

Sixty-sixth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1383

Introduced by

Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt

Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek

1 A BILL for an Act to create and enact a new section to chapter 4.1-01, and a new section to
2 chapter 49-22, ~~and a new section to chapter 49-22.1~~ of the North Dakota Century Code, relating
3 to the creation of an environmental impact mitigation fund and to mitigating direct environmental
4 impacts; to amend and reenact subsection 1 of section 4.1-01-18, and sections 49-22-05.1, and
5 49-22-09, ~~49-22.1-03, and 49-22.1-09~~ of the North Dakota Century Code, relating to the federal
6 environmental law impact review committee, exclusion and avoidance areas and the factors
7 considered by the public service commission when evaluating and designating sites, corridors,
8 and routes; to provide for a report ~~to the budget section; to provide an appropriation;~~ and to
9 provide a continuing appropriation.

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

11 **SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century
12 Code is amended and reenacted as follows:

- 13 1. The federal environmental law impact review committee consists of:
- 14 a. The commissioner, who shall serve as the chairman;
- 15 b. The governor or the governor's designee;
- 16 c. The majority leader of the house of representatives, or the leader's designee;
- 17 d. The majority leader of the senate, or the leader's designee;
- 18 e. One member of the legislative assembly from the minority party, selected by the
19 chairman of the legislative management;
- 20 f. ~~One individual appointed by the lignite energy council;~~
- 21 ~~g. One individual appointed by the North Dakota corn growers association;~~
- 22 ~~h. One individual appointed by the North Dakota grain growers association;~~
- 23 ~~i. One individual appointed by the North Dakota petroleum council;~~
- 24 ~~j. One individual appointed by the North Dakota soybean growers association; and~~

- 1 ~~_____ k. One individual appointed by the North Dakota stockmen's association;~~
2 ~~_____ l. One individual appointed by the North Dakota farm bureau;~~
3 ~~_____ m. One individual appointed by the North Dakota farmers union;~~
4 ~~_____ n. The chairman of the public service commission or the chairman's designee;~~
5 _____ g. The state engineer or the state engineer's designee;
6 _____ h. The director of the game and fish department, or the director's designee;
7 _____ i. The director of the department of transportation, or the director's designee;
8 _____ j. The director of the department of environmental quality, or the director's
9 designee;
10 _____ k. One representative of an investor-owned utility companies; ~~and~~
11 ~~e-l.~~ One representative from the North Dakota association of rural electric
12 cooperatives;
13 _____ m. Two individuals from the agricultural production community appointed by the
14 commissioner;
15 _____ n. Two individuals from the conservation community appointed by the
16 commissioner;
17 _____ o. Two individuals from the wind energy development community appointed by the
18 commissioner;
19 _____ p. Two individuals from the crop community appointed by the commissioner;
20 _____ q. Two individuals from the animal agriculture community appointed by the
21 commissioner; and
22 _____ r. Two individuals from the energy community appointed by the commissioner.

23 **SECTION 2.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Environmental impact mitigation fund - Report to ~~budget section~~legislative**
26 **management - Continuing appropriation.**

- 27 1. ~~The moneys accumulated in the environmental impact mitigation fund must be~~
28 ~~allocated as provided by law and as appropriated by the legislative assembly~~There is
29 created in the state treasury the environmental impact mitigation fund. The fund
30 consists of all moneys deposited in the fund under section 5 of this Act. All moneys in

1 the fund are appropriated to the commissioner on a continuing basis for distribution by
2 the agriculture commissioner:

3 ~~a. To political subdivisions and state agencies to offset impacts of energy~~
4 ~~development to agricultural land;~~

5 ~~b. To to landowners for the mitigation of agricultural land impacted by wind energy~~
6 ~~development; and~~

7 ~~c. To landowners of agricultural land who are subject to excessive mitigation of~~
8 ~~wetlands as set forth under subsection 2.~~

9 2. Funding may be used only for:

10 a. Contracting for consultation with environmental scientists, wildlife biologists,
11 biologists, soil scientists, range scientists, engineers, economists, or scientists in
12 any other field determined to be relevant for services including the evaluation,

13 assessment, and analysis of the physical composition and potential chemical

14 properties of land determined to be impacted by energy development or land to

15 be considered for mitigation; or engineers for relevant services to implement

16 mitigation required from the impact of wind energy development; and

17 b. Reclamation, restoration, or mitigation of land, water resources, or wildlife

18 habitats adversely impacted directly by adverse impacts from wind energy

19 development; and

20 ~~c. Offsetting or defraying costs of landowner mitigation in qualifying circumstances~~

21 ~~as determined by the advisory board.~~

22 3. ~~The commissioner is not subject to chapter 54 44.4 when contracting for services~~

23 ~~under this chapter.~~

24 ~~4. The federal environmental law impact review committee shall establish criteria for~~

25 ~~disbursement of environmental impact funds.~~

26 5.4. The commissioner shall make disbursements based upon the determinations made by

27 the federal environmental law impact review committee.

