

**HOUSE BILL NO. 1095**

Introduced by

Energy and Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new subsection to section 49-22-07 of the North Dakota  
2 Century Code, relating to the siting of a repowered wind conversion facility that has not  
3 previously been issued a certificate of site compatibility; and to amend and reenact sections  
4 49-22-03 and 49-22-16.4 of the North Dakota Century Code, relating to the definition of repower  
5 for a wind facility and waivers or extensions for light mitigation technology systems.

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

7 **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **49-22-03. Definitions.**

10 In this chapter, unless the context or subject matter otherwise requires:

- 11 1. "Certificate" means the certificate of site compatibility or the certificate of corridor  
12 compatibility issued under this chapter.
- 13 2. "Commission" means the North Dakota public service commission.
- 14 3. "Construction" includes a clearing of land, excavation, or other action affecting the  
15 environment of the site after April 9, 1975, but does not include activities:
- 16 a. Conducted wholly within the geographic location for which a utility has previously  
17 obtained a certificate or permit under this chapter, or on which a facility was  
18 constructed before April 9, 1975, if:
- 19 (1) The activities are for the construction of the same type of facility as the  
20 existing type of facility as identified in a subdivision of  
21 ~~subsection 5~~ subsection 5 or ~~42~~ in subsection 13 of this section and the  
22 activities are:
- 23 (a) Within the geographic boundaries of a previously issued certificate or  
24 permit;

- 1 (b) For an electric energy conversion facility constructed before April 9,  
2 1975, within the geographic location on which the facility was built; or  
3 (c) For an electric transmission facility constructed before April 9, 1975,  
4 within a width of three hundred fifty feet [106.68 meters] on either side  
5 of the centerline;
- 6 (2) Except as provided in subdivision b, the activities do not affect any known  
7 exclusion or avoidance area;
- 8 (3) The activities are for the construction:
- 9 (a) Of a new electric energy conversion facility;
- 10 (b) Of a new electric transmission facility;
- 11 (c) To improve the existing electric energy conversion facility or electric  
12 transmission facility; or
- 13 (d) To increase or decrease the capacity of the existing electric energy  
14 conversion facility or electric transmission facility; and
- 15 (4) Before conducting any activities, the utility certifies in writing to the  
16 commission that:
- 17 (a) The activities will not affect a known exclusion or avoidance area;
- 18 (b) The activities are for the construction:
- 19 [1] Of a new electric energy conversion facility;
- 20 [2] Of a new electric transmission facility;
- 21 [3] To improve the existing electric energy conversion or electric  
22 transmission facility; or
- 23 [4] To increase or decrease the capacity of the existing electric  
24 energy conversion facility or electric transmission facility; and
- 25 (c) The utility will comply with all applicable conditions and protections in  
26 siting laws and rules and commission orders previously issued for any  
27 part of the facility.
- 28 b. Otherwise qualifying for exclusion under subdivision a, except that the activities  
29 are expected to affect a known avoidance area and the utility before conducting  
30 any activities:
- 31 (1) Certifies in writing to the commission that:

- 1 (a) The activities will not affect a known exclusion area;
- 2 (b) The activities are for the construction:
- 3 [1] Of a new electric energy conversion facility;
- 4 [2] Of a new electric transmission facility;
- 5 [3] To improve the existing electric energy conversion facility or
- 6 electric transmission facility; or
- 7 [4] To increase or decrease the capacity of the existing electric
- 8 energy conversion facility or electric transmission facility; and
- 9 (c) The utility will comply with all applicable conditions and protections in
- 10 siting laws and rules and commission orders previously issued for any
- 11 part of the facility;
- 12 (2) Notifies the commission in writing that the activities are expected to impact
- 13 an avoidance area and provides information on the specific avoidance area
- 14 expected to be impacted and the reasons why impact cannot be avoided;
- 15 and
- 16 (3) Receives the commission's written approval for the impact to the avoidance
- 17 area, based on a determination that there is no reasonable alternative to the
- 18 expected impact. If the commission does not approve impacting the
- 19 avoidance area, the utility must obtain siting authority under this chapter for
- 20 the affected portion of the site or route. If the commission fails to act on the
- 21 notification required by this subdivision within thirty days of the utility's filing
- 22 the notification, the impact to the avoidance area is deemed approved.
- 23 c. Incident to preliminary engineering or environmental studies.
- 24 4. "Corridor" means the area of land where a designated route may be established for an
- 25 electric transmission facility.
- 26 5. "Electric energy conversion facility" means a plant, addition, or combination of plant
- 27 and addition, designed for or capable of:
- 28 a. Generation by wind energy conversion exceeding one-half megawatt of
- 29 electricity; or
- 30 b. Generation by any means other than wind energy conversion exceeding fifty
- 31 megawatts of electricity.

