

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1435

Introduced by

Representatives Severson, S. Kelsh, Monson

Senators Erbele, Grindberg, Mathern

1 A BILL for an Act to provide a renewable energy production incentive program; and to provide
2 an appropriation.

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

4 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 5 1. "Commission" means the public service commission.
- 6 2. "Qualified wind energy conversion facility" means a wind energy conversion
7 system in this state that begins generating electricity after the effective date of this
8 Act, produces two megawatts or less of electricity as measured by nameplate
9 rating, and is:
- 10 a. Owned by an individual who owns the land where the facility is sited;
- 11 b. Owned by a nonprofit organization organized under state law;
- 12 c. Owned by an Indian tribe if the facility is located within the boundaries of the
13 reservation; or
- 14 d. Owned by a political subdivision of the state.

15 **SECTION 2. Incentive payment.** Incentive payments must be made according to this
16 section to the owner or operator of a qualified wind energy conversion facility for electric energy
17 generated and sold by the facility. Payment may only be made upon receipt by the commission
18 of an incentive payment application that establishes that the applicant is eligible to receive the
19 incentive payment and that satisfies other requirements the commission determines necessary.
20 The application must be in the form and submitted at the time the commission establishes.

21 **SECTION 3. Eligibility.** Payments may be made under this section only for electricity
22 generated from a qualified wind energy conversion facility that is operational in generating
23 electricity before January 1, 2007.

1 **SECTION 4. Payment.** A facility may receive payments under this Act for a ten-year
2 period. No payment under this Act may be made for electricity generated by a qualified wind
3 energy conversion facility after December 31, 2017. The payment period begins and runs
4 consecutively from the date the facility begins generating electricity.

5 **SECTION 5. Amount of payment.**

- 6 1. An incentive payment is based on the number of kilowatt hours of electricity
7 generated. The amount of the payment is one and one-half cents per kilowatt hour
8 for electricity generated by a qualified wind energy conversion facility with greater
9 than a one hundred kilowatt nameplate capacity.
- 10 2. The commission shall establish a list of qualified wind energy conversion systems
11 over one hundred kilowatt nameplate capacity. The commission shall place a
12 proposed system with a nameplate capacity over one hundred kilowatts on the list
13 when the commission determines that the system qualifies under this section and
14 the system proposer submits to the commission a copy of a signed power
15 purchase agreement or other agreement to sell power generated by the system to
16 a third person. The commission shall add proposed systems to the list in the order
17 in which proposers submit completed applications that include copies of power
18 purchase agreements or other agreements to sell power. A proposed system
19 remains on the list from the date it is added until it begins operation and begins
20 receiving the production incentive or eighteen months, whichever time period is
21 shorter.
- 22 3. When a proposed system on the list of qualified systems commences operation,
23 the proposer shall notify the commission to begin payment of the incentive.
24 Notification must include a sworn certificate confirming that the representations as
25 to ownership, financing, and operation of the facility in its original application
26 remain true and accurate. The commission may require additional documentation
27 necessary to determine qualification of a system. The commission may rely on a
28 certification for the purpose of paying the incentive.
- 29 4. The commission shall establish a secondary list of qualified proposed wind energy
30 conversion systems over one hundred kilowatt nameplate capacity using the same
31 criteria and listing procedures. If a proposed system on the primary list fails to be

constructed and become operational within eighteen months of listing, the commission shall notify the proposers of the first systems on the secondary list that roughly equal the nameplate capacity of the removed system. On receiving certification from the notified proposers that the systems continue to qualify and will be constructed within eighteen months, the commission shall transfer those systems to the primary list.

5. For wind energy conversion systems installed and contracted for after the effective date of this Act, the total size of a wind energy conversion system under this section must be determined according to this subsection. Unless the systems are interconnected with different distribution systems, the nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that is:

- a. Located within five miles of the wind energy conversion system;
- b. Constructed within the same calendar year as the wind energy conversion system; and
- c. Under common ownership.

