

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1/456

2007 HOUSE NATURAL RESOURCES

HB 1456

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1456

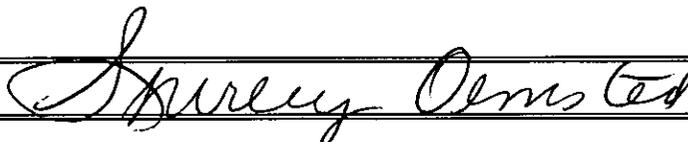
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2726

Committee Clerk Signature



Minutes:

**Chairman Porter** opened the hearing on HB 1456 and asked the clerk to read the title.

**Representative Jon Nelson** came forward to introduce HB 1456. See written testimony marked as Item #1. There is a situation that did occur in Dickey County and I would like to introduce some of the members of that township that have some sophistication in the area of wind development and this is the only area that I am aware of that has zoning regulations in place. It is very unlikely that most local townships would have the ability to enact that and I think that is the responsibility of the state. With us today is Mr. Brad Crabtree whom all of you know and Mr. Mark Flaten who is also a township official and they will talk about their experience in the Spring Valley Township and I am sure that many others will follow with testimony as well. He would urge a do pass and would stand for questions.

**Representative Keiser** asked if the PSC would be doing the study and reporting to the Legislative Council. Why hasn't the PSC done this study already? What are we paying them for?

**Representative Nelson** said he couldn't answer that. I think it is a very good question. This is certainly a small step to make from standpoint. I would like to think that we as a Legislative body would be ready to take this issue and move with it, but you know numbers as well as I do

and we have to start somewhere. I certainly would support a more aggressive approach and looking forward rather than back, I cannot answer that question why the PSC hasn't responded in a more timely fashion. We are here today and we can start here.

**Chairman Porter** said that one or two sessions ago we removed the siting requirements completely and took them off the books. The PSC has no authority on wind projects below 100 MW. What would happen if we would just put that authority back in the game and have the PSC doing the siting projects just like other industries moving into the area?

**Representative Nelson** said it was last session. He said he voted in favor of that bill as did many of us. Quite honestly as I look back today, I think that was a mistake. I think the PSC should have oversight on commercial development. How you define that, I am not sure. I

think it needs to be tightened up on those under 100 MW. Maybe there should be some less restrictive approaches. I think we went too far in that legislation and I think that would be a good first step to get the PSC back into commercial application oversighting and I think that is good for the long term industry. Landowners and the state of North Dakota need the help and the guidance from the state as they need in so many other areas not only in energy development but in feed lot applications and other areas where the State Health Department has a template to draw from. I am a township official and it is difficult for me to fathom dealing with some of these issues. We deal with loads of gravel and putting in roads and that is about the extent of our sophistication in these local governments. To have to develop zoning regulations for commercial wind energy applications it is past the level of sophistication that we can deal with.

**Chairman Porter** asked if he would have any information or input on the number that we would bring back to the PSC in the siting process. Not only would it address the concerns that you bring forward today but it would also address those issues on decommissioning as it would

bring them back in under their regulation. If we started out at a 25 MW energy project, or is there a number out there that you have been in discussions with that would work?

**Representative Nelson** said that his suggestion would be that this is a negotiated number that people in the industry such as commercial applicators and private applicators would have better idea on. It would be a number that could be reasonably decided upon. I don't know what it is and I wouldn't make a determination on it. In my district we do have wind farms that are under that 100 MW threshold and there is one proposed over that threshold. There is potential for smaller applications as well. I think the industries and the utilities, the stakeholders, need to be brought together to do that. This is one thing that the study can take care of. Do we need two years to get there? I don't think so. I think they can be brought together and I would think that most of those people are in the room today. An attempt could be made to bring them together sooner than that.

**Chairman Porter** asked if he would be opposed to use this bill as a vehicle to do that.

**Representative Nelson** said as usual he is open to almost everything.

**Chairman Porter** said he should know the deadline they are up against with the appropriation. A choice has to be made if we are going to use this bill as the vehicle to do that and we all have to be in agreement to strip the appropriation off and keep it here for another week and make it into that vehicle or we are going to have to make a determination to vote it up or down and rerefer it to appropriations. I am interested in your input as to what you would like to do.

**Representative Nelson** said he was very open to making this study a bill that digs deeper and I would work very closely with this Committee if that is what you feel has some value. This could be a vehicle in my opinion.

**Commissioner Roger Johnson** of the State Agriculture Commissioner came forwarding support of HB 1456. See written testimony attached marked as Item #2. He thinks that this is

a very sensible approach and following up on your question Mr. Chairman, if you want to dig deeper, I think that may be a sensible approach as well. There are a lot of moving parts to this and there are a lot of people who have very strong views and the industry is certainly among them. It is important that we get this right. North Dakota is number one in the nation in terms of wind energy potential. There are lots of issues in terms of trying to develop that potential but certainly we should do what we can to solve the local issues in a fashion that is beneficial to both the industry and the local land owner. I think that is really at the heart of this particular bill. The issue that arose in Dickey County underscored in my mind a couple of issues; one of which is where should the number be. Should it be 100 or should it be another number as you have been talking about. Another very simple and important issue in my mind is what about the private property rights of folks who might be adjacent to a sight where a wind tower happens to be. If you want to put it on or very near a section line and if the wind resources are being drawn from property across that section line, it seems that we need to have a mechanism for compensating people that are both using the land and are contributing the resources. It was my understanding that this bill was going to be a vehicle to discuss some of those issues as well. My mind tells me that this should not be that complicated. We do this with oil production down below the ground in places we cannot even see visually. We figure out how to attribute the value of that oil to adjacent resource owners and this certainly should not be that difficult to do it on top of the ground as well. I suspect that while this arose in Dickey County, this is an issue that has statewide appeal and I think this bill was introduced in a fashion to try to bring some very thoughtful considerate discussion and deliberation as to how we can deal with some of these issues.

**Chairman Porter** asked for further testimony in favor of HB 1456.

**Mr. Mark Flaten**, Chairman of the Spring Valley Township from Dickey County came forward in support of HB 1456. See written testimony marked as Item #3. He wanted to address the issue that Representative Nelson said he thought that they were the only township that has used its wind ordinance that was developed and since we did that other townships in Dickey County have adopted that policy so we are not the only ones with that anymore. He urged a do pass to do this study.

**Chairman Porter** asked what is the population of your township.

**Mr. Flaten** said 32 people. He said there are 7 kids and the rest are husbands and wives.

**Chairman Porter** asked him to explain briefly what your ordinance does or is currently doing.

**Mr. Flaten** said it does a lot of things. It sets up a guideline for how far a turbine can be from a property line depending on the size of the turbine and there are lots of different sizes of course. The distance that we have set up is variable according to the turbine size. One provision that we feel is very important that was voted down I guess, is there is a provision that the contractor has to have a bond in case the project fails the things that are left there after 25 years there is some money there to restore the land and that was our biggest concern. The biggest issue is siting turbines close to a property line where adjacent people have a different developer that has paid them for wind rights and the chance of diminishing their land getting developed is the biggest problem. We are not against siting turbines on property lines because where we live the property lines are not always in the best spot. They go over hills and down valleys and the hills where you need the turbines which are the windiest spots. We just believe that there needs to be something in place because just because you are on the wrong side of the line you still get a share of the money that the turbine produces. We feel that is only fair.

**Representative Hofstad** asked if as this process goes forward and the state develops some regulations and zoning laws, how would the township weigh in on that process as the state versus township. Can you weigh in on that issue for me?

**Mr. Flaten** said when we started this and went to our commissioners, they didn't want to do anything about it. I think they were in the same boat that we were. They didn't know where to start so we were left with the situation. The way it was explained in some of my first telephone calls to Bismarck, the township had the first authority and if they don't have anything in place, it goes to the County. If the County doesn't have anything in place, it goes to the State. We talked about the fact that if the state develops something that we feel is suitable then our zoning commission will more than likely adopt the same policy as the state does if we feel it is right and fair to everyone. You can take everyone in the wind project and ask them if it is a good deal and they are all going to say yes. During this study, they need to talk to the people that neighbor the project, those that are not included but still deal with what is going on in their area.

**Representative Solberg** said so the major complaint the landowners had when they came to you was the sharing the wind resources. Am I correct?

**Mr. Flaten** said the compensation for the wind resource. That was the complaint. If the turbines are sited close, it cast a shadow down further and it diminishes their chance to get a turbine on their land. There aren't many people in their township and he was one of the 6 people that were affected by that. That is no secret and I am not trying to hide it but there aren't that many people in the township to do the job and I happened to be one of the people that was affected by both ends of the stick.

**Representative Solberg** said as a side note and a statement, his township has 12 people in it.

**Representative Keiser** said a few years ago we passed legislation that said below 100 MW that it was a wind farm and we were going to create opportunities for everyone out there. Wasn't it the people from your area that wanted this to be changed?

**Mr. Flaten** said to be honest with you he doesn't know who wanted the change. Brad Crabtree is my neighbor and you guys probably talk to him more than I do. You know how it is with your neighbors. I didn't know anything about wind farms or wind turbines until February of 2005 that I started getting my education.

