

**SECOND ENGROSSMENT
with Senate Amendments
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 of the North Dakota Century Code, relating to the creation of an environmental
3 impact mitigation fund and to mitigating direct environmental impacts; to amend and reenact
4 subsection 1 of section 4.1-01-18 and sections 49-22-05.1 and 49-22-09 of the North Dakota
5 Century Code, relating to the federal environmental law impact review committee, exclusion and
6 avoidance areas and the factors considered by the public service commission when evaluating
7 and designating sites, corridors, and routes; to provide for a report; and to provide a continuing
8 appropriation.

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

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

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

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

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

23 **Environmental impact mitigation fund - Report to legislative management -**

24 **Continuing appropriation.**

- 25 1. There is created in the state treasury the environmental impact mitigation fund. The
26 fund consists of all moneys deposited in the fund under section 5 of this Act. All
27 moneys in the fund are appropriated to the commissioner on a continuing basis for
28 distribution by the agriculture commissioner to landowners for the mitigation of
29 agricultural land impacted by wind energy development as set forth under subsection
30 2.
31 2. Funding may be used only for:

- 1 a. Contracting for consultation with environmental scientists or engineers for
2 relevant services to implement mitigation required from the impact of wind energy
3 development; and
- 4 b. Reclamation or mitigation of adverse impacts from wind energy development.
- 5 3. The federal environmental law impact review committee shall establish criteria for
6 disbursement of environmental impact funds.
- 7 4. The commissioner shall make disbursements based upon the determinations made by
8 the federal environmental law impact review committee.
- 9 5. For purposes of this section, the federal environmental law impact review committee
10 shall hold meetings as the chairman determines necessary at a time and place set by
11 the chairman. Upon written request of any four members, the chairman shall call a
12 special meeting of the committee.
- 13 6. The federal environmental law impact review committee shall make determinations for
14 the disbursement of grants in accordance with subsection 2 and provide those
15 determinations to the commissioner.
- 16 7. The federal environmental law impact review committee shall provide a biennial report
17 to the legislative management.

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

20 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 21 1. The commission shall develop criteria to be used in identifying exclusion and
22 avoidance areas and to guide the site, corridor, and route suitability evaluation and
23 designation process. The criteria also may include an identification of impacts and
24 policies or practices which may be considered in the evaluation and designation
25 process.
- 26 2. The commission may not identify prime farmland, unique farmland, or irrigated land as
27 exclusion or avoidance areas when evaluating and designating geographical areas for
28 site, corridor, or route suitability.
- 29 3. Except for electric transmission lines in existence before July 1, 1983, areas within five
30 hundred feet [152.4 meters] of an inhabited rural residence must be designated
31 avoidance areas. This criterion does not apply to a water pipeline. The five hundred

1 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be
2 waived by the owner of the inhabited rural residence in writing.
3 ~~3.4.~~ Areas less than one and one-tenth times the height of the turbine from the property
4 line of a nonparticipating landowner and less than three times the height of the turbine
5 or more from an inhabited rural residence of a nonparticipating landowner, must be
6 excluded in the consideration of a site for a wind energy conversion area, unless a
7 variance is granted. The commission may grant a variance if an authorized
8 representative or agent of the permittee, the nonparticipating landowner, and affected
9 parties with associated wind rights file a written agreement expressing the support of
10 all parties for a variance to reduce the setback requirement in this subsection. A
11 nonparticipating landowner is a landowner that has not signed a wind option or an
12 easement agreement with the permittee of the wind energy conversion facility as
13 defined in chapter 17-04. A local zoning authority may require setback distances
14 greater than those required under this subsection. For purposes of this subsection,
15 "height of the turbine" means the distance from the base of the wind turbine to the
16 turbine blade tip when it is in its highest position.

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

19 **49-22-09. Factors to be considered in evaluating applications and designation of**
20 **sites, corridors, and routes.**

- 21 1. The commission shall be guided by, but is not limited to, the following considerations,
22 where applicable, to aid the evaluation and designation of sites, corridors, and routes:
- 23 4. a. Available research and investigations relating to the effects of the location,
24 construction, and operation of the proposed facility on public health and welfare,
25 natural resources, and the environment.
- 26 2. b. The effects of new electric energy conversion and electric transmission
27 technologies and systems designed to minimize adverse environmental effects.
- 28 3. c. The potential for beneficial uses of waste energy from a proposed electric energy
29 conversion facility.
- 30 4. d. Adverse direct and indirect environmental effects that cannot be avoided should
31 the proposed site or route be designated.

- 1 5. e. Alternatives to the proposed site, corridor, or route which are developed during
- 2 the hearing process and which minimize adverse effects.
- 3 6. f. Irreversible and irretrievable commitments of natural resources should the
- 4 proposed site, corridor, or route be designated.
- 5 7. g. The direct and indirect economic impacts of the proposed facility.
- 6 8. h. Existing plans of the state, local government, and private entities for other
- 7 developments at or in the vicinity of the proposed site, corridor, or route.
- 8 9. i. The effect of the proposed site or route on existing scenic areas, historic sites
- 9 and structures, and paleontological or archaeological sites.
- 10 10. j. The effect of the proposed site or route on areas ~~which are~~ unique because of
- 11 biological wealth or because ~~they~~the areas are habitats for rare and endangered
- 12 species.
- 13 11. k. Problems raised by federal agencies, other state agencies, and local entities.
- 14 2. The commission may not condition the issuance of a certificate or permit on the
- 15 applicant providing a mitigation payment assessed or requested by another state
- 16 agency or entity to offset a negative impact on wildlife habitat.

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

19 **Mitigating direct environmental impacts.**

- 20 1. An applicant may elect to provide payment to mitigate any assessed adverse direct
- 21 environmental impacts of a proposed site, corridor, route, or facility. The applicant may
- 22 elect to provide the payment to the agriculture commissioner.
- 23 2. The agriculture commissioner shall deposit into the environmental impact mitigation
- 24 fund any moneys paid to mitigate the adverse direct environmental impacts of a
- 25 proposed site, corridor, route, or facility.