

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2313

Introduced by

Senator Unruh

Representative Porter

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

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

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

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

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

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

1 **17-04-03. Wind easements - Creation - Term - Development required.**

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

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

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

15 **49-02-34. Public reporting on progress toward meeting the renewable energy and**
16 **recycled energy objective.**

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

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

29 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 30 1. The commission shall develop criteria to be used in identifying exclusion and
31 avoidance areas and to guide the site, corridor, and route suitability evaluation and

1 designation process. The criteria also may include an identification of impacts and
2 policies or practices which may be considered in the evaluation and designation
3 process.

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

11 3. Areas less than one and one-tenth times the height of the turbine from the property
12 line of a nonparticipating landowner and three times the height of the turbine from any
13 quarter section of property containing an occupied residence of a nonparticipating
14 landowner, must be excluded in the consideration of a site for a wind energy
15 conversion area, unless a variance is granted. A variance may be granted if an
16 authorized representative or agent of the permittee and affected parties with
17 associated wind rights file a written agreement expressing the support of all parties for
18 a variance to reduce the setback requirement in this paragraph. A nonparticipating
19 landowner is a landowner that has not signed a wind option or an easement
20 agreement with the permittee of the wind energy conversion facility as defined in
21 chapter 17-04.

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