

LEGISLATIVE BILL 235

Approved by the Governor February 11, 2010

Introduced by Adams, 24; Howard, 9.

FOR AN ACT relating to school lands; to provide for leases involving the production of solar energy or wind energy; and to declare an emergency.

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

Section 1. Leases involving the production of wind or solar energy on lands under the control of the Board of Educational Lands and Funds shall be regulated by sections 1 to 5 of this act.

Sec. 2. For purposes of sections 1 to 5 of this act:

(1) Board means the Board of Educational Lands and Funds;

(2) Lease means any lease, easement, covenant, or other such contractual arrangement;

(3) Lessee means any individual, corporation, or other entity that enters into a lease with the board;

(4) Solar energy means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy; and

(5) Wind energy means the use of wind to produce electricity.

Sec. 3. The board may authorize leases of any school or public lands belonging to the state and under its control for exploration and development of wind or solar energy for such durations and under such terms and conditions as the board shall deem appropriate, except that the initial term for any such wind energy lease and any amendment thereto shall not exceed forty years. In making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such leases. Any such lease authorized by the board 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 lease is located. Such leases shall run with the land benefited and burdened and shall include, as applicable, the contents specified in sections 66-911 and 66-911.01.

Sec. 4. (1) If a wind or solar energy lease is authorized by the board on land already being leased for agricultural or other purposes by a prior lessee, the existing rights of the prior lessee shall not be impaired, and the board shall reduce the rental amount due from such prior lessee in proportion to the amount of land that is removed from use as a result of the wind or solar energy lease.

(2) A lessee for agricultural or other purposes shall be compensated for all damages to personal property owned by such lessee or to growing crops, including grass, caused by operations under a concurrent lease of such land for wind or solar energy purposes, and the board shall require the lessee under the wind or solar energy lease to provide such insurance and indemnity agreements which the board determines are necessary for the protection of the state and its lessees.

(3) If a wind or solar energy lease is authorized by the board on land concurrently being leased for agricultural purposes, the lessee for agricultural purposes shall have priority as to the use of the water on the land, but lessees for other purposes, including wind or solar energy lessees, shall be allowed reasonable use of the water on the land.

Sec. 5. The board may adopt and promulgate such rules and regulations as it shall deem necessary and proper to regulate the leasing of school and public lands for wind or solar energy exploration and development pursuant to sections 1 to 5 of this act and to prescribe such terms and conditions, including bonds, as it shall deem necessary in order to protect the interests of the state and its lessees.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.