**Mr. Brad Crabtree** came forward in support of HB 1456. See written testimony marked as Item #4. He said he was not here today as the organization that he works for. He said he checked their ordinance and they don't require a bond actually. I do not believe that we can require a bond. Our language merely obligates a developer to restore the property at the end of the wind farms life. The description as to what condition the land was in was in the decommissioning bill. The only other clarification he wanted to make, and Mark didn't say this but he just wants the Committee to understand that they do not regulate compensation. You cannot legally regulate compensation through zoning. We privately, in our discussions, and publicly suggested formulas that we think might work but our zoning only defines the setbacks and the parameters of the wind farms. It doesn't affect the turbines within the wind farm. He didn't want that to be misunderstood. You have heard about our zoning ordinance. There are many reasons why you might zone for wind farms. Our principle reason was the issue of private property rights that Commissioner Johnson and Representative Nelson as well as Mark Flaten have talked about. The only thing I want to emphasize is that this is not just an issue of individual wind rights. As I mentioned last week, we were the first place in the state that had two wind farms directly adjoining each other. South of my ranch they actually come to a common boundary. We also had the issue of competing commercial wind rights because we

had a developer that held the rights to develop it with one set of landowners and another developer that held a similar set of rights through leases to wind resources on adjacent land. So why was this an issue? The answer is fairly simple. As Roger Johnson talked about, turbines create wind wakes. They create wind wakes within the project but developers as a matter of course do all kinds of modeling and engineering to determine how best to position turbines within a wind farm so they aren't cheating their own turbines out of wind so they space them appropriately. The idea is not that they totally eliminate wind wakes because that would take too much distance. What they do is optimize the distance between turbines so that they get the most output possible while not making their infrastructure costs too great. The more the turbines are spread out, the greater your infrastructure costs are so they use engineering and modeling types of things to figure out that formula. The bottom line is in the wind farms it became the issue in our township that the developer was proposing to leave over 2000 feet between their own turbines between upwind to downwind along the prevailing wind. As Mark Flaten has mentioned they were proposing to site turbines within 150 to 300 feet of the neighbors who were not participating in the project. That is the fundamental problem for which there was no regulation and we had to deal it. I won't get into details as it has already been mentioned. This is not unique to wind development and I am beginning to think it is probably unique to any resource that is shared in any way once that resource begins to get developed. Oil and gas is the common example. That is regulated with the establishment of space units for oil and gas. It is a very good regulation and it allows for resource to be developed by individual owners and other adjacent owners cannot stand in the way, but in state regulations, the nonparticipating owners in that oil and gas development, the mineral resource owners, must be compensated on a royalty formula basis through royalties. It is a good compromise. You don't tie up development but you make sure that everyone is treated well. This is not

widely known and I don't think it was intentional at least in the broader concepts that we are talking about, but in last session you actually recognized wind rights in the formal way in Senate Bill 2239 and you can see in my testimony that there are other relevant portions but I quote "a wind easement means a right.... Executed by or on behalf of an owner of land or airspace" so it explicitly states an owner in the bill. Then it goes on to say what a property owner may do with that ownership right. That is very unambiguous language that the state of North Dakota recognizes wind rights. This is broader than wind rights and broader than the decommissioning issues that we talked about last week. I want to emphasize that Mark and I are sometimes misinterpreted while we believe large scale wind farms are beneficial. I devote a lot of my professional life to promoting renewable energy. You can still want to see an industry grow and see that there is a need for some sensible regulation and that is where we come down on this. We believe that one or two wind farms people will get excited about it and nobody notices it. Three or four people start to pay more attention and as they grow issues will crop up and we need to make sure some of these things will be accepted and we can anticipate what a lot of these impacts will be. As in every other thing in our lives, there will always be things that we don't expect and so I think in that sense some level of public oversight falls in the realm of common sense. As Representative Nelson said this is common sense that is good for the industry because avoiding mistakes will maintain what is our great comparative advantage. It is very hard to site a wind farm in Wisconsin and it is almost impossible to site a wind farm off Cape Cod. It is very easy to site a wind farm in North Dakota. That is going to attract the industry to places like North Dakota assuming we do things right and keep landowners supportive. Again, there has been ample discussion of HB 1283 last session where they moved the threshold up to 100 MW on the PSC oversight authority. I won't get into that except to point out what the Chairman and I talked about briefly

after the hearing last week is that at some level you set that number and it drives development at a lower number. Our township for the first time used our zoning and we permitted a feeder line and a substation for what will be a very large wind project, the largest in the northern plains except for Iowa. It straddles the North Dakota/South Dakota border. It is 180 MW. Does that sound right? It is by far the largest project in North Dakota. Only 99 MW of that wind farm is going to be in North Dakota. There is no magic in that. They very clearly chose 99 MW so as not to be at 100. Mr. Chairman you raised the question earlier and I would have answered the same as Representative Nelson. I don't know what the precise number is but I do know that if it is not quite low, substantially lower than the 50 MW used to be, we will just see a profusion of wind farms just under that and that is why we talked about some way of thinking about a tiered structure of oversight so that the level of megawatts doesn't drive the size of the wind farm but real issues like transmission capacity, market for the power and those kinds of issues determine the size of wind farms. He did strongly favor the decommissioning bill and he thought a lot of good work went into it. If there is a way to bring that back, he would certainly be in favor of that. I also clearly recognize as stressed last week by Chairman Porter and other members of this committee that this situation does need a comprehensive and thoughtful policy. I was relieved that the committee thought that way. I think that is also why the ND renewable energy partnership and the public private and nonprofit members throughout ND endorse this bill. It is not because they favor any particular policy but they think that this issue needs to be resolved. That means the study is a good step. It allows the PSC to frame issues comprehensively rather than piece meal and it brings everyone to the table. The other thing that is important that we haven't talked much about is that this is not new ground. I realize that regulation in Minnesota is not necessarily a popular topic in the North Dakota legislature, and I would not even propose that we adopt everything that Minnesota has

done relative to wind farm siting. I think they do things that frankly are unnecessary in North Dakota. In terms of some of the things like decommissioning, basic property rights issues and those kinds of things, they have a very clear planning guidelines that offer protection to affected parties but also offer flexibility so that they don't stop wind farms. Of that bulk of regulation in Minnesota, there are pieces of that regulation that could be studied and possibly used in North Dakota. I want to make it perfectly clear that I am not advocating that it be brought to ND as a whole document. It has been very divisive and very painful for some people and some people are not talking to each other in church. They are not shaking hands in church and that kind of thing. There is no reason for that. With that, I will request a do pass and would be happy to answer questions.

**Representative Solberg** asked as question regarding air space. Has your group studied or do you have any suggestion as to the size or boundaries if there is a wind farm located in the NE quarter of section 2? Have you studied what those boundaries should be as far as air space is concerned?

**Mr. Crabtree** said yes. They have studied them in a non-engineering capacity or as a lay person. My understanding from a number of engineering professionals in the field that he talked to and worked with is that the economically significant wind wake, again you have to distinguish between what they call the access of prevailing winds which in the northern plains is most of the year northwest southeast, and then all other wind directions. The wind wake on an average basis in terms of its affect on power generation differs depending on prevailing winds to other winds. In our region it is commonly talked about 8 to 10 rotor diameters of the turbine. So if you think blade tip to blade tip. That is a rotor diameter. You take a GE 1.5 MW turbine which is the size of the turbine in the Kulm wind farm north of our ranches those are GE 1.5 turbines, right? The rotor diameter of those turbines is approximately 250 feet, it is

250 something so you multiply that and it gives you the sense of the distances you are talking about. In our zoning, we are only talking about the boundary of the wind farm and if our zoning asks the developer setback from the property line, then the other owner if they have development on their land you can setback a comparable amount. Our zoning says 5 rotor diameters. We don't discriminate between prevailing winds and nonprevailing winds because as Mark talked about we have 32 people. We can't make it very complicated. I think if the state were to do this they need to very clearly distinguish between prevailing and nonprevailing winds because it has economic significance. Minnesota has 5 rotor diameters for prevailing winds and 2.5 for nonprevailing winds with flexibility. If a turbine is on the edge of a federally protected wetland you don't necessarily need to require that kind of a rotor diameter setback. I do not have the engineering background to go any farther on this question.

**Mr. William Binek**, council for the PSC, offered written testimony on behalf of Commissioner Susan Wefald who could not be here today. See attached testimony marked as Item #5.

**Representative Keiser** asked if one commission hold the portfolio on wind.

**Mr. Binek** said the commission portfolios are split up and since wind comes under the electricity portfolio Commissioner Wefald holds that portfolio.

**Representative Keiser** said in the job description of the PSC, why wouldn't this be a part of your normal function.

**Mr. Binek** said as far as conducting the study, this a new project that is going to take considerable time and expertise. As Commissioner Wefald pointed out, the commission had a very small staff in a new area like this. This would regularly contain a consultant for a specific job. It is not unusual for the legislature to appropriate funds for the hiring of consultants. This would be a special type project and it is outside of what would be considered a normal project for the PSC. The appropriation would cover the cost of that consultant.

**Representative Keiser** said he understands that but he still has a problem with it simply because the PSC certainly could have put funding for this in their budget. The second point is that we heard testimony today that many states, including Minnesota, have done this and we could look at that. There are people in this room that could sit down and recommend a suggested policy and bring that to the legislature reasonably easy. Again, why aren't we doing it and why isn't it in your budget?

**Mr. Binek** said this was not an item that to his knowledge that this legislation was being contemplated. He said he could only speak for himself on this. I don't know if any of the commissioners were aware of this at the time they were proposing their budgets.

**Representative Keiser** said but they were aware that there was a problem in certain areas of the area that have wind farms.

**Mr. Binek** said the commission was aware of that as it has already been pointed out but the legislature made it very clear to the commission that their siting authority is to be very limited. The Commission has sited one wind farm above 100 MW and this was some time ago. We did provide for some setbacks and we did make some requirements regarding the reclamation of the land but that is the only instance where we have had the authority to do that.

**Mr. Harlan Fuglesten** with the ND Association of Rural Electric Cooperative and they support this bill. They think it is a reasonable step that should be taken. There are issues that need to be resolved and not everyone is in agreement and there are different sides to it. We need to be sure that we have the proper regulations going forward.

**Representative Keiser** asked instead of doing this under the PSC, why not just do legislative council study and pick it up during the interim. We have two options. We can change the legislation now or we are going to study it. Why do we want it in the PSC versus the Legislative Council?

**Mr. Fuglesten** said that is an option that could be considered but he was not involved in formulating the bill. I think it is not inappropriate to have the PSC handling this because they will be the agency siting this. They are going to make a report to the Legislative Council and I think it probably does a considerable amount of study and legwork looking at what other states do as an example and so I think in the time allowed it might provide for a little more focus but I certainly respect the rights of the Legislature to study the issues and come up with a recommendation as well.

**Representative Keiser** said one of the problems that we have is the fiscal note on it. If we have an interim committee that is dedicated to studying energy related issues and they are the policy makers, why wouldn't we want it there.

**Mr. Fuglesten** said he respects the fact that he is concerned about the fiscal note. He doesn't know what it should cost or will cost to do the study, but he said he does know that if they provide the forum for parties to get together, they will do a lot of work themselves and come up with some of the research. Again, it isn't my choice and I support the bill as written but there certainly are other options that you can consider.

**Mr. Richard Schlosser** came forward in support of this bill. He is here on behalf of the members of the ND Farmers Union. He is a landowner and is representing land owners and we can look back about 8 or 10 years ago and Representative Kelsh serving in another capacity made a visit to our community in Edgely, ND, and talked about the wind energy development in their area. They were anticipating 30 or 40 people at that meet and there were over 200. Obviously the enthusiasm and the support for this type of development transpired into what happened here a few sessions ago. We were in a large hearing room to hear three tax bills and everyone was in support of that. Now in subsequent sessions we have seen a number of issues arise from that, whether it be siting or severability or whether it be

reclamation or the decommissioning. When we looked at this bill, we thought whether this study would be with the PSC, there was a need for this and obviously there is more than one wind farm out there developing and how these issues are arising as a result of this. We are support of this bill.

