

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 568

Introduced by Dubas, 34; Haar, 21; Mello, 5.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to real estate; to amend sections 66-911.01
2 and 76-404, Reissue Revised Statutes of Nebraska; to
3 provide requirements and conditions for wind leases and
4 easements; to harmonize provisions; and to repeal the
5 original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 3 of this act:

2 (1) Decommissioning security means a specified amount of
3 money which is put aside by the wind developer to ensure there is
4 sufficient funding available for removal of a wind facility and
5 reclamation at the end of a wind development project;

6 (2) Development period means the time period used by the
7 wind developer to inspect and study the feasibility of a wind
8 development project on a parcel of land;

9 (3) Renewable energy means energy generated from natural
10 resources, including sun, wind, rain, geothermal, and biomaterial;

11 (4) Wind easement means a legal agreement detailing the
12 development period for the purposes of developing a wind facility;
13 and

14 (5) Wind facility means a facility consisting of two or
15 more wind turbines erected for the purpose of generating renewable
16 energy.

17 Sec. 2. When a wind lease is given on land situated
18 within the State of Nebraska, the recording of the lease in the
19 office of the register of deeds of the county in which the land
20 is located shall impart notice to the public of the validity and
21 continuance of the lease for the definite term expressed in the
22 lease. If the lease contains the statement of any contingency upon
23 the happening of which the term of any such lease may be extended,
24 the owner of the lease may, at any time before the expiration of
25 the definite term of the lease, file with the register of deeds

1 an affidavit setting forth the description of the lease, that
2 the affiant is the owner thereof, and the facts showing that the
3 required contingency has happened. This affidavit shall be recorded
4 by the register of deeds, and such record together with that of
5 the lease shall be due notice to the public of the existence and
6 continuing validity of the lease until the lease is forfeited,
7 canceled, set aside, or surrendered according to law. The lease
8 shall specify the amount of time allocated for an operational wind
9 facility, once any wind turbines have been constructed and begin to
10 generate electricity.

11 Sec. 3. (1) A wind easement on land situated within the
12 State of Nebraska shall be filed with the register of deeds of the
13 county in which the land is located and shall terminate after five
14 years. An annual easement fee shall be paid to a landowner for a
15 wind easement. If a wind developer has not started construction of
16 a wind facility on the land subject to the easement within five
17 years after the date of the easement, the easement shall terminate.

18 (2) A wind easement shall specify the amount of time
19 necessary for the development period. If the wind developer fails
20 to begin construction of a wind facility within the development
21 period, the wind easement shall terminate.

22 (3) A landowner may negotiate for payment for the use of
23 any of the following on his or her land:

24 (a) Roads;

25 (b) Transmission lines;

1 (c) Substations;
2 (d) Meteorological towers; and
3 (e) Access to in-holdings if land includes a large amount
4 of federal or state land within its boundaries.

5 (4) A landowner may specify in the lease any land feature
6 or characteristics that the landowner wishes to protect from wind
7 development, including, but not limited to:

8 (a) Riparian areas;
9 (b) Irrigation meadows;
10 (c) Boulder formations; and
11 (d) View sheds or any important or sensitive wildlife
12 habitat.

13 (5) A landowner shall explicitly reserve or waive the
14 following rights in a wind lease:

15 (a) Mineral exploration and development by the landowner;
16 (b) Hunting and fishing rights; and
17 (c) Water rights.

18 (6) The lease shall specify how much time the wind
19 developer is permitted to remove the wind turbines from the
20 land in the event of default or termination of a lease and the
21 decommissioning security.

22 (7) The lease shall provide for reclamation during
23 construction, operation, and repairs and after the wind facility
24 has been removed from the land. Reclamation measures shall identify
25 the means to keep track of the original condition of the land,

1 which improvements must be removed, how deep in the soil such
 2 removal should occur, how topsoil is to be stockpiled and stored
 3 during construction, how the soil will be decompacted, how roads
 4 will be reclaimed, how revegetation will occur, erosion issues,
 5 how seeding will occur, means to protect revegetation, methods to
 6 remove noxious weeds, dust control issues, and trash removal.

7 (8) A landowner shall have the right to terminate a
 8 lease if the wind developer fails to pay rent, fails to maintain
 9 adequate insurance, commits abandonment, fails to pay taxes, files
 10 for bankruptcy protection, or fails to neglect to perform any
 11 obligation set forth under the lease. The landowner shall give the
 12 wind developer a sixty-day notice to remedy any default prior to
 13 termination.

14 Sec. 4. Section 66-911.01, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 66-911.01 An instrument creating a lease or an option
 17 to lease real property or the vertical space above real property
 18 for a solar energy system or for a wind energy conversion system
 19 shall be created in writing and shall be filed, duly recorded,
 20 and indexed in the office of the register of deeds of the county
 21 in which the real property subject to the easement is located. An
 22 instrument creating a lease or an option to lease real property or
 23 the vertical space above real property for wind measuring equipment
 24 may be created in writing and may be filed, duly recorded, and
 25 indexed in the office of the register of deeds of the county in

1 which the real property subject to the easement is located. Such
2 lease or lease option document shall include, but the contents are
3 not limited to:

- 4 (1) The names of the parties;
- 5 (2) A legal description of the real property involved;
- 6 (3) The nature of the interest created;
- 7 (4) The consideration paid for the transfer; and
- 8 (5) The terms or conditions, if any, under which the
9 interest may be revised or terminated.

10 A wind easement and lease shall also be subject to
11 sections 1 to 3 of this act.

12 Sec. 5. Section 76-404, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 76-404 Corporations incorporated under the laws of the
15 United States of America, or under the laws of any state of the
16 United States of America, or any foreign corporation or any alien,
17 doing business in this state, may acquire, own, hold, or operate
18 leases for oil, gas, or other hydrocarbon substances, or wind for
19 a period as long as ten years and as long thereafter as oil, gas,
20 or other hydrocarbon substances or wind shall or can be produced in
21 commercial quantities.

22 Sec. 6. Original sections 66-911.01 and 76-404, Reissue
23 Revised Statutes of Nebraska, are repealed.