

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; to provide a statement of legislative intent; 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 2. 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 3. 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~~inhabited rural residence of a  
14 nonparticipating landowner, must be excluded in the consideration of a site for a wind  
15 energy 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. A local zoning authority may require setback distances greater than  
22 those required under this subsection. For purposes of this subsection, "height of the  
23 turbine" means the distance from the base of the wind turbine to the turbine blade tip  
24 when it is in its highest position.

25 **SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND**  
26 **RECLAMATION OVERSIGHT PROGRAM.** It is the intent of the sixty-fifth legislative assembly  
27 that the agriculture commissioner establish the wind property restoration and reclamation  
28 oversight program, created in section 1 of this Act, using existing operating funds.

29 **SECTION 5. APPLICATION.** Section ~~4~~<sup>3</sup> of this Act applies only to projects that have  
30 applied for a certificate of site compatibility after December 31, 2017.