANSFEREE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d) ARE JOINTLY AND SEVERALLY LIABLE FOR ANY DAMAGES CAUSED BY THE FAILURE OF THE WIND

ENERGY DEVELOPER OF RECORD TO RECORD THE RELEASE, AS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), OR OF A TRANSFEREE TO COMPLY WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH (d).

(4) Nothing in this article alters, amends, diminishes, or invalidates wind energy agreements or conveyances made or entered into prior to July 1, 2012. ~~so long as a contract, lease, memorandum, or other notice evidencing the acquisition, conveyance, or reservation of the wind energy rights is recorded in accordance with subsection (2) of this section by September 1, 2012.~~

(5) Nothing in this article restricts the transfer of ANY INTEREST OF A PARTY TO a wind energy agreement, including the transfer of the right of the owner of the surface estate to receive payments under the wind energy agreement.

**38-30.7-104. Expiration of rights under wind energy agreements.** (1) ~~Unless the owner of the surface estate and wind energy developer otherwise agree, all easement interests acquired after July 1, 2012, for the purpose of producing wind energy revert to the owner of the surface estate if wind energy production has ceased~~ EXCEPT AS OTHERWISE PROVIDED IN A WIND ENERGY AGREEMENT OR AN AMENDMENT TO THE AGREEMENT, ALL RIGHTS OF A WIND ENERGY DEVELOPER TO USE REAL PROPERTY FOR WIND ENERGY DEVELOPMENT OR PRODUCTION UNDER A WIND ENERGY AGREEMENT ENTERED INTO ON OR AFTER JULY 1, 2012, EXPIRE IF NO WIND-POWERED ENERGY GENERATION HAS OCCURRED UNDER THE AGREEMENT for a continuous period of fifteen years. ~~or if the generation of electricity by a turbine has not commenced within fifteen years after the execution of a wind energy agreement. Reversion of an interest~~ THE EXPIRATION OF RIGHTS under this section does not ~~transfer~~ MODIFY any obligation to restore or reclaim the surface estate THAT IS CONTAINED IN THE AGREEMENT OR IMPOSED BY LAW.

(2) ~~The lessee, easement holder, licensee, or contracting party under~~ AT ANY TIME AFTER A WIND ENERGY DEVELOPER HAS DETERMINED TO COMMENCE CONSTRUCTION OF WIND ENERGY GENERATING FACILITIES UNDER A RECORDED WIND ENERGY AGREEMENT, the wind energy agreement shall DEVELOPER MAY record in the office of the county clerk and recorder where the land subject to the wind energy agreement is located an affidavit stating ~~that the generation of electricity by a turbine has~~ THE DATE ON WHICH SUCH CONSTRUCTION commenced OR IS EXPECTED TO COMMENCE. If no such affidavit is recorded, then the wind energy agreement expires ~~by~~ IN ACCORDANCE WITH its own terms ~~If no terms are given, the wind energy agreement expires no more than~~ OR, IF NO EXPIRATION DATE IS SPECIFIED, fifteen years after the ~~execution~~ RECORDING of the wind energy agreement. The affidavit must include the name of the owner of the surface estate, ~~the name of the lessee, easement holder, licensee, or contracting party under~~ IDENTIFY the wind energy agreement WITH REASONABLE CLARITY, INCLUDING THE NAMES OF THE PARTIES, the legal description of the property ~~and the original reception number or book and page number of~~ SUBJECT TO THE AGREEMENT, AND THE APPLICABLE RECORDING INFORMATION of the wind energy agreement. The COUNTY CLERK AND RECORDER SHALL INDEX THE affidavit ~~must be indexed~~ in both the grantor and grantee indices under the ~~name of the owner of the surface estate and the lessee, easement holder, licensee, or contracting party under the wind energy agreement~~ NAMES OF ALL PARTIES IDENTIFIED IN THE AFFIDAVIT.

**38-30.7-105. Taxation.** Equipment used in the development of wind energy is exempt from the levy and collection of personal property tax until ~~such~~ THE equipment is first used pursuant to section 39-3-118.5, C.R.S.

**SECTION 2. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 13, 2015