**Ms. Mary Mitchell** of the Dakota Resource Council and they support this study. This has been an interesting topic for their members. They thought it was interesting that they brought up the fact they had moved the siting requirements to 100 MW. They have talked about this quite a bit and the number that keeps coming up in casual conversation is 20. She does not know where that comes from but that is the number that keeps coming up.

**Mr. Curtis Jabs** from Basin Electric came forward in support. He said they do own a small wind farm near Minot and have also been involved in the Edgeley Kulm area. They think having standard rules for everyone is siting wind farms is a good idea. They think a study is appropriate. Whether it is done by the PSC or by an interim committee, he said they were open to either one of them but they think a study is in order.

**Chairman Porter** asked for further support of this bill. Hearing none, he asked for opposition to the bill.

**Representative Keiser** asked if they had talked to Representative Nelson, the sponsor of this bill, whether it would be appropriate for the PSC or the interim committee to study this issue.

**Representative Nelson** said initially his thought process would be this. If the interim study were picked, it would be a shell and it would meet that criteria that we do study it. I do think the resources the PSC has to go into a more detailed study would weigh heavily on their side as they have the expertise and the experience to draw from in other industries that they have some oversight on. Obviously they would be a main part of the legislative study. I guess from my standpoint if it was shell language in there I don't have an ax to grind with that.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1456

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2728

Committee Clerk Signature

*Shirley Bennett*

Minutes:

**Chairman Porter** asked the committee to consider HB 1456.

**Representative Keiser** said he thought the intern had an amendment prepared for HB 1456.

He said he would move the amendment because it simply takes this study out of the Public Service Commission which I think hasn't done their job apparently and says the Legislative Council "shall" study in the next interim and that would take out the appropriation. It drives me crazy that they say they have the expertise and knowledge and that they had all these issues before them and they are going to need \$75,000 to study this. I think it is a policy question at this point whether to put back in the 100 MW or whatever but we should have some discussions.

**Representative Drovdal** said he would second this so they could go into discussion on it.

**Representative Damschen** second the motion.

**Representative Meyer** asked Representative Keiser if there is a difference in the results when they come out. A lot of us have served on the interim and when it gets done but by having the PSC study it, does it give it more impact?

**Representative Keiser** said he thinks she has served on the wrong interim committees.

There are a lot of interim committees.

**Chairman Porter** said he passed the bill that they dealt with last session and the PSC actually came in and opposed on changing the siting requirements for the generation of electricity from 50 MW to 100 MW. I guess the question he has for the committee, is waiting 2 years the good thing to do or do we also want to look at moving that back to what it was and putting an expiration date on it so that there siting comes in. Part of that has to do with the fact that the decommissioning is also part of every siting. It is addressed there from the PSC standpoint.

**Representative Kelsh** said as he recalled, Commissioners Clark and Kramer were in support of the bill and Commissioner Wefald was in opposition to the bill two years ago, just for clarification.

**Representative Keiser** said the dilemma is we don't know if it should be 50 or 20 or 25.

Again, you can move it back to 50 and everyone will go to 49.

**Chairman Porter** said that is true. I guess my thought is to move it back to 50 and have the study and then find out where it should be and put an expiration date on the moving it back to 50 so that it makes the study a meaningful study.

**Representative Drovdal** said he was in agreement to moving in back to 50, but when we moved it to 100 we had a complete hearing and everyone decided that. I am a bit nervous about that giving them another chance to speak on it.

**Chairman Porter** said the bill would be guaranteed a public hearing.

**Representative Keiser** said he strongly supports moving it back to 50 as well. I would incorporate that into this amendment as well.

**Representative DeKrey** moved to further amend Representative Keiser's amendment by moving it back to 50.

**Chairman Porter** asked if he wanted an expiration date on the move.

**Representative DeKrey** said yes.

**Representative Meyer** asked if this had any affect that are being sited right now and going in. How are you going to deal with that?

**Chairman Porter** said it would not because the law would not go into affect until August 1<sup>st</sup>.

**Representative Meyer** said but a lot of time it takes a lot longer than that.

**Chairman Porter** said it could potentially affect something happening after the fact where construction has not started by August 1<sup>st</sup>. There is the potential yes.

**Representative DeKrey** said if they had made their application he didn't think they could change the law midstream of the application.

**Chairman Porter** said so that everyone has it straight, this amendment would be to have Section 1 moving the generation of the electricity of siting from 100 back to 50 with an expiration date of the next legislative session. Section 2 would be a mandatory study by the interim committee related to this issue.

**Representative Meyer** asked if they could vote on them one at a time.

**Chairman Porter** indicated no.

**Representative Damschen** said did not want to second the motion now because he was not sure why we are encouraging this change.

**Chairman Porter** said it would be part of the motion that you seconded, but it would be a replacement motion to the motion made by Representative DeKrey. He asked if there was a second on the further amendment to the motion by Representative DeKrey.

**Representative Keiser** seconded the new motion.

**Chairman Porter** said he would take them one at a time. This motion is whether or not to move it from 100 back to 50 with an expiration date of the next legislative session.

**Chairman Porter** called a voice vote. The clerk was asked to call the roll on the amendment. Let the record show that the motion passed with 9 yes, 4 no and 1 absent.

**Chairman Porter** said the next amendment is to incorporate the study language of section 2 of the bill. There is a motion from **Representative DeKrey** and second from **Representative Damschen**. He called a voice vote and the motion prevailed.

**Representative DeKrey** made a motion for a do pass as amended on HB 1456.

**Representative Keiser** seconded the motion.

**Representative Keiser** said to keep in mind that his amendment eliminated the appropriation.

**Chairman Porter** asked for discussion. Hearing none, he asked the clerk to call the roll on a do pass as amended on HB 1456. Let the record show 13 yes, 0 no with 1 absent.

**Representative Keiser** will carry the bill on the floor.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1456

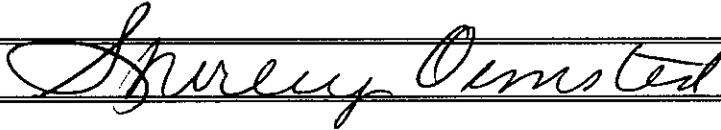
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3157

Committee Clerk Signature



Minutes:

**Chairman Porter** asked the committee to address HB 1456. You may recall this is the bill about the \$75,000 study and we changed section 2 to be a legislative council interim study and then in section 1 we moved the siting from 100 MW back to 50 MW which would put us back to where we were two years ago.

**Representative Keiser** moved to reconsider their actions on HB 1456.

**Representative DeKrey** second the motion.

**Chairman Porter** asked for discussion. Hearing none, a voice vote was taken and the motion carried.

**Mr. Ron Rosenberger** from the governor's office came forward. They very much appreciate you taking another look at this. We have been very involved in wind development the past few years. One of the items that we think that has been very helpful is the 100 MW siting which is a very competitive issue in South Dakota which is at 100 MW and probably is our biggest competitor in wind right now. We feel we need all the advantage possible within reason to have this type of development available to us. We are working on a number of new projects coming down the line and perhaps we should talk about those. There is a tremendous amount of wind in North Dakota. Some of the projects will involve split projects that will be in both

South Dakota and North Dakota as well as a lot of competition from Minnesota. We do need these advantages and we think it is very important for our development also as we look forward to things such as Minnesota and others when we deal with our property taxes and all other things so we are very tuned into this. We are working with such companies as Florida Power and others and this is a big item and it does help. We run into some big transmission constraints at times so we need every advantage we can have when we deal with other states and work on this wind energy project. I strongly urge you to look leave the siting to be 100 MW or higher and not to require the siting process for less.

**Representative Keiser** said he was not here on the original testimony but there were parties that were directly involved and impacted by the wind farms that had been sited and built. They brought great concerns to us that although they were here a couple of years ago asking for this to be moved up to 100 MW. They said based on their experience, they made a mistake. They want to move back down so now we have conflicting pressures on us one for economic development giving it a reason to move, but the reality is that with wind farms in place they are saying we should have had some oversight here. Where is the Public Service Commission and where is the governor? You present the economic development but what about the protection for the property owners.

**Mr. Rosenberg** said he knows you have to have a number somewhere you have siting and protection and it is somewhat of an arbitrary number because whether it is 40, or 80 or 100 it definitely requires other regulations and oversights at that point but I think with the responsible area that we have known and to be very honest, we haven't had those people in our office telling us there is a problem. We have not heard those problems. We have heard some problems with leasing as far as the property owners but not at the siting areas. We basically

have not seen those problems with our involvement with recruitment and potential recruitment that we have coming, we feel the 100 MW is very important.

**Chairman Porter** said the way the law works is that if it is over 100 MW, the PSC is involved. If it is less than 100 MW, the responsibility falls back to either the county through their zoning ordinances or the townships through their zoning ordinances. The other information that we received is that this is overwhelming them. They are not comfortable or have the professional resources to in order to do this kind of work. That is kind of where the whole debate came back up on whether or not to move this back at 100 because of the burden that we now put on the local units of government with these requirements.

**Mr. Rosenberg** said again that they have not had that problem. We have not had them in the development areas working with the governments working on the project. I can see that they may feel that it is but actually there has been a number of them sited and we have not seen any problems.

