

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB568

Hearing Date: Wednesday February 18, 2009
Committee On: Natural Resources
Introducer: Dubas
One Liner: Provide requirements for wind leases and easements

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Carlson, Cook, Dubas, Haar, Langemeier, McCoy, Schilz
Nay:		
Absent:	1	Senator Fischer
Present Not Voting:		

Proponents:

Senator Annette Dubas
Randy Pryor
Mike Donahue
Robert Byrnes
Keith Dittrich
Steve Eveans
Darrel Hayek

Representing:

Introducer
Self
Midwest Wind Energy
Nebraska Renewable Energy Association
American Corn Growers Association
Windrow Energies, LLC
Saline County Wind Association

Opponents:

Jessica Kolterman

Representing:

Nebraska Farm Bureau

Neutral:

David Rich
John K. Hansen
Elaine Menzel
Reed Bartels

Representing:

Nebraska Public Power District
Nebraska Farmers Union
Nebraska Association of County Officials
Tradewind Energy

Summary of purpose and/or changes:

LB 568, in its original language, would have created standards for wind leases and easements between landowners and wind energy developers.

Section 1 contains new language defining decommissioning security, development period, renewable energy, wind easement, and wind facility.

Section 2 contains new language stating that a wind lease is to be recorded with the register of deeds of the county where the land is located. The recording, and any affidavit attesting to the extension of the lease, provides due notice to the public of the lease. The lease is to specify the amount of time allocated for an operational wind facility, once it has been constructed and begins generating electricity.

Section 3 contains new language stating that a wind easement is to be filed with the register of deeds of the county where the land is located and is to terminate after five years. An annual easement fee is to be paid to the landowners, and if a developer has not started construction within five years, the easement terminates. If a developer has not started construction within the development period specified in the easement, the easement terminates.

States a landowner may negotiate for payment on the following uses of his or her land: roads, transmission lines, substations, meteorological towers, and access to in-holdings.

Also, a landowner may protect from wind development land features in a lease, such as: riparian areas, irrigation meadows, boulder formations, and view sheds or wildlife habitat.

Last, a landowner must explicitly reserve or waive these rights in a wind lease: mineral exploration and development, hunting and fishing rights, and water rights.

The lease is to provide the amount of time needed for turbine removal after a lease termination, and provide for reclamation measures. The landowner may terminate a lease if a developer fails to meet its obligations, after a 60-day notice to remedy is provided.

Section 4 amends section 66-911.01, relating to solar energy or wind energy conversion system leases, by clarifying that a wind easement or lease under this section is to also meet the conditions of this bill.

Section 5 amends section 76-404, relating to foreign and alien ownership of real property, by adding wind to the list of leased matter (oil, gas, or other hydrocarbon substances) that a foreign corporation and alien doing business in the state may acquire, own, hold, or operate.

Section 6 repeals the original sections.

Explanation of amendments:

AM 732 would replace the bill and does the following:

Section 1 provides new definitions for decommissioning security and wind agreement.

Section 2 contains new language providing: that the wind agreement runs with the land benefited and burdened and terminates according to the terms of the agreement, BUT the initial term is not to exceed fifty years, and the agreement terminates if development has not started within ten years. The parties may agree to extend the ten year requirement.

Section 3 provides that a wind agreement is to comply with section 66-911.01, which contains provisions for solar energy or wind energy conversion system leases.

Section 4 provides new language stating that no interest in any resource on land associated with the production, or potential production, of wind energy may be severed from the surface estate. However, such interests may be granted for an initial period of no more than fifty years.

Section 5 amends section 66-911.01, relating to solar energy or wind energy conversion system leases, by replacing the term "lease" with "land right"; adding that the instrument contents are to contain a description of the improvements the developer intends to make on the real property and a description of any decommissioning security; and rewording current language.

Section 6 repeals the original section.

Chris Langemeier, Chairperson