

Introduced by

Representatives Severson, DeKrey, Monson

Senator Klein

1 A BILL for an Act to provide for wind turbine siting requirements and wind energy development  
2 contract provisions.

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

4 **SECTION 1. Wind turbine siting requirements and wind energy development**  
5 **contract provisions.**

- 6 1. All wind turbines and contracts for the development of wind energy in this state  
7 must comply with this section.
- 8 2. A person may not acquire directly or indirectly wind energy rights that have been  
9 severed from the surface estate. As used in this subsection, surface estate means  
10 an estate in or ownership of the surface of a particular tract of land.
- 11 3. The duration of an option to provide a contract entered after the effective date of  
12 this Act to provide land for the siting of a wind turbine may not exceed three years.  
13 The renewal period for an option entered after the effective date of this Act to  
14 provide land for the site of a wind turbine may not exceed three years. A renewal  
15 clause must provide both parties with a clear right to unilaterally deny renewal by  
16 notifying the other party in writing of the intention not to renew within one hundred  
17 eighty days of the expiration of the contract or option. Notice is deemed to have  
18 been given when sent by one party to the other party by certified mail to the  
19 address contained in the contract or option.
- 20 4. A contract, lease, or option entered after the effective date of this Act may not  
21 contain:
- 22 a. A nondisclosure or secrecy clause prohibiting a party to the contract, lease, or  
23 option from disclosing its contents to other parties in the wind energy  
24 development area.

- 1           b.    A mandatory arbitration clause.
- 2           c.    A clause requiring the landowner to invest in the wind energy development
- 3                project as a condition to entering the contract, lease, or option.
- 4           d.    A right of first refusal for the wind energy developer or wind turbine operator.
- 5        5.    Notwithstanding any other provision of law, landowners may bargain collectively for
- 6                standard contract, lease, and option terms.
- 7        6.    Notwithstanding any other provision of law, a landowner may void a contract,
- 8                lease, or option within three days of entering the contract, lease, or option.
- 9        7.    A copy of every contract, easement, option for easement, or other document that
- 10               reserves the right or provides for the right to use land for wind energy development
- 11               must be filed with the department of commerce not later than thirty days after
- 12               execution of the contract, easement, or option. The department of commerce shall
- 13               establish and maintain a publicly accessible, web-based data base or table
- 14               providing, at a minimum, information relating to the price; duration of the contract,
- 15               lease, or option; the county within which the land that is the subject of the contract,
- 16               lease, or option is located; and the name of the wind energy developer. The
- 17               department of commerce may charge a filing fee not to exceed one hundred
- 18               dollars per wind energy siting to defray the expenses of maintaining the data base.
- 19               All documents filed pursuant to this subsection are open records and are
- 20               considered public information.
- 21        8.    The minimal size of a wind turbine to be erected on leased land must be stated in
- 22               any contract that includes payment in part or in whole based on the actual power
- 23               produced from the wind turbine. The size of a new turbine is the maximum peak
- 24               power generating capacity of the wind turbine as certified in writing by the wind
- 25               turbine manufacturer. A wind turbine or generator that has been modified to
- 26               reduce the original equipment manufacturer's maximum peak power generating
- 27               capacity by more than ten percent must be recertified by the entity having
- 28               conducted the work resulting in the reduction. A land lease or easement contract
- 29               providing for payment based on the productivity of a wind energy turbine or the
- 30               receipts from the sale of power from the wind turbine must include a minimum
- 31               annual payment to be paid during each period regardless of production or receipts.

1 The minimum payment may not be conditioned on the production of electricity or  
2 receipts from the sale of electricity. The placement and operation of a wind turbine  
3 with maximum peak power generating capacity less than that stated in the contract  
4 voids the contract. A contract voided under this subsection must require that the  
5 party holding the original option for the land remove all equipment and restore the  
6 land to its original condition within one hundred twenty days of the voiding of the  
7 contract. Equipment left on the land for more than one hundred twenty days  
8 becomes the property of the landowner. The landowner is entitled to receive from  
9 the lessee or option holder an amount equal to three times the actual expenses,  
10 including lost agricultural revenue, incurred in restoring the land to its original  
11 condition.

