

Sixty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2313

Introduced by

Senator Unruh

Representative Porter

1 A BILL for an Act to create and enact a new subdivision to subsection 1 of section 49-22-08 of
2 the North Dakota Century Code, relating to application requirements for certificates of site and
3 corridor compatibility for energy conversion facilities; and to amend and reenact sections
4 17-04-03, 49-02-27, and 49-22-05.1 of the North Dakota Century Code, relating to the creation
5 and duration of wind energy easements, the decommissioning of commercial wind energy
6 conversion facilities, and exclusion areas for wind energy conversion facilities.

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

8 **SECTION 1. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **17-04-03. Wind easements - Creation - Term - Development required.**

11 A property owner may grant a wind easement in the same manner and with the same effect
12 as the conveyance of an interest in real property. The easement runs with the land benefited
13 and burdened and terminates upon the conditions stated in the easement or thirty days after
14 decommissioning, whichever occurs first. However, the easement is void if the following have
15 not occurred with respect to the property that is the subject of development to produce energy
16 from wind power associated with the easement has not occurred within five years after the
17 easement commences:

- 18 1. ~~A certificate of site compatibility or conditional use permit has been issued, if required;~~
19 and
- 20 2. ~~A transmission interconnection request is in process and not under suspension is~~
21 created.

22 **SECTION 2. AMENDMENT.** Section 49-02-27 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **49-02-27. Decommissioning of wind energy conversion facilities.**

- 2 1. The commission shall adopt rules governing the decommissioning of commercial wind
3 energy conversion facilities. The rules must address:
4 a. The anticipated life of the project;
5 b. The estimated decommissioning costs in current dollars;
6 c. The method and schedule for updating the costs of the decommissioning and
7 restoration; and
8 d. ~~The method of ensuring that funds will be available for decommissioning and~~
9 ~~restoration;~~
10 e. ~~The anticipated manner in which the project will be decommissioned and the site~~
11 ~~restored; and~~
12 f. Present and future natural resource development.
13 2. Before operation of a commercial wind energy conversion facility or wind turbine, the
14 commission by order shall require the owner to secure a performance bond, surety
15 bond, or corporate guarantee to cover the anticipated costs of decommissioning the
16 commercial wind energy conversion facility or turbine. The commission may accept a
17 corporate guarantee if the corporation has a tangible net worth of at least ten million
18 dollars, a ratio of total liabilities of net worth of 2.5 or less, and a ratio of current assets
19 to current liabilities of 1.2 or greater; or if it has an investment grade current rating for
20 its most recent bond issuance of A or higher as issued by Moody's Investors Service, A
21 or higher as issued by Standard and Poor's Corporation, or an equivalent rating by
22 any other nationally recognized statistical rating organization, as defined and approved
23 by the United States securities and exchange commission.
24 3. Decommissioning and site restoration includes dismantling and removal of all towers,
25 turbine generators, transformers, and overhead cables; removal of underground
26 cables to a depth of forty-eight inches [121.92 centimeters]; removal of foundations,
27 buildings, and ancillary equipment to a depth of eight feet [2.44 meters] and removal of
28 surface road material and restoration of the roads and turbines sites to substantially
29 the same physical condition that existed immediately before construction of the
30 commercial wind energy conversion facility or wind turbine. The facility owner or
31 operator shall record notice of record with the county recorder with the location of any

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1 cables, foundations, buildings, and ancillary equipment not removed. The site must be
2 restored and reclaimed to the same general topography that existed immediately
3 before the beginning of the construction of the commercial wind energy conversion
4 facility or wind turbine and with topsoil respread over the disturbed areas to a depth
5 similar to that in existence before the disturbance. Areas disturbed by the construction
6 of the facility and decommissioning activities must be graded, topsoiled, and reseeded
7 according to natural resource conservation service technical guide recommendations
8 and other agency recommendations, unless the landowner requests in writing that the
9 access roads or other land surface areas be retained.

- 10 4. The facility owner or operator of a commercial wind energy facility shall record the
11 location of any portion of underground foundation not removed during
12 decommissioning with the county recorder in the county in which any such
13 underground foundation is located.

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

16 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 17 1. The commission shall develop criteria to be used in identifying exclusion and
18 avoidance areas and to guide the site, corridor, and route suitability evaluation and
19 designation process. The criteria also may include an identification of impacts and
20 policies or practices which may be considered in the evaluation and designation
21 process.
- 22 2. Except for transmission lines in existence before July 1, 1983, areas within five
23 hundred feet [152.4 meters] of an inhabited rural residence must be designated
24 avoidance areas. This criterion does not apply to a water pipeline. The five hundred
25 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be
26 waived by the owner of the inhabited rural residence in writing. The criteria may also
27 include an identification of impacts and policies or practices which may be considered
28 in the evaluation and designation process.
- 29 3. The following geographical areas must be excluded in the consideration of a site for a
30 wind energy conversion area:
- 31 a. Areas less than:

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- 1 (1) Two times the height of the turbine from an interstate or state roadway right
2 of way;
3 (2) Two times the height of the turbine from the centerline of any county or
4 maintained township roadway;
5 (3) Two times the height of the turbine from any railroad right of way;
6 (4) Two times the height of the turbine from a one hundred fifteen kilovolt or
7 higher transmission line;
8 (5) Three times the height of the turbine from an occupied residence of a
9 participating or nonparticipating landowner or a business; and
10 (6) Two times the height of the turbine from the property line of a
11 nonparticipating landowner, unless a variance is granted. A variance may be
12 granted if an authorized representative or agent of the permittee and
13 affected parties with associated wind rights file a written agreement
14 expressing the support of all parties for a variance to reduce the setback
15 requirement in this paragraph. A nonparticipating landowner is a landowner
16 that has not signed a wind option or an easement agreement with the
17 permittee of the wind energy conversion facility as defined in chapter 17-04.

- 18 b. Areas where, due to operation of the facility, the sound levels within one hundred
19 feet of an inhabited residence or a community building will exceed fifty
20 A-weighted decibels. The sound level avoidance area criteria may be waived in
21 writing by the owner of the occupied residence or the community building.

22 **SECTION 4.** A new subdivision to subsection 1 of section 49-22-08 of the North Dakota

23 Century Code is created and enacted as follows:

24 A statement explaining the manner in which an energy conversion facility has
25 informed and mitigated any affected subsurface mineral owners or lessees.