In the case of a dispute, the commission shall determine the total size of the system and shall draw all reasonable inferences in favor of combining the systems.

6. In making a determination under subsection 5, the commission may determine that two wind energy conversion systems are under common ownership when the underlying ownership structure contains similar persons or entities, even if the ownerships differ between the two systems. Wind energy conversion systems are not under common ownership solely because the same person or entity provided equity financing for the systems.

7. A place on either list established under this section is not transferable by sale or any other conveyance to any person or entity. The commission shall remove a proposed facility from either list if the project proposer attempts to transfer, by any means, the system place on the list.

SECTION 6. Ownership, financing, and cure.

- 1 1. For purposes of this Act, a wind energy conversion facility qualifies if it is owned at
2 least fifty-one percent by one or more of any combination of the entities listed in
3 subsection 2 of section 1 of this Act.
- 4 2. A subsequent owner of a qualified facility may continue to receive the incentive
5 payment for the duration of the original payment period if the subsequent owner
6 qualifies for the incentive under section 1 of this Act.
- 7 3. This section does not deny incentive payment to an otherwise qualified facility that
8 has obtained debt or equity financing for construction or operation as long as the
9 ownership requirements of section 1 of this Act are met. If, during the incentive
10 payment period for a qualified facility, the owner of the facility is in default of a
11 lending agreement and the lender takes possession and operates the facility and
12 makes reasonable efforts to transfer ownership of a facility to an entity other than
13 the lender, the lender may continue to receive the incentive payment for electricity
14 generated and sold by the facility for a period not to exceed eighteen months. A
15 lender who takes possession of a facility shall notify the commission immediately
16 on taking possession and, at least quarterly, document efforts to transfer
17 ownership of the facility.
- 18 4. If, during the incentive payment period a qualified facility loses the right to receive
19 the incentive because of changes in ownership, the facility may regain the right to
20 receive the incentive upon cure of the ownership structure that resulted in the loss
21 of eligibility and may reapply for the incentive, but in no case may the payment
22 period be extended beyond the original ten year limit.
- 23 5. A subsequent or requalifying owner under this section retains the facility's original
24 priority order for incentive payments as long as the ownership structure requalifies
25 within two years from the date the facility became unqualified or two years from the
26 date a lender takes possession.
- 27 6. An owner or principal beneficiary of a wind energy conversion system qualified to
28 receive the incentive, including immediate family members for an individual and
29 subsidiaries, parents, affiliates, and otherwise related entities for a corporation,
30 company, cooperative, or other organization, may not own or be the principal
31 beneficiary of wind energy conversion systems that represent a combined total of

1 more than seven megawatts. For purposes of this subsection, immediate family
2 member means a spouse, a minor child, and any other person who is a dependent
3 for tax purposes and principal beneficiary means a person or entity who receives
4 or is expected to receive more than twenty percent of the financial benefits of the
5 system in any form over its projected life. The commission shall combine the
6 interests of persons or entities listed above to determine the total number of
7 megawatts they own or of which they are principal beneficiaries.

8 **SECTION 7. APPROPRIATION.**

- 9 1. There is appropriated out of any moneys in the general fund in the state treasury,
10 not otherwise appropriated, the sum of \$500,000, or so much of the sum as may
11 be necessary, to the public service commission for the purpose of making
12 renewable energy production incentive payments under this Act, for the biennium
13 beginning July 1, 2003, and ending June 30, 2005.
- 14 2. The appropriation provided in subsection 1 is contingent upon an increase in
15 income tax revenues to the state from qualified wind energy conversion facilities in
16 an amount sufficient to fund the appropriation. The tax commissioner shall certify
17 to the state treasurer the amount of income tax revenue deposited in the state
18 general fund from qualified wind energy facilities at least annually, beginning
19 May 1, 2004. The state treasurer may not release more state general fund
20 moneys than the amounts certified by the tax commissioner under this subsection
21 during the 2003-05 biennium or the amount appropriated by subsection 1,
22 whichever is less.