

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1426

Introduced by

Representatives Mueller, S. Kelsh, Nelson

Senators Fischer, Flakoll, Horne

1 A BILL for an Act to create and enact a new section to chapter 49-22 of the North Dakota
2 Century Code, relating to the wind tower setbacks; and to provide for application.

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

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

6 **Wind tower setbacks.** As used in this section and in lieu of the definitions in section
7 49-22-03, "commercial wind energy conversion facility" means any device that converts wind
8 energy to electrical energy, including wind chargers, windmills, or wind turbines and associated
9 facilities, that exceeds five hundred kilowatts. The owner or operator of a commercial wind
10 energy conversion facility to be constructed shall apply to the commission and receive approval
11 from the commission to ensure that each device is located at least five rotor diameters from the
12 perimeter of the site as to prevailing winds and two rotor diameters as to the nonprevailing
13 winds unless the owner or operator of the site has the wind rights for the area of setback
14 surrounding the site or an exemption has been approved by the commission. The commission
15 may allow an exemption to the owner or operator of a site if the commission finds that the
16 setback should be a shorter distance due to topography making an area within the standard
17 setback not commercially viable for a device or the commission receives consent of the owner
18 of wind rights within the original setback. The commission may not designate a setback shorter
19 than the distance from the base of a device to the point at which physical damage would occur
20 if the device were to fall. Notwithstanding any other provision of law or any ordinance or
21 resolution of a political subdivision, including a political subdivision operating under home rule
22 charter, a political subdivision may not enact or enforce any regulation as to setbacks other
23 than as approved by the commission under this section.

1 **SECTION 2. APPLICATION.** This Act does not apply to an existing commercial wind
2 energy conversion facility. An existing facility includes a facility that has applied for a
3 conditional use permit from the county.