12 9. Payment for amounts due under a lease or easement agreement must be made on  
13 an annual or more frequent basis.

14 10. A wind turbine may not be erected within a distance to a property line equal to two  
15 and three quarters times the total swept rotor-blade diameter of the installed wind  
16 turbine unless the county where the wind turbine is located expressly authorizes  
17 the location after determining that the wind turbine will not infringe on the property  
18 rights of adjacent landowners.

19 11. A wind energy developer desiring to engage in wind energy development projects  
20 or erect wind turbines in this state shall file with the public service commission a  
21 good and sufficient surety bond in an amount determined adequate by the  
22 commission. The public service commission may charge a reasonable fee for  
23 administrative costs incurred by the commission. The bond must be in a form  
24 prescribed by the commission and must indemnify landowners of property subject  
25 to wind energy development, including the state and its political subdivisions,  
26 against physical damages to property which may result from wind energy  
27 development, erection of wind turbines, and reclamation of wind turbine sites. The  
28 bond must cover all wind energy development and operation of wind turbines  
29 conducted or occurring within one year of the date the bond is issued and must be  
30 automatically renewed unless the commission and the person covered by the bond  
31 receive notice sixty days before any anniversary date of the surety's intent not to

1           renew the bond. If the surety does not renew the wind energy developer's bond,  
2           the surety's liability under the bond ceases six years from the date that wind  
3           energy development, wind turbine operations, or wind turbine site reclamation  
4           covered by the bond was last conducted in the state. If the surety does not renew  
5           the bond, the surety's liability under the bond ceases two years from the date wind  
6           energy development operations, wind turbine operations, or site reclamation  
7           operations were last conducted in this state. A person required to post a bond  
8           under this subsection may post cash or a certificate of deposit in lieu of the bond  
9           under rules adopted by the commission. The aggregate liability of the surety on  
10          the bond may in no event exceed the amount of the bond. Upon filing the bond  
11          required by this subsection and presenting a certificate of authority to transact  
12          business in this state issued under section 10-19.1-136, a certificate of  
13          incorporation issued under chapter 10-19.1, or some other certificate issued by the  
14          secretary of state showing the name of the person designated as resident agent for  
15          service of process, the commission shall issue to the person desiring to engage in  
16          wind energy development a certificate showing that the bond has been filed and  
17          showing the name and address of the surety company and the name of the person  
18          designated resident agent for service of process. The proceeds of a surety bond  
19          become the property of the commission or the cash or certificate of deposit posted  
20          in lieu of a surety bond may not be returned to that person if the principle or person  
21          posting the bond, cash, or certificate of deposit fails to comply with this Act and  
22          rules adopted by the commission under this Act. This must be determined by the  
23          commission after notice and hearing in accordance with rules adopted by the  
24          commission. Notice of the hearing must be given to the principal and surety on the  
25          bond or to the person posting the cash or certificate of deposit by mailing a copy of  
26          the notice of hearing and a copy of a complaint, stating the grounds for forfeiture to  
27          them, filed by the commission. This must be done by certified mail, return receipt  
28          requested, and addressed to their last-known address listed with the commission.  
29          If the principal or surety or person posting the cash or certificate of deposit has a  
30          defense to, or otherwise wishes to contest the complaint of the commission, that  
31          person must file a written statement or answer setting forth the defense with the

- 1 commission at least three business days before the commission hearing. A  
2 defense or reason for contesting the complaint is waived if that person fails to do  
3 so. The commission may treat the failure to file a defense or reason to contest the  
4 complaint or the failure to appear at the hearing as default by the party. If the  
5 commission determines the principal on the bond or the person posting the cash or  
6 certificate of deposit as security has complied with this Act and rules adopted by  
7 the commission under this Act, including the proper reclamation of the surrounding  
8 affected area, with respect to all operations secured by the bond, the commission  
9 shall release the obligation of the bond or return the cash or certificate of deposit  
10 upon its next anniversary date.
- 11 12. A wind energy developer or wind turbine operator may not acquire any interest in  
12 land other than an easement for the location of the wind turbine, and access to the  
13 turbine, and any transmission facilities.