- 1           6. "Electric transmission facility" means an electric transmission line and associated  
2 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission  
3 facility" does not include:
- 4           a. A temporary electric transmission line loop that is:
- 5                 (1) Connected and adjacent to an existing electric transmission facility that was  
6                         sited under this chapter;
- 7                 (2) Within the corridor of the sited facility and does not cross known exclusion  
8                         or avoidance areas; and
- 9                 (3) In place for less than one year; or
- 10           b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 11           7. "Facility" means an electric energy conversion facility, electric transmission facility, or  
12 both.
- 13           8. "Permit" means the permit for the construction of an electric transmission facility within  
14 a designated corridor issued under this chapter.
- 15           9. "Person" includes an individual, firm, association, partnership, cooperative,  
16 corporation, limited liability company, or any department, agency, or instrumentality of  
17 a state or of the federal government, or any subdivision thereof.
- 18           10. "Power emergency" means an electric transmission line and associated facilities that  
19 have been damaged or destroyed by natural or manmade causes resulting in a loss of  
20 power supply to consumers of the power.
- 21           11. "Repower" means construction activities to completely or partially dismantle and  
22 replace turbine equipment at an existing wind energy conversion facility site that result  
23 in an increase of the facility's generation output potential or turbine height. The term  
24 does not include routine turbine maintenance or routine replacement of malfunctioning  
25 turbines or turbine components.
- 26           12. "Route" means the location of an electric transmission facility within a designated  
27 corridor.
- 28 ~~12-13.~~ "Site" means the location of an electric energy conversion facility.
- 29 ~~13-14.~~ "Utility" means a person engaged in and controlling the electric generation, the  
30 transmission of electric energy, or the transmission of water from or to any electric  
31 energy conversion facility.

1       **SECTION 2.** A new subsection to section 49-22-07 of the North Dakota Century Code is  
2 created and enacted as follows:

3           A wind energy conversion facility that has not been issued a certificate of site  
4           compatibility and exceeds five megawatts of electricity may not repower the wind  
5           energy conversion facility without first having obtained a certificate of site compatibility.  
6           A variance may be granted for impacts to exclusion and avoidance areas resulting  
7           from the repowering of existing infrastructure upon a showing of good cause. A  
8           requested variance must comply with local land use, zoning, building rules,  
9           regulations, and ordinances.

10       **SECTION 3. AMENDMENT.** Section 49-22-16.4 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **49-22-16.4. Light-mitigating technology system - Rules.**

- 13       1. The commission shall adopt rules by January 1, 2019, relating to the implementation  
14 of light-mitigating technology systems on wind energy conversion facilities. The rules  
15 must be consistent with the federal aviation administration regulations [14 CFR 1.1 et  
16 seq.] and must include service and maintenance requirements, safety standards, and  
17 lighting system requirements.
- 18       2. By December 31, 2019, every wind energy conversion facility for which the  
19 commission issued a certificate of site compatibility after June 5, 2016, must be  
20 equipped with a functioning light-mitigating technology system that complies with rules  
21 adopted by the commission. After public hearing, the commission may grant a waiver  
22 or an extension of time based on technical or economic feasibility considerations.
- 23       3. By December 31, 2021, every wind energy conversion facility for which the  
24 commission issued a certificate of site compatibility before June 5, 2016, must be  
25 equipped with a functioning light-mitigating technology system that complies with the  
26 rules adopted by the commission. After public hearing, the commission may grant a  
27 waiver or an extension of time based on technical or economic feasibility  
28 considerations.
- 29       4. Any costs associated with the implementation, operation, and maintenance of  
30 light-mitigating technology systems are the sole responsibility of the wind energy  
31 conversion facility owner.