

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1383
(Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt)
(Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-01 and a new section to chapter 49-22 of the North Dakota Century Code, relating to the creation of an environmental impact mitigation fund and to mitigating direct environmental impacts; to amend and reenact subsection 1 of section 4.1-01-18, sections 49-22-05.1 and 49-22-09, and subsection 4 of section 49-22-16 of the North Dakota Century Code, relating to the federal environmental law impact review committee, exclusion and avoidance areas, the factors considered by the public service commission when evaluating and designating sites, corridors, and routes, and state agency rules; to provide for a report to the legislative management; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The federal environmental law impact review committee consists of:
 - a. The commissioner, who shall serve as the chairman;
 - b. The governor or the governor's designee;
 - c. The majority leader of the house of representatives, or the leader's designee;
 - d. The majority leader of the senate, or the leader's designee;
 - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
 - f. ~~One individual appointed by the lignite energy council;~~
 - g. One individual appointed by the North Dakota corn growers association;
 - ~~h-g.~~ One individual appointed by the North Dakota grain growers association;
 - ~~i.~~ One individual appointed by the North Dakota petroleum council;
 - ~~j-h.~~ One individual appointed by the North Dakota soybean growers association; and
 - ~~k-i.~~ One individual appointed by the North Dakota stockmen's association;
 - ~~j.~~ One individual appointed by the North Dakota farm bureau;
 - ~~k.~~ One individual appointed by the North Dakota farmers union;
 - ~~l.~~ The chairman of the public service commission or the chairman's designee;
 - ~~m.~~ The state engineer or the state engineer's designee;
 - ~~n.~~ The director of the game and fish department, or the director's designee;
 - ~~o.~~ The director of the department of transportation, or the director's designee;

- p. The director of the department of environmental quality, or the director's designee;
- q. One representative of an investor-owned utility company;
- r. One representative from the North Dakota association of rural electric cooperatives; and
- s. Two individuals from the energy community appointed by the commissioner.

SECTION 2. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Environmental impact mitigation fund - Report to legislative management - Continuing appropriation.

1. There is created in the state treasury the environmental impact mitigation fund. The fund consists of all moneys deposited in the fund under section 5 of this Act. All moneys in the fund are appropriated to the commissioner on a continuing basis for distribution by the agriculture commissioner to landowners for the mitigation of agricultural land impacted by development as set forth under subsection 2.
2. Funding may be used only for:
 - a. Contracting for consultation with environmental scientists or engineers for relevant services to implement mitigation required from the impact of development; and
 - b. Reclamation or mitigation of adverse impacts from development.
3. The commissioner is not subject to chapter 54-44.4 when contracting for services under this chapter.
4. The federal environmental law impact review committee shall establish criteria for disbursement of environmental impact funds.
5. The commissioner shall make disbursements based upon the determinations made by the federal environmental law impact review committee.
6. For purposes of this section, the federal environmental law impact review committee shall hold meetings as the chairman determines necessary at a time and place set by the chairman. Upon written request of any four members, the presiding officer shall call a special meeting of the committee.
7. The federal environmental law impact review committee shall make determinations for the disbursement of grants in accordance with subsection 2 and provide those determinations to the commissioner.
8. The federal environmental law impact review committee shall provide a biennial report to the legislative management.
9. For purposes of this section, the environmental impact mitigation fund is not subject to subsection 2 of section 4.1-01-18.

SECTION 3. AMENDMENT. Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

2. The commission may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability.
3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
- ~~3.4.~~ Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 1. a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 2. b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
 3. c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
 4. d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
 5. e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 6. f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 7. g. The direct and indirect economic impacts of the proposed facility.
 8. h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 9. i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.

40. j. The effect of the proposed site or route on areas ~~which are~~ unique because of biological wealth or because ~~they~~the areas are habitats for rare and endangered species.
41. k. Problems raised by federal agencies, other state agencies, and local entities.
2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

SECTION 5. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Mitigating direct environmental impacts.

1. An applicant may elect to provide payment to mitigate any assessed adverse direct environmental impacts of a proposed site, corridor, route, or facility. The applicant may elect to provide the payment to the agriculture commissioner.
2. The agriculture commissioner shall deposit into the environmental impact mitigation fund any moneys paid to mitigate the adverse direct environmental impacts of a proposed site, corridor, route, or facility.

SECTION 6. AMENDMENT. Subsection 4 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~No~~A site or route ~~shall~~may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at least thirty days before the public hearing on an application for a certificate, a permit, or a waiver, which position ~~shall~~ clearly must state whether the site, corridor, or route being considered for designation will be in compliance with ~~such~~the agency's rules. For purposes of this chapter it ~~shall be~~ presumed ~~that~~ a proposed facility will be in compliance with a state agency's rules if ~~such~~the agency fails to present its position on the proposed site, corridor, or route at least thirty days before the appropriate public hearing.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of providing grants to political subdivisions for the mitigation of environmental impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1383.

House Vote: Yeas 72 Nays 19 Absent 3

Senate Vote: Yeas 41 Nays 6 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State