

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1509

That the Senate recede from its amendments as printed on pages 1219 and 1220 of the House Journal and pages 1014 and 1015 of the Senate Journal and that Engrossed House Bill No. 1509 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to requirements for wind easement and wind energy leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 17-04 of the North Dakota Century Code is created and enacted as follows:

Requirements for wind easements and wind energy leases.

1. In a wind easement and a wind energy lease, the easement and lease:
 - a. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

Special message to property owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to _____ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. We also recommend that you consult with your insurance agent or adviser to determine how this agreement could affect your potential liability and future insurance costs. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.
 - b. May not be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.
 - c. May not require either party to maintain the confidentiality of the terms of a proposed or final lease or easement, except that the parties may agree to a mutual confidentiality agreement regarding the payment terms of the final executed lease or easement.
 - d. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement. When a wind energy facility is being constructed and when it is completed, the property owner must make accommodations to the developer, owner, or operator of the facility for the facility's business operations to allow the construction and operation of the wind energy facility.

- e. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind generation.
 - f. May not make the property owner liable for any damages caused by the wind facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.
 - g. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.
 - h. Must allow the property owner to terminate the agreement if the wind generating facility has not operated for a period of at least three years, unless the property owner receives the normal lease payments that would have occurred if the turbine had been operating during that time. For the purposes of this subdivision, the term "normal lease payments" means payments at least equal to the periodic payments received by the property owner in the last calendar year that the turbine was in full operation.
 - i. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.
 - j. Must contain in any indemnity obligation on the property owner an indemnity obligation placed on the developer, owner, or operator of the wind energy facility of at least equal terms.
2. The owner of the wind generating facility shall carry general liability insurance relating to events occurring on the wind energy facility project site. At minimum, the insurance must include the property owner as an additional insured on the policy.
3. If the terms of the wind easement or wind energy lease are not in accordance with this section or the owner of the facility does not carry insurance as required under subsection 2 as determined by a court as a matter of law, the court may reform the easement or lease in accordance with this section, void the easement or lease, or provide any relief allowed by law. The court shall award reasonable attorney's fees to the property owner in a successful action by the property owner under this section."

Renumber accordingly