28 6.5. For purposes of this section, the federal environmental law impact review committee

29 shall hold at least one regular meeting each year and additional meetings as the

30 chairman determines necessary at a time and place set by the chairman. Upon written

1 request of any four members, the ~~presiding officer~~chairman shall call a special
2 meeting of the committee.

3 7.6. The federal environmental law impact review committee shall make determinations for
4 the disbursement of grants in accordance with subsection 2 and provide those
5 determinations to the commissioner.

6 8.7. The federal environmental law impact review committee shall provide a biennial report
7 to the ~~budget section of the~~ legislative management.

8 ~~9. All moneys in the environmental impact mitigation fund are appropriated to the~~
9 ~~commissioner on a continuing basis for the purposes set forth under subsection 2.~~

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

12 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 13 1. The commission shall develop criteria to be used in identifying exclusion and
14 avoidance areas and to guide the site, corridor, and route suitability evaluation and
15 designation process. The criteria also may include an identification of impacts and
16 policies or practices which may be considered in the evaluation and designation
17 process.
- 18 2. The commission may not identify prime farmland, unique farmland, or irrigated land as
19 exclusion or avoidance areas when evaluating and designating geographical areas for
20 site, corridor, or route suitability.
- 21 3. Except for electric 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.
- 26 ~~3.4.~~ Areas less than one and one-tenth times the height of the turbine from the property
27 line of a nonparticipating landowner and less than three times the height of the turbine
28 or more from an inhabited rural residence of a nonparticipating landowner, must be
29 excluded in the consideration of a site for a wind energy conversion area, unless a
30 variance is granted. The commission may grant a variance if an authorized
31 representative or agent of the permittee, the nonparticipating landowner, and affected

1 parties with associated wind rights file a written agreement expressing the support of
2 all parties for a variance to reduce the setback requirement in this subsection. A
3 nonparticipating landowner is a landowner that has not signed a wind option or an
4 easement agreement with the permittee of the wind energy conversion facility as
5 defined in chapter 17-04. A local zoning authority may require setback distances
6 greater than those required under this subsection. For purposes of this subsection,
7 "height of the turbine" means the distance from the base of the wind turbine to the
8 turbine blade tip when it is in its highest position.

9 **SECTION 4. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **49-22-09. Factors to be considered in evaluating applications and designation of**
12 **sites, corridors, and routes.**

13 1. The commission shall be guided by, but is not limited to, the following considerations,
14 where applicable, to

15 ~~1. To aid in the evaluation and designation of sites, corridors, and routes, the commission~~
16 ~~shall consider:~~

- 17 1. a. Available research and investigations relating to the effects of the location,
18 construction, and operation of the proposed facility on public health and welfare,
19 natural resources, and the environment.
- 20 2. b. The effects of new electric energy conversion and electric transmission
21 technologies and systems designed to minimize adverse environmental effects.
- 22 3. c. The potential for beneficial uses of waste energy from a proposed electric energy
23 conversion facility.
- 24 4. d. Adverse direct and indirect environmental effects that cannot be avoided should
25 the proposed site or route be designated.
- 26 5. e. Alternatives to the proposed site, corridor, or route which are developed during
27 the hearing process and which minimize adverse effects.
- 28 6. f. Irreversible and irretrievable commitments of natural resources should the
29 proposed site, corridor, or route be designated.
- 30 7. g. The direct and indirect economic impacts of the proposed facility.

- 1 8. h. Existing plans of the state, local government, and private entities for other
2 developments at or in the vicinity of the proposed site, corridor, or route.
3 9. i. The effect of the proposed site or route on existing scenic areas, historic sites
4 and structures, and paleontological or archaeological sites.
5 10. j. The effect of the proposed site or route on areas which are unique because of
6 biological wealth or because ~~they~~the areas are habitats for rare and endangered
7 species.
8 11. k. Problems raised by federal agencies, other state agencies, and local entities.

9 2. ~~In the evaluation and designation of sites, corridors, and routes, the commission may~~
10 ~~not:~~

11 ~~a. Require payment for mitigation of any assessed adverse indirect environmental~~
12 ~~effects or impacts; or~~

13 ~~b. Require payment to a third-party nongovernmental organization for any assessed~~
14 ~~adverse direct or indirect environmental effects or impacts. The commission may~~
15 ~~not condition the issuance of a certificate or permit on the applicant providing a~~
16 ~~mitigation payment assessed or requested by another state agency or entity to~~
17 ~~offset a negative impact on wildlife habitat.~~

18 **SECTION 5.** A new section to chapter 49-22 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Mitigating direct environmental impacts.**

21 1. ~~If an applicant elects to provide~~An applicant may elect to provide payment to mitigate
22 any assessed adverse direct environmental ~~impact~~impacts of a proposed site, corridor,
23 route, or facility, ~~the applicant shall make the payment to the agriculture commissioner.~~

24 The applicant may elect to provide the payment to the agriculture commissioner.

25 2. ~~Subject to subsection 3, the~~The agriculture commissioner shall deposit into the
26 environmental impact mitigation fund any moneys paid to mitigate the adverse direct
27 environmental impacts of a proposed site, corridor, route, or facility.