**Commissioner Kevin Kramer** came to the podium. He was here to speak to this issue as an independent elected state official. This is a funny situation because you will notice that he wasn't there when the original bill was heard regarding the wind study. He said he has no problems with the wind study and maybe they could glean some good information. When it shifted to changing the threshold of 100 MW to 50 MW it gravely concerned him. This is a little bit of historical information. Many of you know that I spent 4 years as the State Economic Development Director. I didn't always understand why a site selector kept score the way they did when they were choosing where a site for an investment, but I also knew that it wasn't wise to argue with them. One of the things you did and should be congratulated for what you did as a body two years ago was changing this from 50 MW to 100 MW. As Mr. Rosenberger testified, that one bit of information when the site selector checks that on his site list is very

important because our closest neighbor and clearly our greatest competition for major investments is South Dakota. To put our state at a competitive disadvantage with our number one competitor just does not seem wise to me at all. Furthermore I would say the evidence from the last two years would suggest that your move two years ago was a very wise one. I don't think that it is an accident that all the wind farms planned previous to the threshold were somewhere between 12 and 49 MW. Since that time, they have been between 49 and 99 MW. I just don't think that is an accident. I think it was a good piece of business. To further illustrate that point as you have all heard about the Totonka wind farm project in Dickey. It is a 180 MW wind farm that just happens to straddle the North Dakota/South Dakota border with 99 MW sited where there threshold is 100 and 99 MW in North Dakota whose threshold happens to be 100 MW. Although we do not have siting authority there we do have siting authority for the twelve mile transmission line and we had a hearing a couple of weeks ago. While he was on the witness stand, I asked the senior present management this very question. I know that this is not relevant to the transmission line that we are siting today, however if you would could you answer this question because this very debate was taking place in Bismarck. Did the siting threshold have an impact on your decision to put 90 MW in North Dakota and 90 MW in South Dakota? He was honest with his answer. He said there were really two factors to this decision. One was that we like the value of two states and the public relations that comes with that. You have two governors, you have two state legislatures and you have good wind resources in both. The second factor was yes; we appreciate avoiding jurisdictional pressure. I think that is relevant current information. Why is wind different in the first place? Why is it different than a coal powered plant? I think one of the major issues is the planning time frame is so much shorter. We see wind farms being planned and developed with months as opposed to years and decades. It is somewhat driven by the production tax credit that Congress

continues to play with one year at a time, so the windows of opportunity for development are so much shorter so that magnifies the issues of time and cost to a great degree. Those may be somewhat obvious but I want to urge you to resist changing the special back down from 100 MW to 50 MW.

**Chairman Porter** asked him to walk the committee through a siting requirement.

**Commissioner Kramer** said one thing that is helpful in understanding this process is that what we really do is facilitate all of the other agencies who have oversight jurisdiction, and we do it pretty well. We do it quite efficiently. To be honest with you, I don't think we need to apologize for how well we do it as a commission. Others might have a different view. We aggregate all that information that is relevant from other oversight entities. Through the process, we first receive a letter of intent from the company telling us then intend to build this facility. Within the letter of intent, or shortly after, they ask us to shorten the time frame or time waiting period. There is a one year waiting period. We then set the hearing date. We see the application and with that application are a lot of testimony in writing and the hearing is held in at least one of the Counties where the facility is going to be built. At that hearing the written testimony is placed into the record. We hear testimony from the project manager, and then we hear testimony from anybody that might intervene either for or against it. We also hear public information outside of the evidence, and we do invite the public. They are very well attended as your might imagine. The vast majority of the people attending take the Ashley meeting for example where there were about 70 people at the hearing and not one person from the audience got up to testify. It is kind of interesting when that happens because you are putting the witness through the mill pretty severely. If there is something they don't have, we want to make it very clear the parameters of their responsibility. I look at all these people and wonder if they are appreciating this or are they worried we are going to screw it up. Not one person

got up when the public was invited. We keep the record open after the hearing for that very reason. We encourage people to contact us after the fact because hearings can be somewhat intimidating. In a nutshell that is it. We act very quickly or as quickly as we can and still be responsible making sure that all the documents are in and all the evidence is heard. We then issue our order.

**Chairman Porter** asked from start to finish, how long does it take?

**Commissioner Kramer** said he wishes he know exactly how long that was but he was not sure.

**Commissioner Wefald** (answering from the audience) said they were limited by law to six months, but it has been done in a short as 90 days.

**Commissioner Kramer** said sometimes he wonders what the objection is. We take the filing fee and use very little of it and thanks to you last session we are able to refund what is left of the filing fee, so the cost is very minimal. We do it very quickly and that is part of the competitive advantage. We think we have created a regulatory environment in North Dakota that is very competitive. We have to do it in six months, but that would be too long. It is shorter than that in most cases.

**Representative Keiser** indicated that he was playing the devils advocate, and he said this discussion reminds him of keeping the bars open until 1:00 so that we can meet Minnesota's rules, but at any rate, if 100 is good, 200 has got to be better based on your argument. If it is not better then why is it 100? What criteria do you use when you say this is when the PSC should be involved and what are the criteria besides the 100?

**Commissioner Kramer** said he thought is was a great philosophical question. Right now the standard was driven by South Dakota's. I would have a hard time being up here advocating for it to be much higher. That is my personal view. Although the footprint for a wind farm is

considerably different than it is for a 500 MW plant, certainly the environmental footprint is very different, but it is an intrusion on the landscape. There do need to be protections in place. At the 100 mark you start involving more land owners and perhaps multiple jurisdictions. In the Totonka operations we are talking two counties in North Dakota and several townships. Much over 100 would be hard for me justify but again that is my personal view.

**Representative Hofstad** asked if there was a concern among his agency that as we go forward this process becomes fragmented because of the regulations by the townships and counties. Would you address that?

**Commissioner Kramer** said he did not know how much concern that was about this within the agency, and perhaps one of my colleges might want to address their view on that particular topic, but it is somewhat of a concern of his. One of the things that I think we will learn and our developers are starting to learn is that the PSC is pretty good at facilitating this whole thing and in fact it might even be helpful that we actually be an assistant to them because they then no longer have to deal with multiple jurisdictions and will have someone to help them with this. I do think there is value in this. You get pretty good at reading these check lists and find out who has not been contacted and that sort of thing. I think this is a legitimate concern and that is one of the reasons which would be why I would not advocate raising the threshold.

**Representative Meyer** asked if his office, since raising the threshold, received complaints and I don't mean formal complaints, I mean a lot of telephone calls.

**Commissioner Kramer** said not that he was aware of. We could probably fairly quickly put that together for you. In fact, personally as commissioner, he has received more calls from landowners wanting these projects on their land. Earlier this week he received a call from a landowner talking about the ridge that he has on his family property that is very windy and asked how he could get in contact with the developers. That is more common.

**Commissioner Wefald** said the reason she supported the wind study at the PSC over the next two years was because she knew these issues would come up. I think the PSC can find ways to deal with them over the next two years. People are talking about having a lighter regulation for smaller wind farms. Some people think we should site at 20, some think 50, and then 100 and I think this has some merit and are worth exploring. Although you can probably look back at the record and know I was a strong voice and I still am for siting at 50 MW because although South Dakota has 100 MW, Minnesota has their siting requirements at 50 MW. You have heard a lot of argument on both sides so I am not going go through all of those, but I would just encourage you to have the wind study one by the PSC. If you don't allow the resource for it, it would be more limited in scope, but I do think we would be able to do a good job on that siting study and have a chance to go through all of these types of arguments and bring some recommendations to you two years from now to either this committee or to the legislature.

**Commissioner Clark** said his comments would be similar to Commissioner Kramer. He said that he was fine with the wind study if you want us to do it. I was not at the original hearing because to me it didn't matter to me either way. As a former legislature, he thought it was a little odd. To me it looked like an interim committee study and typically we have situations where coming out of the legislative session what looks like interim committee studies have been given to executive branch agencies who then report to the interim committee recommendation. This is fine if that is how you decide to have it done. If you think the appropriation is necessary and I guess it would be that much more in depth. His thoughts are substantially the same as Commissioner Kramer's on the 50 versus 100 MW thresholds.

**Representative DeKrey** moved that move the requirement back to 100 MW on HB 1456.

**Chairman Porter** said so we are just removing Section 1?

**Representative Kelsh** seconded the motion.

**Chairman Porter** asked for discussion. A voice vote was taken and the motion carried.

**Representative DeKrey** made a motion for a do pass as amended on HB 1456.

**Representative Damschen** seconded the motion.

**Representative Drovdal** asked for clarification if it was still a study with no fiscal note.

**Chairman Porter** said that was correct. There would be a study by the legislature with no fiscal note.

**Representative Hofstad** asked if this would also include a study of the decommissioning of these wind farms. I do not see any language in here that is specific to that.

**Chairman Porter** said that certainly the language is broad enough that it could include that where it says the siting must include identification key issues of public and industry concerns. The legislative council as they are assigning this, and the committee chair, inside of this committee could certainly address those issues.

**Representative Hofstad** said we defeated that bill on that. It would probably be a good idea to include that with the discussion.

**Chairman Porter** said he thought the language was open enough to include all of these issues. He asked for any discussion. Hearing none, he asked the clerk to call the roll on a do pass as amended on HB 1456. Let the record show 13 yes, 0 no with 1 absent.

**Representative Keiser** will carry this bill to the floor.

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/05/2007

Amendment to:           Engrossed  
                                  HB 1456

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires Legislative Council to conduct an interim study regarding siting wind farms. No fiscal impact to PSC

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

n/a

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

<b>Name:</b>	Ilona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	04/05/2007

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/13/2007

Amendment to: HB 1456

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires Legislative Council to conduct an interim study regarding siting wind farms. No fiscal impact to PSC

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

n/a

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

<b>Name:</b>	Illona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	02/13/2007

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/16/2007

Bill/Resolution No.: HB 1456

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$75,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$75,000	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Requires the PSC to conduct a study regarding siting wind farms. Permits the PSC to hire a consultant to assist with the study. Estimated fiscal impact is the estimated cost of hiring a consultant and supporting services.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We estimate the cost to hire a consultant and pay for supporting services to conduct the study would be \$75,000 in general funds.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimate \$75,000 for consulting services and support services to conduct the study, from the general fund.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

To expend funds for a consulting contract and supporting services would require a corresponding appropriation of \$75,000. This amount is not included in the PSC's current budget request.

<b>Name:</b>	Illona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	01/23/2007

**Proposed Amendments to House Bill 1456**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subdivision a to subsection 5 of 49-22-03 of the North Dakota Century Code, relating to the definition of an energy conversion facility.

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

**SECTION 1.** Subsection 5 to 44-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for capable of:
  - a. Generation of ~~one hundred~~ fifty thousand kilowatts or more of electricity;
  - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - d. Enrichment of uranium minerals.

Renumber accordingly

February 2, 2007

VR  
2/2/07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the definition of an energy conversion facility; to provide for a legislative council study of wind farm siting; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Generation of ~~one hundred~~ five thousand kilowatts or more of electricity;
  - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - d. Enrichment of uranium minerals.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - WIND FARM SITING STUDY.**

During the 2007-08 interim, the legislative council shall study the siting of commercial wind farms. The study must include identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; and recommendations concerning laws or policies needed in this state to address wind farm siting. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through July 1, 2009, and after that date is ineffective."

