

Introduced by

Senator Unruh

Representative Porter

1 A BILL for an Act to create and enact a new ~~subdivision to subsection 1 of section~~  
2 ~~49-22-08~~section to chapter 4-01 of the North Dakota Century Code, relating to ~~application~~  
3 ~~requirements for certificates of site and corridor compatibility for energy conversion facilities;~~  
4 ~~and~~a wind energy restoration and reclamation oversight program; to amend and reenact  
5 sections 17-04-03, ~~49-02-27~~49-02-34, and 49-22-05.1 of the North Dakota Century Code,  
6 relating to the creation and duration of wind energy easements, ~~the decommissioning of~~  
7 ~~commercial wind energy conversion facilities~~annual reports on meeting renewable and recycled  
8 energy objectives, and exclusion areas for wind energy conversion facilities; and to provide for  
9 application.

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

11 **SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created  
12 and enacted as follows:

13 **Wind energy restoration and reclamation oversight program.**

- 14 1. The agricultural commissioner shall establish a program that provides technical  
15 assistance and support to property owners on wind property restoration and followup  
16 support to property owners on wind property reclamation.
- 17 2. The agricultural commissioner may contract for ombudsmen for purposes of being a  
18 resource for technical assistance and followup on wind property issues. The  
19 ombudsmen may not investigate or assist in any easement negotiations.
- 20 3. The program may provide technical education, support, and outreach on wind-related  
21 matters in coordination with other entities.
- 22 4. The agricultural commissioner may contract with local individuals, deemed trustworthy  
23 by property owners, to be ombudsmen. The agricultural commissioner is not subject to  
24 chapter 54-44.4 when contracting for the services of ombudsmen.

1       **SECTION 2. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **17-04-03. Wind easements - Creation - Term - Development required.**

4       A property owner may grant a wind easement in the same manner and with the same effect  
5 as the conveyance of an interest in real property. The easement runs with the land benefited  
6 and burdened and terminates upon the conditions stated in the easement or thirty days after  
7 decommissioning full reclamation, whichever occurs first. However, the easement is void if the-  
8 following have not occurred with respect to the property that is the subject of development to  
9 produce energy from wind power associated with the easement has not occurred within five  
10 years after the easement commences:

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

15 ~~— **SECTION 2. AMENDMENT.** Section 49-02-27 of the North Dakota Century Code is~~  
16 ~~amended and reenacted as follows:~~

17 ~~— **49-02-27. Decommissioning of wind energy conversion facilities.**~~

- 18 ~~— 1. The commission shall adopt rules governing the decommissioning of commercial wind~~  
19 ~~energy conversion facilities. The rules must address:~~
  - 20 ~~— a. The anticipated life of the project;~~
  - 21 ~~— b. The estimated decommissioning costs in current dollars;~~
  - 22 ~~— c. The method and schedule for updating the costs of the decommissioning and~~  
23 ~~restoration; and~~
  - 24 ~~— d. The method of ensuring that funds will be available for decommissioning and~~  
25 ~~restoration;~~
  - 26 ~~— e. The anticipated manner in which the project will be decommissioned and the site~~  
27 ~~restored; and~~
  - 28 ~~— f. Present and future natural resource development.~~
- 29 ~~— 2. Before operation of a commercial wind energy conversion facility or wind turbine, the~~  
30 ~~commission by order shall require the owner to secure a performance bond, surety~~  
31 ~~bond, or corporate guarantee to cover the anticipated costs of decommissioning the~~

1 ~~commercial wind energy conversion facility or turbine. The commission may accept a~~  
2 ~~corporate guarantee if the corporation has a tangible net worth of at least ten million~~  
3 ~~dollars, a ratio of total liabilities of net worth of 2.5 or less, and a ratio of current assets~~  
4 ~~to current liabilities of 1.2 or greater; or if it has an investment grade current rating for~~  
5 ~~its most recent bond issuance of A or higher as issued by Moody's Investors Service, A~~  
6 ~~or higher as issued by Standard and Poor's Corporation, or an equivalent rating by~~  
7 ~~any other nationally recognized statistical rating organization, as defined and approved~~  
8 ~~by the United States securities and exchange commission.~~