28 ~~3. At the applicant's request, the agriculture commissioner may provide moneys directly~~
29 ~~to an organization approved by the federal environmental law impact review~~
30 ~~committee.~~

1 ~~— **SECTION 6. AMENDMENT.** Section 49-22.1-03 of the North Dakota Century Code is~~
2 ~~amended and reenacted as follows:~~

3 ~~— **49-22.1-03. Exclusion and avoidance areas – Criteria.**~~

4 ~~— 1. The commission shall develop criteria to be used in identifying exclusion and~~
5 ~~avoidance areas and to guide the site, corridor, and route suitability evaluation and~~
6 ~~designation process.~~

7 ~~— 2. The commission may not identify prime farmland, unique farmland, or irrigated land as~~
8 ~~exclusion or avoidance areas when evaluating and designating geographical areas for~~
9 ~~site, corridor, or route suitability.~~

10 ~~— 3. Except for oil and gas transmission lines in existence before July 1, 1983, areas within~~
11 ~~five hundred feet [152.4 meters] of an inhabited rural residence must be designated~~
12 ~~avoidance areas.~~

13 ~~— a. This criterion does not apply to a water pipeline.~~

14 ~~— b. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural~~
15 ~~residence may be waived by the owner of the inhabited rural residence in writing.~~

16 ~~— c. The criteria also may include an identification of impacts and policies or practices~~
17 ~~which may be considered in the evaluation and designation process.~~

18 ~~— **SECTION 7. AMENDMENT.** Section 49-22.1-09 of the North Dakota Century Code is~~
19 ~~amended and reenacted as follows:~~

20 ~~— **49-22.1-09. Factors to be considered in evaluating applications and designation of**~~
21 ~~**sites, corridors, and routes.**~~

22 ~~— The commission is guided by, but is not limited to, the following considerations, when~~
23 ~~applicable, to~~

24 ~~— 1. To aid in the evaluation and designation of sites, corridors, and routes, the commission~~
25 ~~shall consider:~~

26 ~~— 1. a. Available research and investigations relating to the effects of the location,~~
27 ~~construction, and operation of the proposed facility on public health and welfare,~~
28 ~~natural resources, and the environment.~~

29 ~~— 2. b. The effects of new gas or liquid energy conversion and gas or liquid transmission~~
30 ~~technologies and systems designed to minimize adverse environmental effects.~~

- 1 ~~3. c. The potential for beneficial uses of waste energy from a proposed gas or liquid-~~
2 ~~energy conversion facility.~~
- 3 ~~4. d. Adverse direct and indirect environmental effects that cannot be avoided should-~~
4 ~~the proposed site or route be designated.~~
- 5 ~~5. e. Alternatives to the proposed site, corridor, or route that are developed during the-~~
6 ~~hearing process and which minimize adverse effects.~~
- 7 ~~6. f. Irreversible and irremediable commitments of natural resources should the-~~
8 ~~proposed site, corridor, or route be designated.~~
- 9 ~~7. g. The direct and indirect economic impacts of the proposed facility.~~
- 10 ~~8. h. Existing plans of the state, local government, and private entities for other-~~
11 ~~developments at or in the vicinity of the proposed site, corridor, or route.~~
- 12 ~~9. i. The effect of the proposed site or route on existing scenic areas, historic sites-~~
13 ~~and structures, and paleontological or archaeological sites.~~
- 14 ~~10. j. The effect of the proposed site or route on areas that are unique because of-~~
15 ~~biological wealth or because the site or route is a habitat for rare and endangered-~~
16 ~~species.~~
- 17 ~~11. k. Problems raised by federal agencies, other state agencies, and local entities.~~
- 18 ~~2. In the evaluation and designation of sites, corridors, and routes, the commission may~~
19 ~~not:~~
- 20 ~~a. Require payment for mitigation of any assessed adverse indirect environmental~~
21 ~~effects or impacts; or~~
- 22 ~~b. Require payment to a third party nongovernmental organization for any assessed~~
23 ~~adverse direct or indirect environmental effects or impacts.~~
- 24 ~~**SECTION 8.** A new section to chapter 49-22.1 of the North Dakota Century Code is created~~
25 ~~and enacted as follows:~~
- 26 ~~**Mitigating direct environmental impacts.**~~
- 27 ~~1. If an applicant elects to provide payment to mitigate any assessed adverse direct~~
28 ~~environmental impact of a proposed site, corridor, route, or facility, the applicant shall~~
29 ~~make the payment to the agriculture commissioner.~~

1 ~~2. Subject to subsection 3, the agriculture commissioner shall deposit into the~~
2 ~~environmental impact mitigation fund any moneys paid to mitigate the adverse direct~~
3 ~~environmental impacts of a proposed site, corridor, route, or facility.~~

4 ~~3. At the applicant's request, the agriculture commissioner may provide moneys directly~~
5 ~~to an organization approved by the federal environmental law impact review~~
6 ~~committee.~~

7 ~~**SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the~~
8 ~~environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum~~
9 ~~of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for~~
10 ~~the purpose of providing grants to political subdivisions for the mitigation of environmental~~
11 ~~impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.~~