

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2261

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2261
2/2/2023

A bill relating to wind energy facility liens.

9:00 AM Chairman Patten opened the meeting.

Present were Chairman Patten and Senators, Beard, Boehm, Kannianen and Kessel. Senator Magrum was absent.

Discussion Topics:

- Land improvements
- Contractors
- Reclamation
- Developers
- Subcontractors

9:01 AM Senator Kannianen introduced the bill.

9:05 AM Troy Coons, Chairman, Northwest Landowners Association testified in favor of the bill and provided written testimony #18779.

9:09 AM Chairman Patten closed the public meeting.

9:09 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2261
2/2/2023

A bill relating to wind energy facility liens.

11:41 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Beard, Boehm, Kannianen and Kessel were present.
Senator Magrum is absent.

Discussion Topics:

- Committee action

11:40 AM Senator Beard moved to Do Pass the bill. Motion seconded by Senator Boehm.

11:40 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	AB
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passed 5-0-1.

Senator Kannianen will carry the bill.

This bill does not affect workforce development.

11:42 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2261: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2261 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2261

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2261
3/9/2023

Relating to wind energy facility liens.

9:38 AM

Vice Chairman Anderson opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Representative Ruby.

Discussion Topics:

- Subcontractors
- Landowners

Sen Kannianen, District 4, introduced SB 2261, oral testimony
Troy Coons, Chairman, NW Landowners Association, Testimony 23183

9:44 AM Vice Chairman Anderson closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2261
3/23/2023

Relating to wind energy facility liens.

9.34 AM Chairman Porter opened the meeting.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby.
Absent: Representative Kasper

Discussion Topics:

- Committee action

Rep Roers Jones moved to adopt amendment 23.0938.01001 (Testimony #26488, #26489), seconded by Rep Olson. Voice vote, motion carried.

Rep Roers Jones moved a Do Pass as Amended, seconded by Rep Olson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	AB
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	AB
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

9-0-5 Motion carried. Rep Roers Jones is carrier.

9:37 AM Meeting adjourned.

Kathleen Davis, Committee Clerk

AG
3-23-23
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "17-04-07" insert "and 35-27-13"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

35-27-13. How lien perfected - Construction lien recorded.

Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days after all the person's contribution is done, and having complied with the provisions of this chapter, a lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted. Unless the owner of the freehold estate also is the owner of the leasehold for wind turbines or an electric energy conversion facility for which the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or associated facility under section 17-04-07, the recorded lien must contain the following statement in at least sixteen-point type:

The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2261: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). SB 2261 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "17-04-07" insert "and 35-27-13"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

35-27-13. How lien perfected - Construction lien recorded.

Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days after all the person's contribution is done, and having complied with the provisions of this chapter, a lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted. Unless the owner of the freehold estate also is the owner of the leasehold for wind turbines or an electric energy conversion facility for which the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or associated facility under section 17-04-07, the recorded lien must contain the following statement in at least sixteen-point type:

The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate."

Renumber accordingly

2023 CONFERENCE COMMITTEE

SB 2261

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 2261
4/18/2023
Conference Committee

A bill relating to wind energy facility liens.

10:04 AM Chairman Kannianen opened the meeting.

Chairman Kannianen and Senators Beard, Boehm and Representatives Roers Jones, Heinert and Novak are present.

Discussion Topics:

- Infrastructure
- Amendments

10:04 AM The committee has discussion on the bill.

10:08 AM Representative Roers Jones moved that the House Recede from House amendments and amend the bill with LC 23.0938.01002. #27655, #27656.
Motion is seconded by Representative Novak.

10:13 AM Roll call vote was taken.

Motion carries 5-1-0.

Senator Kannianen will carry the bill for the Senate.

Representative Roers Jones will carry the bill for the House.

10:13 AM Chairman Kannianen closed the meeting.

Rick Schuchard, Committee Clerk

MJ
9/18/23
191

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

That the House recede from its amendments as printed on pages 1210 and 1211 of the Senate Journal and page 1357 of the House Journal and that Senate Bill No. 2261 be amended as follows:

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "17-04-07" insert "and 35-27-13"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

35-27-13. How lien perfected - Construction lien recorded.

Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days after all the person's contribution is done, and having complied with the provisions of this chapter, a lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted. Unless the owner of the freehold estate also is the owner of the leasehold for wind turbines or an electric energy conversion facility for which the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or associated facility under section 17-04-07, the recorded lien must contain the following statement in at least sixteen-point type:

The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate.

Failure to include the statement required under this section in the statement of the lien does not invalidate a lien on the leasehold or electric energy conversion facility."

Renumber accordingly

**2023 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2261

Senate Energy and Natural Resources Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Roers Jones Seconded by: Novak

Senators	4/18		Yes	No	Representatives	4/18		Yes	No
Kannianen	P		X		Roers Jones	P		X	
Beard	P		X		Heinert	P			X
Boehm	P		X		Novak	P		X	
Total Senate Vote			3	0	Total Rep. Vote			2	1

Vote Count Yes: 5 No: 1 Absent: 0

Senate Carrier Kannianen House Carrier Roers Jones

LC Number 23.0938 . 01002 of amendment

LC Number 23.0938 . 03000 of engrossment

Emergency clause added or deleted
 Statement of purpose of amendment
 Adopt amendment LC 23.0938.01002.

Insert LC: 23.0938.01002
Senate Carrier: Kannianen
House Carrier: Roers Jones

REPORT OF CONFERENCE COMMITTEE

SB 2261: Your conference committee (Sens. Kannianen, Beard, Boehm and Reps. Roers Jones, Heinert, Novak) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1210-1211, adopt amendments as follows, and place SB 2261 on the Seventh order:

That the House recede from its amendments as printed on pages 1210 and 1211 of the Senate Journal and page 1357 of the House Journal and that Senate Bill No. 2261 be amended as follows:

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "17-04-07" insert "and 35-27-13"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

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The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate.

Failure to include the statement required under this section in the statement of the lien does not invalidate a lien on the leasehold or electric energy conversion facility."

Renumber accordingly

SB 2261 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2261

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2261
Senate Energy and Natural Resources Committee
February 2, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2261 because it is a practical solution to an unintended consequence of prior legislation. In 2019 the Legislative Assembly passed Senate Bill 2254, which removed any ability to obtain a lien under chapter 35-27 of the Century Code. This was a very well-timed and important step because it saved many landowners from having significant liens attached to their property as a result of disputes between contractors that had nothing to do with them. The law had the intended effect very shortly after it went into effect and we appreciate the efforts to pass that important legislation.

We have learned that disputes have arisen related to wind projects, however, and that this removal of the liens has resulted in smaller North Dakota subcontractors who do not get paid by large general contractors without important remedies. We have crafted a solution that would allow those developers to attach a lien to the actual improvements they construction, such as the wind towers and turbines, but the lien would not attach to the real property. This preserves the lien remedy for the contractors as to their rights in the towers and turbines, but still protects landowners from having liens placed on their land. We feel it is a practical solution with benefits for everyone and ask you vote do pass on SB 2261.

Thank you,

Troy Coons
Northwest Landowners Association

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2261
House Energy and Natural Resources Committee
March 9, 2023

Chairman Porter and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2261 because it is a practical solution to an unintended consequence of prior legislation. In 2019 the Legislative Assembly passed Senate Bill 2254, which removed any ability to obtain a lien under chapter 35-27 of the Century Code. This was a very well-timed and important step because it saved many landowners from having significant liens attached to their property as a result of disputes between contractors that had nothing to do with them. The law had the intended effect very shortly after it went into effect and we appreciate the efforts to pass that important legislation.

We have learned that disputes have arisen related to wind projects, however, and that this removal of the liens has resulted in smaller North Dakota subcontractors who do not get paid by large general contractors without important remedies. We have crafted a solution that would allow those developers to attach a lien to the actual improvements they construction, such as the wind towers and turbines, but the lien would not attach to the real property. This preserves the lien remedy for the contractors as to their rights in the towers and turbines, but still protects landowners from having liens placed on their land. We feel it is a practical solution with benefits for everyone and ask you vote do pass on SB 2261.

