

## LEGISLATIVE BILL 140

Approved by the Governor March 13, 1997

Introduced by Preister, 5; Bromm, 23; Hartnett, 45

AN ACT relating to wind energy; to amend sections 66-901, 66-902, and 66-910 to 66-914, Reissue Revised Statutes of Nebraska; to define terms; to provide for wind energy easements; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 66-901, Reissue Revised Statutes of Nebraska, is amended to read:

66-901. The Legislature hereby finds and declares that the use of solar energy and wind energy in Nebraska: (1) Can help reduce the nation's reliance upon irreplaceable domestic and imported fossil fuels; (2) can reduce air and water pollution resulting from the use of conventional energy sources; (3) requires effective legislation and efficient administration of state and local programs to be of greatest value to its citizens; and (4) is of such importance to the public health, safety, and welfare that the state should take appropriate action to encourage its use.

As the use of solar energy and wind energy devices increases, the possibility of future shading and obstruction of such devices by structures or vegetation will also increase. The Legislature therefore declares that the purpose of sections 66-901 to 66-914 and sections 3 to 5 and 8 of this act is to promote the public health, safety, and welfare by protecting access to solar skyspace and wind energy as provided in sections 66-901 to 66-914 and sections 3 to 5 and 8 of this act.

Sec. 2. Section 66-902, Reissue Revised Statutes of Nebraska, is amended to read:

66-902. As used in For purposes of sections 66-901 to 66-914 and sections 3 to 5 and 8 of this act, unless the context otherwise requires, the definitions found in sections 66-903 to 66-909 shall be used and sections 3 to 5 of this act apply.

Sec. 3. Wind energy shall mean the use of wind to produce electricity through the use of a wind energy conversion system.

Sec. 4. Wind energy conversion system shall mean any device, supporting structure, mechanism, or series of mechanisms that uses wind for the production of electricity or a mechanical application.

Sec. 5. Wind energy easement shall mean any easement, covenant, or condition designed to insure the undisturbed flow of wind across the real property of another.

Sec. 6. Section 66-910, Reissue Revised Statutes of Nebraska, is amended to read:

66-910. Any property owner may grant a solar skyspace easement or wind energy easement in the same manner and with the same effect as a conveyance of any other interest in real property. The easement shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the solar skyspace easement is located. No duly recorded solar skyspace easement shall be unenforceable on account of lack of privity of estate or privity of contract. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar skyspace easement or wind energy easement may terminate upon the conditions stated therein or by agreement of the owners of the lands benefited and burdened.

Sec. 7. Section 66-911, Reissue Revised Statutes of Nebraska, is amended to read:

66-911. Any deed, will, or other instrument that creates a solar skyspace easement or wind energy easement shall may include, but the contents are not limited to:

(1) A description of the real property subject to the solar skyspace easement or wind energy easement and a description of the real property benefiting from the solar skyspace easement;

(2) A description of (a) the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar skyspace easement extends over the real property subject to the solar skyspace easement, (b) the dimensions of the wind energy easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed, or (c) any other

description which defines the three-dimensional space, or the place and times of day in which an obstruction to solar energy or wind energy is prohibited or limited;

(3) Any terms or conditions under which the solar skyspace easement is granted or may be terminated;

(4) Any provisions for compensation of the owner of the real property benefiting from the solar skyspace easement in the event of interference with the enjoyment of the solar skyspace easement, or compensation of the owner of the real property subject to the solar skyspace easement for maintaining the solar skyspace easement; and

(5) Any other provisions necessary or desirable to effect the purpose of the instrument.

Sec. 8. An instrument creating a lease or an option to lease real property or the vertical space above real property for a solar energy system or for a wind energy conversion system shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the easement is located. An instrument creating a lease or an option to lease real property or the vertical space above real property for wind measuring equipment may be created in writing and may be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the easement is located. Such lease or lease option document shall include, but the contents are not limited to:

(1) The names of the parties;

(2) A legal description of the real property involved;

(3) The nature of the interest created;

(4) The consideration paid for the transfer; and

(5) The terms or conditions, if any, under which the interest may be revised or terminated.

Sec. 9. Section 66-912, Reissue Revised Statutes of Nebraska, is amended to read:

66-912. A solar skyspace easement or wind energy easement may be enforced by injunction or proceedings in equity or other civil action.

Sec. 10. Section 66-913, Reissue Revised Statutes of Nebraska, is amended to read:

66-913. All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy and wind energy use and the protection of access to solar energy and wind energy in all applicable zoning regulations or ordinances and comprehensive development plans. Such considerations may include, but not be limited to, regulation of height, location, setback, and use of structures, the height and location of vegetation with respect to property boundary lines, the type and location of energy systems or their components, and the use of districts to encourage the use of solar energy systems and wind energy conversion systems and protect access to solar energy and wind energy. Comprehensive development plans may contain an element for protection and development of solar energy and wind energy access which will promote energy conservation and ensure coordination of solar energy and wind energy use with conventional energy use.

Sec. 11. Section 66-914, Reissue Revised Statutes of Nebraska, is amended to read:

66-914. When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems or wind energy conversion systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy or wind energy if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance.

Sec. 12. Original sections 66-901, 66-902, and 66-910 to 66-914, Reissue Revised Statutes of Nebraska, are repealed.