Renumber accordingly

Date: 2-2-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1456

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken NY Amendment

Motion Made By Keiser Seconded By Rep. Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter			Rep. Hanson		
Vice-Chairman - Rep Damschen			Rep. Hunsakor		
Rep. Charging			Rep. Kelsh		
Rep. Clark			Rep. Meyer		
Rep. DeKrey			Rep. Solberg		
Rep. Drovdal					
Rep. Hofstad					
Rep. Keiser					
Rep. Nottestad					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*takes out of study  
places it in Leg Study  
for next iteration. WI take  
but approp  
policy question*

Date: 2-2-07  
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1436

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number Further Amend Rep Keiser's

Action Taken ~~Keiser's Amendment to Amendment of Amendment~~

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter			Rep. Hanson		
Vice-Chairman - Rep Damschen			Rep. Hunskor		
Rep. Charging			Rep. Kelsh		
Rep. Clark			Rep. Meyer		
Rep. DeKrey			Rep. Solberg		
Rep. Drovdal					
Rep. Hofstad					
Rep. Keiser					
Rep. Nottestad					

*Voice*

Total Yes 13 No 1

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*sect 1 mvg the generation of  
 elec 100 bk to 50  
 expiration - next session  
 sect mandatory study*



Date: 2-2-07  
Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1456

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No pass as Amended

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter	<input checked="" type="checkbox"/>		Rep. Hanson	<input checked="" type="checkbox"/>	
Vice-Chairman - Rep Damschen	<input checked="" type="checkbox"/>		Rep. Hunskor	<input checked="" type="checkbox"/>	
Rep. Charging	<input checked="" type="checkbox"/>		Rep. Kelsh	<input checked="" type="checkbox"/>	
Rep. Clark	<input checked="" type="checkbox"/>		Rep. Meyer	<input checked="" type="checkbox"/>	
Rep. DeKrey	<input checked="" type="checkbox"/>		Rep. Solberg		
Rep. Drovdal	<input checked="" type="checkbox"/>				
Rep. Hofstad	<input checked="" type="checkbox"/>				
Rep. Keiser	<input checked="" type="checkbox"/>				
Rep. Nottestad	<input checked="" type="checkbox"/>				

Total Yes ~~13~~ 13 No 0

Absent 1 Solberg

Floor Assignment Keiser

If the vote is on an amendment, briefly indicate intent:

Hoq house  
No Appropriation

**REPORT OF STANDING COMMITTEE**

**HB 1456: Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1456 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the definition of an energy conversion facility; to provide for a legislative council study of wind farm siting; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Generation of ~~one hundred~~ five thousand kilowatts or more of electricity;
  - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - d. Enrichment of uranium minerals.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - WIND FARM SITING STUDY.** During the 2007-08 interim, the legislative council shall study the siting of commercial wind farms. The study must include identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; and recommendations concerning laws or policies needed in this state to address wind farm siting. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through July 1, 2009, and after that date is ineffective."

Renumber accordingly

Date: 2-8-07  
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1456

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken reconsideration

Motion Made By Keiser Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter			Rep. Hanson		
Vice-Chairman - Rep Damschen			Rep. Hunskor		
Rep. Charging			Rep. Kelsh		
Rep. Clark			Rep. Meyer		
Rep. DeKrey			Rep. Solberg		
Rep. Drovdal					
Rep. Hofstad					
Rep. Keiser					
Rep. Nottestad					
<i>Vote</i>					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



Date: 2-8-07  
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1456

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amended

Motion Made By DeKrey Seconded By Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman - Rep Damschen	✓		Rep. Hunskor	✓	
Rep. Charging	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Meyer	✓	
Rep. DeKrey	✓		Rep. Solberg		
Rep. Drovdal	✓				
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:

Motion Prevails -

**REPORT OF STANDING COMMITTEE**

**HB 1456: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1456 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of wind farm siting.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - WIND FARM SITING STUDY.** During the 2007-08 interim, the legislative council shall study the siting of commercial wind farms. The study must include identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; and recommendations concerning laws or policies needed in this state to address wind farm siting. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE NATURAL RESOURCES

HB 1456

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1456

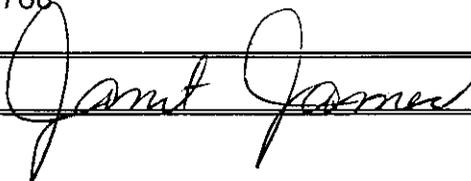
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: # 4767, 4768

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on HB 1456 providing for a legislative council study of wind farm sitings.

All members of the committee were present.

**Representative Jon Nelson** of District 7 prime sponsor of HB 1456 introduced the bill (See attachment #1). He also presented written testimony in support of HB 1456 from Mark Flaten, Chairman of the Spring Valley Township (See attachment #2).

**Susan Wefald**, North Dakota Public Service Commissioner President testified in support of HB 1456 spoke directly to the language presently included in the bill. At one time this study was under the jurisdiction of the commission and now support is to be a legislative study it is important to study this issue and it is a very good time for that study. Numerous wind farms are being planned to be built in the state. The commission has jurisdiction over wind farms 100 mega watts or larger. Several smaller wind farms are presently being planned around the state. These will all present questions regarding wind farms so this is a good time for the study.

**Senator Ben Tollefson**: there are no reclamation laws now in place with wind farms.

**Susan Wefald**; agreed that is not.

**Roger Johnson**, North Dakota Agriculture Commissioner testified in support of HB 1456 (see attachment # 3).

**Senator Layton Freborg**: what do you think of including reclamation in the study?

**Roger Johnson**: it is fine as it is an issue that has been talked about a lot. These towers are at some point outdated and are of no value and the question is what do you do with them.

**Senator Herbert Urlacher**: if companies go belly-up, someone will have to be responsible.

**Roger Johnson**; exactly.

**Senator Constance Triplett**: have you reviewed HB 1363 that died in the house regarding ... would you be supporting of that.

**Roger Johnson**: I think I was, but I looked at a lot bills...

**Senator Joel Heitkamp**; the verbiage of the bill allows the study to include anything in relation to landowners and other common interests to include reclamation. Do we have to amend the bill?

**Roger Johnson**: there is a lot of room for interpretation in the language that is in the bill and hopefully the study will consider the discussion of this hearing. North Dakota has a lot of opportunity and obstacles to deal with in this industry.

**Brad Crabtree** testified on his on behalf in support of HB 1456 (see attachment # 4).

**Harlen Fuglesten**, representing the North Dakota Association of Rural Electric Cooperatives testified they support HB 1456.

**Richard Schlosser** representing the North Dakota Farmer's Union testified they are in support of HB 1456.

**Dale Niezwaag** representing the Basin Electric Power Cooperative testified they support HB 1456.

**Mary Mitchell** representing the Dakota Resource Council testified they support HB 1456.

**Senator Lyson** asked for opposing and neutral testimony.

**Senator Lyson** closed the hearing on HB 1456.

**# 4768**

**Senator Stanley Lyson** opened committee work on HB 1456.

All members of the committee were present except Senator Joel Heitkamp.

**Senator Layton Freborg**: despite of what we heard, I would like to include reclamation in the study and made a motion to amend HB 1456 to include reclamation.

**Senator Ben Tollefson** second the motion.

Roll vote # 1 to amend HB 1456 to include reclamation was taken by voice vote indicating 7

Yeas, 0 nays and 0 absent or not voting.

**Senator Ben Tollefson** made a motion for Do Pass as Amended of HB 1456.

**Senator Constance Triplett** second the motion.

Roll call vote # 2 for a Do Pass as Amended of HB 1456 was taken. The vote was held open for Senator Heitkamp and the final vote count was 7 Yeas, 0 Nays and 0 absent or not voting.

**Senator Jim Pomeroy** will carry HB 1456.

Date: 3-9

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1570

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amendment to add reclamation

Motion Made By Freb Seconded By Toll

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman			Sen. Joel Heitkamp		
Sen. Ben Tollefson, ViceChairman			Sen. Jim Pomeroy		
Sen. Layton Freborg			Sen. Constance Triplett		
Sen. Herbert Urlacher					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-9

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1450

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Da Pass as Amend

Motion Made By Tollefson Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman	✓		Sen. Jim Pomeroy	✓	
Sen. Layton Freborg	✓		Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Pomeroy

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2007 9:14 a.m.

**Module No: SR-46-4927**  
**Carrier: Pomeroy**  
**Insert LC: 70754.0201 Title: .0300**

**REPORT OF STANDING COMMITTEE**

**HB 1456, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1456 was placed on the Sixth order on the calendar.

Page 1, line 9, after "siting" insert "and reclamation of wind farm sites"

Renumber accordingly

2007 SENATE NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1456

## 2007 HOUSE STANDING COMMITTEE MINUTES

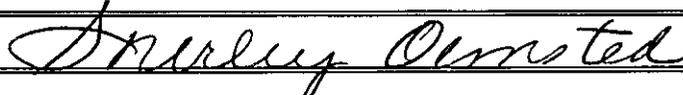
Bill/Resolution No. HB 1456

House Natural Resources Conference Committee

Check here for Conference Committee

Hearing Date: April 3, 2007

Recorder Job Number: 5693

Committee Clerk Signature 

Minutes:

**Chairman Porter** called the conference committee on HB 1456 to order and asked the clerk to call the roll. All were present including Representatives Porter, Brandenburg, and Kelsh and Senators Lyson, Tollefson and Triplett. This bill is a bill that the House Natural Resources Committee had turned into a study on the house side and there was a slate of amendments from the Senate side which we really didn't have a problem with. Representative Brandenburg is working on a different bill that is dealing directly with the sitings and decommissioning and reclamation of wind farms. As part of those ongoing negotiations it was felt that the language in this study should be expanded a little bit so that it is clearer that the decommissioning and reclamation would become part of the Legislative Council study. With that I will let Representative Brandenburg hand out his proposed amendment and explain what is going on in the other bill.

**Representative Brandenburg** handed out his amendment. See attachment marked as Item #1. The proposed amendment says that it will include decommissioning and siting to the study and I would say that we will be studying this with the new energy committee that is being set up dealing with siting issues and I feel that decommissioning will be an issue and it needs

to be studied too. I just wanted to put this in here so that when these issues come before us we can deal with them. He said that he would be open to any questions from the committee.

**Senator Lyson** asked them to explain decommissioning. I know what reclamation is but I am not sure what decommissioning is.