9 ~~3. Decommissioning and site restoration includes dismantling and removal of all towers,~~  
10 ~~turbine generators, transformers, and overhead cables; removal of underground~~  
11 ~~cables to a depth of forty-eight inches [121.92 centimeters]; removal of foundations,~~  
12 ~~buildings, and ancillary equipment to a depth of eight feet [2.44 meters] and removal of~~  
13 ~~surface road material and restoration of the roads and turbines sites to substantially~~  
14 ~~the same physical condition that existed immediately before construction of the~~  
15 ~~commercial wind energy conversion facility or wind turbine. The facility owner or~~  
16 ~~operator shall record notice of record with the county recorder with the location of any~~  
17 ~~cables, foundations, buildings, and ancillary equipment not removed. The site must be~~  
18 ~~restored and reclaimed to the same general topography that existed immediately~~  
19 ~~before the beginning of the construction of the commercial wind energy conversion~~  
20 ~~facility or wind turbine and with topsoil respread over the disturbed areas to a depth~~  
21 ~~similar to that in existence before the disturbance. Areas disturbed by the construction~~  
22 ~~of the facility and decommissioning activities must be graded, topsoiled, and reseeded~~  
23 ~~according to natural resource conservation service technical guide recommendations~~  
24 ~~and other agency recommendations, unless the landowner requests in writing that the~~  
25 ~~access roads or other land surface areas be retained.~~

26 ~~4. The facility owner or operator of a commercial wind energy facility shall record the~~  
27 ~~location of any portion of underground foundation not removed during~~  
28 ~~decommissioning with the county recorder in the county in which any such~~  
29 ~~underground foundation is located.~~

30 **SECTION 3. AMENDMENT.** Section 49-02-34 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **49-02-34. Public reporting on progress toward meeting the renewable energy and**  
2 **recycled energy objective.**

3       Commencing on June 30, 2009, retail providers shall report annually on the provider's  
4 previous calendar year's energy sales. This report must include information regarding qualifying  
5 electricity delivered and renewable energy and recycled energy certificates purchased and  
6 retired as a percentage of annual retail sales and a brief narrative report that describes steps  
7 taken to meet the objective over time and identifies any challenges or barriers encountered in  
8 meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers  
9 shall report to the public service commission, which shall make data and narrative reports  
10 publicly available and accessible electronically on the internet. Distribution cooperatives may  
11 aggregate their reporting through generation and transmission cooperatives and municipal  
12 utilities may aggregate their reporting through a municipal power agency.

13       **SECTION 4. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15       **49-22-05.1. Exclusion and avoidance areas - Criteria.**

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

21       2. Except for transmission lines in existence before July 1, 1983, areas within five  
22 hundred feet [152.4 meters] of an inhabited rural residence must be designated  
23 avoidance areas. This criterion does not apply to a water pipeline. The five hundred  
24 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be  
25 waived by the owner of the inhabited rural residence in writing. ~~The criteria may also~~  
26 ~~include an identification of impacts and policies or practices which may be considered~~  
27 ~~in the evaluation and designation process.~~

28       3. ~~The following geographical areas must be excluded in the consideration of a site for a~~  
29 ~~wind energy conversion area:~~

30       ~~a.~~ Areas less than:

- 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) Twoone and one-tenth times the height of the turbine from the property line~~  
11 ~~of a nonparticipating landowner and three times the height of the turbine~~  
12 ~~from any quarter section of property containing an occupied residence of a~~  
13 ~~nonparticipating landowner, must be excluded in the consideration of a site~~  
14 ~~for a wind energy conversion area, unless a variance is granted. A variance~~  
15 ~~may be granted if an authorized representative or agent of the permittee~~  
16 ~~and affected parties with associated wind rights file a written agreement~~  
17 ~~expressing the support of all parties for a variance to reduce the setback~~  
18 ~~requirement in this paragraph. A nonparticipating landowner is a landowner~~  
19 ~~that has not signed a wind option or an easement agreement with the~~  
20 ~~permittee of the wind energy conversion facility as defined in chapter~~  
21 ~~17-04. **SECTION 4.** A new subdivision to subsection 1 of section 49-22-08 of~~  
22 ~~the North Dakota Century Code is created and enacted as follows:~~  
23 ~~A statement explaining the manner in which an energy conversion facility has~~  
24 ~~informed and mitigated any affected subsurface mineral owners or lessees.~~
- 25 ~~b. Areas where, due to operation of the facility, the sound levels within one hundred~~  
26 ~~feet of an inhabited residence or a community building will exceed fifty~~  
27 ~~A-weighted decibels. The sound level avoidance area criteria may be waived in~~  
28 ~~writing by the owner of the occupied residence or the community building.~~

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30 **SECTION 5. APPLICATION.** Section 4 of this Act applies only to projects that have applied  
31 for a certificate of site compatibility after December 31, 2017.