

**House File 2389 - Introduced**

HOUSE FILE 2389  
BY WILLEMS

**A BILL FOR**

1 An Act relating to agreements between landholders and  
2 developers constructing wind energy facilities.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 558B.1 Definitions.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "*Land*" means real estate, any fixtures, and airspace  
5 above the real estate.

6 2. "*Landholder*" means a person holding a legal or equitable  
7 interest in land, including as a titleholder, leaseholder, or  
8 beneficiary.

9 3. "*Developer*" means a person who acquires an interest in  
10 land for purposes of constructing a wind energy facility.

11 4. "*Wind energy facility*" means a structure or equipment  
12 which has the primary purpose of supporting the generation and  
13 delivery of electricity of at least two megawatts powered by  
14 wind, and includes but is not limited to any of the following:

15 a. Primary structures or equipment such as foundations,  
16 walls, towers, supports, turbines, and blades.

17 b. Ancillary structures or equipment such as buildings,  
18 driveways, roadways, lots, ditches, fences, gates, transmission  
19 or distribution lines, and substations.

20 5. "*Wind energy facility agreement*" or "*agreement*" means a  
21 written arrangement in which a landholder transfers, conveys,  
22 or relinquishes an interest in land to a developer who acquires  
23 such interest and any attendant rights for the purpose of  
24 constructing a wind energy facility.

25 Sec. 2. NEW SECTION. 558B.2 Special terms.

26 1. A wind energy facility agreement may be in the form of a  
27 servitude, covenant, easement, deed restriction or condition,  
28 lease, lease purchase, lease option, contract, or contract  
29 option. The agreement shall be deemed to be an easement which  
30 shall run with the land benefited and burdened and shall  
31 terminate upon the conditions stated in the agreement.

32 2. Construction of a wind energy facility commences upon  
33 the modification of a site to install permanent structures  
34 and equipment associated with the wind energy facility.

35 Construction does not commence upon the occurrence of any of

1 the following:

2     *a.* Performance of engineering services or environmental  
3 studies.

4     *b.* Site preparation, including the removal of crops,  
5 trees, brush, or other vegetative growth; the construction  
6 of a driveway or road; general earth moving for leveling or  
7 compacting; or the installation of temporary utility services.

8     Sec. 3. NEW SECTION. 558B.3 Wind energy facility agreement  
9 — confidentiality provisions void.

10     A provision in a wind energy facility agreement that  
11 restricts a landholder who is a party to the agreement from  
12 disclosing the terms and conditions of the agreement is  
13 severable, void, and unenforceable.

14     1. The confidentiality provision is void whether the  
15 confidentiality provision is express or implied; oral  
16 or written; required or conditional; or contained in the  
17 agreement, or in a related document.

18     2. This section does not affect other provisions of a wind  
19 energy facility agreement or a related document which can be  
20 given effect without the voided provision.

21     3. This section does not require a party to an agreement to  
22 divulge information in the agreement to another person.

23     Sec. 4. NEW SECTION. 558B.4 Wind energy facility agreement  
24 — construction time limit.

25     A wind energy facility agreement terminates if construction  
26 of the wind energy facility has not commenced within three  
27 years after the effective date of the agreement. However, this  
28 period may be extended in writing by the parties.

29     Sec. 5. NEW SECTION. 558B.5 Wind energy facility agreement  
30 — financial assurance for decommissioning.

31     1. A wind energy facility agreement shall include a  
32 financial assurance for decommissioning the wind energy  
33 facility, which the developer shall have in place prior to  
34 construction.

35     2. The amount of financial assurance shall be sufficient to

1 pay all costs associated with the removal of the wind energy  
2 facility and the reclamation of the land at the end of the  
3 facility's useful life as stated in the agreement.

4 3. The financial assurance shall be in one of the following  
5 forms:

6 a. The deposit of moneys or government securities into an  
7 account segregated from the developer's assets and outside the  
8 developer's control, including but not limited to a trust or  
9 escrow account.

10 b. A certificate of deposit that is issued to the treasurer  
11 of state by an eligible lending institution as defined in  
12 section 12.32, if and to the extent allowed by the treasurer of  
13 state.

14 c. A surety in the form of a surety bond, letter of credit,  
15 or line of credit. The surety bond shall be executed by a  
16 surety company authorized to do business in this state, and the  
17 surety bond shall be continuous in nature.

18 4. The amount of financial assurance shall be payable to  
19 the landholder or the landholder's successor in interest if  
20 decommissioning does not occur.

21

EXPLANATION

22 GENERAL. This bill applies when a landowner agrees to  
23 allow the construction of a wind turbine on their land. The  
24 bill refers to the wind turbine and associated construction  
25 as a wind energy facility, and refers to the agreement as a  
26 wind energy facility agreement which may be in various forms  
27 including a servitude, covenant, easement, deed restriction or  
28 condition, lease, lease purchase, lease option, contract, or  
29 contract option. The bill provides that all such agreements  
30 are deemed easements.

31 CONFIDENTIALITY. The bill provides that any confidentiality  
32 provision in an agreement that restricts a party from  
33 disclosing the terms and conditions of the agreement is void.

34 CONSTRUCTION TIME LIMIT. The bill provides that a wind  
35 energy facility agreement terminates if construction of the

1 wind energy facility has not commenced within three years after  
2 the effective date of the agreement. However, this period may  
3 be extended by the parties.

4 FINANCIAL ASSURANCE. The bill provides that a wind energy  
5 facility agreement must include a form of financial assurance  
6 for decommissioning the facility, sufficient to pay all costs  
7 associated with its removal and the reclamation of the land at  
8 the end of the facility's useful life. The financial assurance  
9 must be in the form of a deposit of moneys or government  
10 securities into a type of trust or escrow account. It may also  
11 be a certificate of deposit, surety bond, letter of credit, or  
12 line of credit.