Thank you,

Troy Coons
Northwest Landowners Association

23.0938.01001
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
March 22, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "17-04-07" insert "and 35-27-13"

Page 1, after line 11, insert:

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The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate."

Renumber accordingly

23.0938.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2261

Introduced by

Senators Kannianen, Kreun, Rust

Representatives B. Anderson, Fegley, Longmuir

1 | A BILL for an Act to amend and reenact ~~section~~sections 17-04-07 and 35-27-13 of the North
2 | Dakota Century Code, relating to wind energy facility liens.

3 | **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 | **SECTION 1. AMENDMENT.** Section 17-04-07 of the North Dakota Century Code is
5 | amended and reenacted as follows:

6 | **17-04-07. Wind energy facility liens.**

7 | ~~Wind turbines~~For any wind turbine and associated facilities that are part of an electric
8 | energy conversion facility designed for or capable of generation by wind energy conversion
9 | exceeding one-half megawatt of electricity ~~may not be considered improvements for purposes~~
10 | ~~of chapter 35-27~~and for which a lien is provided under chapter 35-27, the lien is upon only the
11 | improvement and not upon the land.

12 | **SECTION 2. AMENDMENT.** Section 35-27-13 of the North Dakota Century Code is
13 | amended and reenacted as follows:

14 | **35-27-13. How lien perfected - Construction lien recorded.**

15 | Every person desiring to perfect the person's lien shall record with the recorder of the
16 | county in which the property to be charged with the lien is situated, within ninety days after all
17 | the person's contribution is done, and having complied with the provisions of this chapter, a lien
18 | describing the property and stating the amount due, the dates of the first and last contribution,
19 | and the person with which the claimant contracted. Unless the owner of the freehold estate
20 | also is the owner of the leasehold for wind turbines or an electric energy conversion facility for
21 | which the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or
22 | associated facility under section 17-04-07, the recorded lien must contain the following
23 | statement in at least sixteen-point type:

1
2
3

The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate.

23.0938.01002
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
April 11, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

That the House recede from its amendments as printed on pages 1210 and 1211 of the Senate Journal and page 1357 of the House Journal and that Senate Bill No. 2261 be amended as follows:

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Page 1, after line 11, insert:

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Failure to include the statement required under this subsection in the statement of the lien does not invalidate a lien on the leasehold or electric energy conversion facility."

ReNUMBER accordingly

23.0938.01002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2261

Introduced by

Senators Kannianen, Kreun, Rust

Representatives B. Anderson, Fegley, Longmuir

1 | A BILL for an Act to amend and reenact ~~section~~sections 17-04-07 and 35-27-13 of the North
2 | Dakota Century Code, relating to wind energy facility liens.

3 | **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 | **SECTION 1. AMENDMENT.** Section 17-04-07 of the North Dakota Century Code is
5 | amended and reenacted as follows:

6 | **17-04-07. Wind energy facility liens.**

7 | ~~Wind turbines~~For any wind turbine and associated facilities that are part of an electric
8 | energy conversion facility designed for or capable of generation by wind energy conversion
9 | exceeding one-half megawatt of electricity ~~may not be considered improvements for purposes~~
10 | ~~of chapter 35-27~~and for which a lien is provided under chapter 35-27, the lien is upon only the
11 | improvement and not upon the land.

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17 | the person's contribution is done, and having complied with the provisions of this chapter, a lien
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20 | is the owner of the leasehold for wind turbines or an electric energy conversion facility for which
21 | the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or
22 | associated facility under section 17-04-07, the recorded lien must contain the following
23 | statement in at least sixteen-point type:

1 The lien in this chapter attaches only to the leasehold for an electric energy conversion
2 facility or wind turbines for which labor, materials, or services were supplied. This lien
3 does not attach to or encumber the real property or freehold estate.
4 Failure to include the statement required under this subsection in the statement of the lien does
5 not invalidate a lien on the leasehold or electric energy conversion facility.