

House File 281 - Introduced

HOUSE FILE 281

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

6 2. "*Land*" means real estate, any fixtures, and airspace
7 above the real estate.

8 3. "*Landholder*" means a person holding a legal or equitable
9 interest in land, including as a titleholder, leaseholder, or
10 beneficiary.

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 allow
23 the construction of a wind turbine on the landowner's land.
24 The 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.