**Representative Brandenburg** said that decommissioning is how these wind towers that are going up are going to be taken down as well as who would be responsible for that. The bonding issues are also there. When you deal with decommissioning you are going to have to set up some kind of a bond or some sort of funding mechanism to deal with the towers if there is a problem. There is iron out there that has value. The blades can be resalvaged and used again but there will be cement there and who is going to do that and who is going to pay for that. There are a lot of issues and concerns with this. As the wind development is done in the state we really haven't had time to study the whole issue. This has already come up a couple of times so we need to have more of an extensive study as to what it will cost for these bonding issues and what is it going to impact in the cost of the project. Who is going to bear that cost?

**Senator Tollefson** said the bill that he was referencing was HB 1317.

**Representative Brandenburg** said that was correct.

**Senator Tollefson** said the decommissioning part of that and the reclamation in a sense is synonymous. They are really two of the same.

**Representative Brandenburg** said he thought they were comparable because reclamation deals with coal and dealing with the cleanup of that sort of mess and decommissioning would be taking those towers when they are out of service and taking them apart and disposing of those assets and whatever is left of the towers, cement and blades.

**Senator Tollefson** said that HB 1317 gives the jurisdiction to the Public Service Commission.

**Representative Brandenburg** said that was correct Senator Tollefson.

**Senator Tollefson** said he looks at decommissioning as duplication. To me they are synonymous especially with the passage of HB 1317 it will be under their jurisdiction anyway.

**Representative Brandenburg** said he was in the conference committee with HB 1317 right now and when decommissioning came up on the house side it only got 10 votes. That is what happened with that. A lot of people feel that at this time there needs to be more of a study to it especially on the house side to deal with the decommissioning of these wind towers so that is why we want to do the study so that we can take care of the proper way so that industry and the people who are out there like the landowners have a say in how they want to do it because at this point I don't think we have done that. I don't think we have done our due diligence to take care of it so that all parties concerned are taken care of.

**Senator Tollefson** said in 1317 this issue as a study in my opinion is a duplication. I think you will have a study out of 1317 as well. It may not be a formal study but it will be under jurisdiction of the Public Service Commission and this study is a good point to me.

**Chairman Porter** said one of the things when we went through this bill especially in direct relationship to the siting was the fact that there was a component in the other bill regarding the decommissioning and the bonding and all of that and I guess it was felt that the best way to do both, whether 1317 passes or not as I guess it really doesn't matter relative to our discussion, but it was felt in order to have a comprehensive Legislative Council study that to clear it up and to make sure that all of the key components of the wind farm from the siting side of it all the way to the reclamation side to finish would be an important aspect of a legislative study. That is why the language was asked to be included in the council study. This study is one that has mandatory language in it. It is on a bill and it has already passed both chambers. It says that the legislative council will study it in the next session and so rather than just study the siting

issue, which is a huge issue especially with our competition on our borders, it was felt that adding the decommissioning and reclamation were also equally important so that it could be part of the study.

**Senator Triplett** said she had a question about decommissioning versus reclamation. I see them as slightly different terms. I think reclamation of the sight could be different from the decommissioning. They each have a little road going to them and moving that road could be a land reclamation issue versus the decommissioning of the actual wind tower itself. I think there is some overlap and I think there is no harm in using both of the words to make sure that you cover both of them. Am I hearing you correctly Representative Brandenburg? What I think I am hearing is you are making sure that 1317 gets killed or gets removed.

**Representative Brandenburg** I am just saying the house did not accept the bill.

**Senator Triplett** said her understanding in visiting with Commissioner Wefald is that she thought there were some serious misunderstandings in the committee on the first time around about the bonding so I am actually the one who asked to have it amended on to 1317 after 1353 died on the house side. I was hoping that people would maintain an open mind about it and I think she certainly cleared up any issues that we had about this on the Senate side when we discussed it. It passed our committee unanimously and it passed the Senate unanimously. I just think it deserves another look and if there were misunderstandings about what it meant those should be considered with an open mind.

**Representative Brandenburg** said that is why this amendment is here to talk about decommissioning.

**Senator Lyson** said he looks at decommissioning a little bit separately from reclamation.

Some of you may remember two years ago I had a bill in saying that all wind farms would have reclamation involved. It was stripped out and I was rather upset over that. Now they are

coming back and understanding that this can happen because I lived in oil country and I knew what reclamation was. Now you are going to find out. I think it is a good idea and I think that decommissioning is going to take care of the bonding and so along with it so I think it may be an important piece to study. I do kind of agree with Senator Triplett that others did take a good look at it.

**Chairman Porter** said that is definitely a bill out of the hands of all of us but it was felt that this was important enough that this study be updated so that we go into the interim with a look at that too. Are there any motions sitting out there?

**Senator Lyson** asked if this was a new amendment today.

**Chairman Porter** said if you read that paragraph as a proposed amendment that would be the motion that would make this amendment happen.

**Senator Lyson** said he would move that amendment.

**Representative Brandenburg** seconded the motion.

**Chairman Porter** asked for discussion.

**Representative Kelsh** said he had been in a conference committee earlier today and the Senate has to recede from their amendment as part of the motion.

**Chairman Porter** said that was part of the motion. He said the Senate will recede from its amendment as printed on page 1027 of the HJ and page 780 of the SJ and that the engrossed HB 1456 be amended as follows.

**Senator Lyson** said that was his motion.

**Chairman Porter** asked the clerk to call the roll. Let the record show 5 yes, 1 no (Senator Tollefson) with all present. **The motion carried**

**Representative Brandenburg** will carry the bill for the house and **Senator Lyson** will carry the bill on the floor for the Senate.

VR  
4/3/07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1456

That the Senate recede from its amendments as printed on page 1027 of the House Journal and page 780 of the Senate Journal and that Engrossed House Bill No. 1456 be amended as follows:

Page 1, line 1, after "siting" insert "and decommissioning"

Page 1, line 3, after "**SITING**" insert "**AND DECOMMISSIONING**"

Page 1, line 4, after "siting" insert "and decommissioning"

Page 1, line 8, remove "and"

Page 1, line 9, after "siting" insert "and reclamation of wind farm sites; and the decommissioning of wind farm sites"

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number SB 456 (, as (re)engrossed): Date: 4-3-07

Your Conference Committee Natural Resources

11:30 am

*attend* For the Senate: YES / NO *attend* For the House: YES / NO

<i>Sen Lyson</i>	<input checked="" type="checkbox"/>	<i>Rep Porter</i>	<input checked="" type="checkbox"/>
<i>Sen Tolleson</i>	<input checked="" type="checkbox"/>	<i>Rep Brandenburg</i>	<input checked="" type="checkbox"/>
<i>Sen Triplett</i>	<input checked="" type="checkbox"/>	<i>Rep Kelson</i>	<input checked="" type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from

the (Senate/House) amendments on (SJ/HJ) page(s) 1027--

      , and place        on the Seventh order.

      , adopt (further) amendments as follows, and place        on the Seventh order:

      , having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed)        was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_  
CARRIER: Brandenburg & Lyson

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

VOTE COUNT    \_\_ YES    \_\_ NO    \_\_ ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1456, as engrossed:** Your conference committee (Sens. Lyson, Tollefson, Triplett and Reps. Porter, Brandenburg, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1027, adopt amendments as follows, and place HB 1456 on the Seventh order:

That the Senate recede from its amendments as printed on page 1027 of the House Journal and page 780 of the Senate Journal and that Engrossed House Bill No. 1456 be amended as follows:

Page 1, line 1, after "siting" insert "and decommissioning"

Page 1, line 3, after "**SITING**" insert "**AND DECOMMISSIONING**"

Page 1, line 4, after "siting" insert "and decommissioning"

Page 1, line 8, remove "and"

Page 1, line 9, after "siting" insert "and reclamation of wind farm sites; and the decommissioning of wind farm sites"

Renumber accordingly

Engrossed HB 1456 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1456

*Item #1*

TESTIMONY- HB 1456  
REP. JON NELSON

Good Morning Mr. Chairman and members of the House Natural Resource Committee. It is a pleasure to appear before you today to introduce HB 1456.

HB 1456 would authorize the Public Service Commission to conduct a study of siting issues that surround commercial wind farms. The bill would solicit input from utility stakeholders, industry representatives, agriculture interests, political subdivisions, as well as the general public.

As the commercial wind energy industry continues to grow in our state, it seems that the state of North Dakota should be looked upon for leadership in creating responsible safeguards for landowners as it has done in all other areas of energy development in this state. This bill would simply begin that dialogue and report its findings back to the legislative council with recommendations for the next legislative session.

Although the problems of siting commercial wind farms in North Dakota have been relatively limited, disputes have occurred and without guidance from the state, property owners have limited resources to draw from for protection of their property rights. In one situation in Dickey County, local township officials instituted zoning regulations but as many of you committee members from rural North Dakota know, most townships don't have the resources, or sophistication to match the commercial wind developers in a siting dispute.

With us today are two township officials from Spring Valley Township in Dickey County to testify regarding their experience. I am pleased to introduce to the committee Mr. Brad Crabtree, who most of you know, as well as Mr. Mark Flaten who will provide testimony to the committee.

HB 1456 sets up a procedure to study the issue of siting commercial wind farms. I believe it begins to put into place a dialogue that may or may not bring Public Service Commission oversight into this emerging industry. It is my hope that commercial wind farms will continue to grow across our state and join the oil and lignite industry as responsible and accountable members in the communities where they exist.

I respectfully ask for a DO- PASS recommendation for HB 1456 and thank you for the opportunity to appear before you today.

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



*Item # 2*  
Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Roger Johnson  
Agriculture Commissioner  
HB 1456  
House Natural Resources Committee  
Pioneer Room  
February 2, 2007  
8:30 am**

---

---

Chairman Porter and members of the House Natural Resources Committee, I am Agriculture Commissioner Roger Johnson. I'm here today to offer testimony in favor of HB 1456, which would provide authority for the Public Service Commission to study the issues related to the siting of wind farms in North Dakota.

Currently, the Public Service Commission only has oversight over wind projects that are 100 MW or greater in size. North Dakota is home to a total of 179 MW of wind projects and the largest project size to date was 50 MW. Many additional projects are in the planning stages, some as large as 150 MW.

North Dakota is ranked first in the nation in wind energy potential and it is in our best interest to maintain a developer-friendly climate in the state so that our industry can continue to grow. It is

also incumbent upon our state to provide an atmosphere that protects the rights of landowners and the public interest when these projects are being developed.

Siting issues have become more prominent during the last couple of years, particularly relating to a proposed project in Dickey County. A project proposed by Florida Power & Light (FPL) raised concerns for landowners in Dickey County's Spring Valley Township regarding the setback distance of turbines from adjacent landowners. These concerns led to the development of a zoning ordinance in Spring Valley Township to address siting issues.

Siting issues are not isolated to Dickey County alone. HB 1456 would provide the Public Service Commission the authority to study the complex issues related to the siting of wind turbines and projects and provide thoughtful, studied recommendations for statewide siting guidelines in North Dakota. HB 1456 also calls for the solicitation of public input from all affected parties – local government officials, electric utilities, the wind industry, landowners, farm organizations and others.

Chairman Porter and committee members, HB 1456 will position North Dakota to make sound choices regarding statewide siting guidelines that will protect and benefit all interested parties. I would like to recommend a "do pass" on HB 1456. Thank you for this opportunity to offer testimony. I would be happy to answer any questions you may have.

*Item # 3*

**Testimony in Support of HB 1456: To Provide for the  
Public Service Commission to Study Wind Farm Siting**

**Before the House Natural Resources Committee  
February 2, 2007**

**Mark Flaten, Chairman  
Spring Valley Township  
Dickey County  
(701) 357-8421**

*Same to  
Senate*

Chairman Porter and members of the Committee, thanks for the chance to give my testimony in support of House Bill 1456. My name is Mark D. Flaten. I live in Spring Valley Township, Dickey County. My wife of 28 years and I are the third generation of her family to ranch on this spot. I became a township supervisor in April of 1996 and township chairman in March of 2000.

First, I think wind turbines are one of the most sensible ways to produce electricity, using a limitless, renewable resource and providing landowners with some revenue. But, after going through our experience in 2005, I believe there needs to be some siting regulations or guidelines set by the state. I don't think it would be that hard or complicated and could be done much like with oil wells (ND Century Code 38-08-07 to 38-08-10).

In 2005, there was a proposed wind farm sited in our area, with many of the turbines within 300 feet of property lines and affecting six different property owners. Another developer held leases on the adjacent land. If these turbines had been built in these locations, the adjacent land would have been made unsuitable for development.

Faced with this problem, we took our concerns to our Dickey County commissioners. We were told that the County could not do anything and that our Township's only option was to adopt zoning, which we did. We were the first township in the state to have any guidelines for wind farm siting.

We know our ordinance is not perfect. But, right or wrong, we did the best job we could. Our total annual township budget is \$3,400 and, with that, we have to fix, maintain, and keep the snow off 17 miles of roads. Then, we were also faced with regulating an \$80 million construction project with no help from either Dickey County or the state—and no extra money.

Through all this, some have agreed with us, and some have disagreed. The biggest problem is the conflict we have experienced in our area. We do not want others to have to go through the same experience that we did. There are so few farmers and ranchers left in the state that we need to get along and not be fighting each other. I truly believe if there was a plan in place to site turbines and compensate affected landowners fairly, we would have more development because there would be less risk of conflict.

So, I would urge each and every legislator to pass House Bill 1456 and have this matter studied and come up with a fair solution for all.

*Item #4*

**Testimony in Favor of HB 1456:  
To Provide for a Public Service Commission Wind Farm Siting Study  
House Natural Resources Committee  
February 2, 2007**

**Brad Crabtree  
Spring Valley Township  
Dickey County  
(701) 647-2041  
[bcrabtree@gpisd.net](mailto:bcrabtree@gpisd.net)**

Chairman Porter and Committee members, thank you for the opportunity to testify on behalf of HB 1456. I also want to thank the bill sponsors, Representatives Nelson, Gulleason and Kretschmar, for their interest in finding a constructive approach to wind farm siting issues in our state. My name is Brad Crabtree. I am testifying on this bill as an officer of Spring Valley Township in Dickey County.

As you know from my testimony last week on HB 1363 regarding decommissioning of wind farms, our township of 32 residents developed the state's first zoning ordinance for commercial wind farms in 2005. We zoned to protect the commercial wind rights of individual landowners and wind developers—rights threatened by the proposed siting of turbines by Florida Power and Light right along the property lines and upwind of landowners not participating in the project. The affected landowners, and a competing wind developer, enXco, which held the rights to develop the bordering properties, would have lost all economic use of that land for future wind development.

The reason is simple. At the edge of a project, turbines can create wind wakes that diminish the wind resource of adjoining property owners *outside* the wind farm, much like an upwind sailboat steals wind from boats downwind. Designing wind farms to reduce wind wake effects is standard operating procedure for commercial wind developers. In our case, FPL would have provided for well over 2,000 feet of distance between their *own* turbines from northwest to southeast—but as little as 150 feet for the neighbors.

The situation we encountered is not unique to wind development. The early days of oil and gas development saw similar conflicts over correlative rights—the rights of one resource owner relative to those of another. That's why the North Dakota Industrial Commission today regulates the establishment of spacing units for oil and gas pools, and section 38-08 of the North Dakota Century Code requires that all resource owners within an established unit receive royalty compensation on a formula basis when development affects their shared resource.

Fortunately, North Dakota already formally recognizes wind rights. SB 2239 passed last session states that a "wind easement means a right . . . executed by or on behalf of an *owner* of land or airspace . . . . A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property." The fact is that the long-term health of any industry requires basic protection of property rights. As we saw in the former Soviet Union, little or no

private investment occurs in the absence of established and protected private property rights to a resource, be it the land itself, the mineral rights below or, in this case, the wind resource above.

Of course, the broader siting issue is about more than wind rights. And it is about more than the decommissioning of wind farms. Large-scale commercial wind farms are a beneficial and urgently needed new form of electric power generation, and I am a passionate advocate of their development. However, constructing thousands of megawatts of wind farms on the landscape will have many impacts. Some we can reasonably expect; others will be unanticipated. Some level of public oversight and regulation is just plain commonsense, and it will protect the industry by avoiding needless mistakes and conflict, thus maintaining our state's competitive advantage: widespread landowner and public support for wind energy development.

Unfortunately, the passage of HB 1283 last session—done with the honorable intention of reducing regulatory burdens on the wind industry—has left our state without any authority for siting wind farms under 100 MW of capacity. We now see a new wind farm in Dickey County under development that will have 99 MW located in North Dakota and the remainder in South Dakota. While I and my fellow officers support this project and have permitted the feeder line and substation in our Township, sizing wind farms merely to avoid regulation is no rational way to grow an industry. It will be a path littered with unintended and undesirable consequences.

While I do hope you pass this session the decommissioning bill since so much good work has already gone into HB 1363, I also appreciate views expressed last week by Chairman Porter and other Committee members that this situation needs a comprehensive and thoughtful policy fix. That is a view shared by members of the North Dakota Renewable Energy Partnership and why the Partnership has endorsed this bill. By tasking the Public Service Commission to study this issue and report back with recommendations for the 2009 session, this bill is a good first step.

This legislation allows the PSC to frame the issues comprehensively, rather than piecemeal. The Commission will seek broad input from wind developers, utilities buying the power, landowners whose property is affected, and local government officials struggling to balance competing interests. In conducting their study, Commissioners will also draw on other states' policy experience, notably Minnesota, which has successfully sited many more wind farms than we have.

Rather than battling these issues out in the newspapers, or worse, among neighbors, we have always wanted these complex siting issues to be resolved rationally and responsibly at the state level, with participation by all affected parties, including by those who opposed our zoning efforts. HB 1456 would provide that opportunity, and I respectfully request a do-pass recommendation.

*Item #5*

**H. B. 1456**

**Presented by:** Susan Wefald, President  
Public Service Commission

**Before:** Natural Resources  
Honorable Todd Porter, Chairman

**Date:** February 2, 2007

**TESTIMONY**

Mr. Chairman and members of the Committee, I am Susan Wefald, President of the Public Service Commission. The comments I am making today are my own comments and not those of my fellow commissioners. I am sorry that I cannot be here today in person to deliver these comments.

I am in support of House Bill 1456. As a strong supporter of the wind industry, I am delighted that we are seeing many wind energy projects constructed in North Dakota. A few days ago, the Commission received a letter of intent from Florida Power and Light to build a 160 MW wind energy conversion facility this year near Langdon. This facility, since it is over 100 MW will be sited by the Commission.

However, it would be very timely in 2008 for the legislature to have the information proposed in this bill from a wind farm siting study. I particularly like this bill because it gives the Commission adequate time and resources to do the job. As you will note in line 15 and 16 of the bill, this bill allows the Commission "to hire a consultant to assist in the conduct of the study and preparation of the report." This is an important provision, since the Commission has such a small technical staff in its public utilities division (4 people).

I have looked carefully at the sections of the bill that describe what the study must include. They appear very "doable," and are well stated. Since I am a strong supporter of public involvement, I agree with the provisions for seeking public comment in lines 17 and 18.

This concludes my testimony on H. B. 1456.

TESTIMONY TO SENATE NATURAL RESOURCE  
COMMITTEE- HB 1456  
REP. JON NELSON

Good Morning Mr. Chairman Lyson and members of the Senate Natural Resource Committee. It is a pleasure to appear before you today to introduce HB 1456.

HB 1456 would authorize the legislative council to conduct a study of siting issues that surround commercial wind farms. The bill would solicit input from utility stakeholders, industry representatives, agriculture interests, political subdivisions, as well as the general public.

As the commercial wind energy industry continues to grow in our state, it seems that the state of North Dakota should be looked upon for leadership in creating responsible safeguards for landowners as it has done in all other areas of energy development in this state. This bill would simply begin that dialogue and report its findings back to the legislative council with recommendations for the next legislative session.

Although the problems of siting commercial wind farms in North Dakota have been relatively limited, disputes have occurred and without guidance from the state, property owners have limited resources to draw from for protection of their property rights. In one situation in Dickey County, local township officials instituted zoning regulations but as many of you committee members from rural North Dakota know, most townships don't have the resources, or sophistication to match the commercial wind developers in a siting dispute.

With us today is a township official from Spring Valley Township in Dickey County to testify regarding their experience. I am pleased to introduce to the committee Mr. Brad Crabtree, who most of you know, and would like to provide testimony from Mr. Mark Flaten who farms and ranches in Spring Valley Township and also serves on the township board.

HB 1456 sets up a procedure to study the issue of siting commercial wind farms. Additionally, the issue of decommissioning commercial wind towers needs to be added to the list of issues that should become part of the discussion with the defeat of HB 1363. Passage of this legislation begins to put into place a dialogue that may or may not bring Public Service Commission oversight into this emerging

industry. It is my hope that commercial wind farms will continue to grow across our state and join the oil and lignite industry as responsible and accountable members in the communities where they exist.

I respectfully ask for a DO- PASS recommendation for HB 1456 and thank you for the opportunity to appear before you today.

Introduced by

Representatives Nelson, Kreidt, Weisz

Senators Holmberg, Triplett

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century  
2 Code, relating to the decommissioning of commercial wind energy facilities.

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

4 **SECTION 1.** A new chapter to title 49 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

- 7 1. "Commercial wind energy conversion facility" means a wind energy conversion  
8 facility of equal to or greater than five hundred kilowatts in total nameplate  
9 generating capacity.  
10 2. "Commission" means the public service commission.  
11 3. "Wind turbine" means a wind turbine of equal to or greater than five hundred  
12 kilowatts in total nameplate generating capacity.

13 **Jurisdiction of the commission for decommissioning of commercial wind energy**  
14 **conversion facilities.** The commission has continuing jurisdiction and authority over all  
15 persons and property necessary to enforce the provisions of this chapter. The commission has  
16 the authority to:

- 17 1. Investigate all methods and practices of commercial wind energy conversion  
18 facilities, subject to the provisions of this chapter;  
19 2. Require the filing and determine the amount of a bond or other assurance,  
20 conditioned upon the full compliance with this chapter, and the rules and orders of  
21 the commission. The commission may accept under such terms and conditions as  
22 the commission may prescribe, a surety bond, collateral bond, self-bond, escrow  
23 account, or any alternative form of security or other financial assurance, or

- 1           combination thereof, by which an owner or operator assures faithful performance of  
2           all requirements of this chapter and the rules and orders of the commission;  
3        3. Regulate the decommissioning of a commercial wind energy conversion system;  
4           and  
5        4. Adopt and enforce rules and orders to effectuate the purposes and the intent of this  
6           chapter.

7        **Decommissioning of commercial wind energy conversion facilities.**

- 8        1. The owner and operator must, at its expense, complete decommissioning of the  
9           commercial wind energy conversion facility, or individual wind turbines, within  
10           twelve months after the end of the useful life of the commercial wind energy  
11           conversion facility or individual wind turbines. The commercial wind energy  
12           conversion facility or individual wind turbine is presumed to be at the end of its  
13           useful life if no electricity is generated for a continuous period of twelve months,  
14           unless a plan is developed and submitted to the commission outlining the steps  
15           and schedule for returning the turbine to service.  
16        2. Decommissioning of commercial wind energy conversion facilities includes removal  
17           of all physical material pertaining to the wind energy conversion facility to a depth  
18           of forty-eight inches [1.219 meters] beneath the soil surface and restoration of the  
19           disturbed area to substantially the same physical condition that existed  
20           immediately before construction.  
21        3. Disturbed earth must be graded and reseeded, unless the landowner requests in  
22           writing that the access roads or other land surface areas not be removed and  
23           restored to substantially the same physical condition that existed immediately  
24           before construction.  
25        4. The commission may require a performance bond to provide for the  
26           decommissioning and removal of a commercial wind energy conversion facility.  
27           The performance bond may be in the form of a surety bond, collateral bond,  
28           self-bond, cash, or any alternative form of security or other financial assurance as  
29           prescribed by commission rule. The commission shall consider the anticipated life  
30           of the project, the estimated decommissioning costs in current dollars, the method  
31           and schedule for updating the costs of decommissioning and restoration, the

- 1           method of ensuring that funds will be available for decommissioning and  
2           restoration, and the anticipated manner in which the project will be  
3           decommissioned and the site restored when adopting rules that detail the bond  
4           requirements and when determining the amount of any required bond.  
5           5. If the commercial wind energy conversion facility owner or operator does not  
6           complete decommissioning, the commission may take such action as may be  
7           necessary to complete decommissioning, including requiring forfeiture of the bond.  
8           The entry into a participating landowner agreement constitutes agreement and  
9           consent of the parties to the agreement, their respective heirs, successors, and  
10           assigns, that the commission may take such action as may be necessary to  
11           implement the decommissioning plan, including the exercise by the commission,  
12           commission staff, and contractors of the right of ingress and egress for the purpose  
13           of decommissioning the commercial wind energy conversion facility.  
14           6. An easement or lease between a landowner and the owner or operator of a  
15           commercial wind energy facility or wind turbine may contain provisions for  
16           decommissioning that are more restrictive than this chapter.

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



Attachment #3  
Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Roger Johnson  
Agriculture Commissioner  
HB 1456  
Senate Natural Resources Committee  
Fort Lincoln Room  
March 9, 2007  
9:30 am**

---

---

Chairman Lyson and members of the Senate Natural Resources Committee, I am Agriculture Commissioner Roger Johnson. I'm here today to offer testimony in favor of HB 1456, which directs the Legislative Council to study the issues relating the siting of wind farms in North Dakota to provide recommendations to the 61<sup>st</sup> legislative assembly.

Currently, there is little oversight over the development of wind projects in North Dakota. The Public Service Commission has oversight over wind projects that are 100 MW or greater in size. North Dakota is home to a total of 179 MW of wind projects and the largest project size to date was 50 MW. Many additional projects are in the planning stages, some as large as 150 MW.

North Dakota is ranked first in the nation in wind energy potential and it is in our best interest to maintain a developer-friendly climate in the state so that our industry can continue to grow. It is

also incumbent upon our state to provide an atmosphere that protects the rights of landowners and the public interest when these projects are being developed.

Siting issues have become more prominent during the last couple of years, particularly relating to a proposed project in Dickey County. A project proposed by Florida Power & Light (FPL) raised concerns for landowners in Dickey County's Spring Valley Township regarding the setback distance of turbines from adjacent landowners. These concerns led to the development of a zoning ordinance in Spring Valley Township to address siting issues.

Siting issues are not isolated to Dickey County alone. HB 1456 would provide the opportunity for the legislature to study the complex issues related to the siting of wind turbines and projects and provide thoughtful, studied recommendations for statewide siting guidelines in North Dakota. HB 1456 also calls for the solicitation of public input from all affected parties – local government officials, electric utilities, the wind industry, landowners, farm organizations and others.

Chairman Lyson and committee members, HB 1456 will position North Dakota to make sound choices regarding statewide siting guidelines that will protect and benefit all interested parties. I would like to recommend a “do pass” on HB 1456. Thank you for this opportunity to offer testimony. I would be happy to answer any questions you may have.

**Testimony in Favor of HB 1456:  
To Provide for a Wind Farm Siting Study  
Senate Natural Resources Committee  
March 9, 2007**

**Brad Crabtree  
Spring Valley Township  
Dickey County  
(701) 647-2041  
[bcrabtree@gpsid.net](mailto:bcrabtree@gpsid.net)**

Chairman Lyson and Committee members, thank you for the opportunity to testify on behalf of HB 1456. I also want to thank Representative Nelson and the bill sponsors for their interest in finding a constructive approach to wind farm siting issues in our state. My name is Brad Crabtree. I am testifying on this bill as an officer of Spring Valley Township in Dickey County.

Located in the heart of North Dakota's greatest wind resource, our Township became the first location in the state with two different wind developers pursuing adjacent wind developments. Concerns over wind turbine siting issues led our township of 32 residents to develop the state's first zoning ordinance for commercial wind farms in 2005. We zoned to protect the commercial wind rights of individual landowners and wind developers—rights threatened by the proposed siting of turbines by Florida Power and Light right along the property lines and upwind of landowners not participating in the project. The affected landowners, and a competing wind developer, enXco, which held the rights to develop the bordering properties, would have lost all economic use of that land for future wind development.

The reason is simple. At the edge of a project, turbines can create wind wakes that diminish the wind resource of adjoining property owners *outside* the wind farm, much like an upwind sailboat steals wind from boats downwind. Designing wind farms to reduce wind wake effects is standard operating procedure for commercial wind developers. In our case, FPL would have provided for well over 2,000 feet of distance between their *own* turbines from northwest to southeast—but as little as 150 feet for the neighbors.

The situation we encountered is not unique to wind development. The early days of oil and gas development saw similar conflicts over correlative rights—the rights of one resource owner relative to those of another. That's why the North Dakota Industrial Commission today regulates the establishment of spacing units for oil and gas pools, and section 38-08 of the North Dakota Century Code requires that all resource owners within an established unit receive royalty compensation on a formula basis when development affects their shared resource.

Fortunately, North Dakota already formally recognizes wind rights, so establishing a comparable approach to correlative rights for wind energy should not be difficult. SB 2239 passed last

session states that a “wind easement means a right . . . executed by or on behalf of an *owner* of land or airspace . . . . A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.” The fact is that any industry requires basic protection of property rights, be they rights to the land and built structures themselves, the mineral rights below or, in this case, the wind resource above.

Of course, the broader siting issue is about more than wind rights. Constructing thousands of megawatts of wind farms on the landscape will have many impacts. Some we can reasonably expect, such as the need to provide for the decommissioning of wind farms after the end of their economically useful life; other impacts will be unanticipated.

Large-scale commercial wind farms are a beneficial and urgently needed new form of electric power generation, and I am a passionate advocate of their development. However, some level of public oversight and regulation is just plain commonsense, and it will protect the industry by avoiding the kinds of needless mistakes and conflict that occurred in the early years of oil and gas development and surface mining of coal. North Dakota has an important competitive advantage to protect: widespread landowner and public support for wind energy development. We do not want to become like some parts of the country where the siting of wind farms faces intense local opposition from landowners and other interest groups.

Unfortunately, the passage of HB 1283 last session—done with the honorable intention of reducing regulatory burdens on the wind industry—has left our state without any authority for siting wind farms under 100 MW of capacity. We now see a new wind farm in Dickey County under development that will have 99 MW located in North Dakota and the remainder in South Dakota. While I and my fellow officers support this project and have permitted the feeder line and substation in our township, siting wind farms merely to avoid regulation is no rational way to grow an industry. It will be a path littered with unintended and undesirable consequences.

This situation needs a comprehensive and thoughtful policy fix, and the legislative study required by this bill is a responsible first step. This legislation allows the legislative assembly to frame the issues comprehensively, rather than piecemeal, to seek broad input from wind developers, utilities, landowners, and local government officials, and to draw on other states’ policy experience, notably Minnesota, which has successfully sited many more wind farms than we have.

Rather than battling these issues out in the newspapers, or worse, among neighbors, we have always wanted these complex siting issues to be resolved rationally and responsibly at the state level, with participation by all affected parties, including by those who opposed our zoning efforts. The study that HB 1456 requires would provide that opportunity, and I respectfully request a do-pass recommendation.