

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1383

Introduced by

Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt

Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek

1 A BILL for an Act to create and enact a new section to chapter 4.1-01, a new section to chapter  
2 49-22, and a new section to chapter 49-22.1 of the North Dakota Century Code, relating to the  
3 creation of an environmental impact mitigation fund and to mitigating direct environmental  
4 impacts; to amend and reenact subsection 1 of section 4.1-01-18, sections 49-22-05.1,  
5 49-22-09, 49-22.1-03, and 49-22.1-09 of the North Dakota Century Code, relating to the federal  
6 environmental law impact review committee, exclusion and avoidance areas and the factors  
7 considered by the public service commission when evaluating and designating sites, corridors,  
8 and routes; to provide for a report to the budget section; to provide an appropriation; and to  
9 provide a continuing appropriation.

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

11 **SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century  
12 Code is amended and reenacted as follows:

- 13 1. The federal environmental law impact review committee consists of:
- 14 a. The commissioner, who shall serve as the chairman;
  - 15 b. The governor or the governor's designee;
  - 16 c. The majority leader of the house of representatives, or the leader's designee;
  - 17 d. The majority leader of the senate, or the leader's designee;
  - 18 e. One member of the legislative assembly from the minority party, selected by the  
19 chairman of the legislative management;
  - 20 f. One individual appointed by the lignite energy council;
  - 21 g. One individual appointed by the North Dakota corn growers association;
  - 22 h. One individual appointed by the North Dakota grain growers association;
  - 23 i. One individual appointed by the North Dakota petroleum council;
  - 24 j. One individual appointed by the North Dakota soybean growers association; and

- 1 k. One individual appointed by the North Dakota stockmen's association;
- 2 l. One individual appointed by the North Dakota farm bureau;
- 3 m. One individual appointed by the North Dakota farmers union;
- 4 n. One representative of an investor-owned utility companies; and
- 5 o. One representative from the North Dakota association of rural electric
- 6 cooperatives.

7 **SECTION 2.** A new section to chapter 4.1-01 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Environmental impact mitigation fund - Report to budget section - Continuing**  
10 **appropriation.**

- 11 1. The moneys accumulated in the environmental impact mitigation fund must be
- 12 allocated as provided by law and as appropriated by the legislative assembly for
- 13 distribution by the agriculture commissioner:
  - 14 a. To political subdivisions and state agencies to offset impacts of energy
  - 15 development to agricultural land;
  - 16 b. To landowners for the mitigation of agricultural land impacted by energy
  - 17 development; and
  - 18 c. To landowners of agricultural land who are subject to excessive mitigation of
  - 19 wetlands.
- 20 2. Funding may be used only for:
  - 21 a. Contracting for consultation with environmental scientists, wildlife biologists,
  - 22 biologists, soil scientists, range scientists, engineers, economists, or scientists in
  - 23 any other field determined to be relevant for services including the evaluation,
  - 24 assessment, and analysis of the physical composition and potential chemical
  - 25 properties of land determined to be impacted by energy development or land to
  - 26 be considered for mitigation;
  - 27 b. Reclamation, restoration, or mitigation of land, water resources, or wildlife
  - 28 habitats adversely impacted directly by energy development; and
  - 29 c. Offsetting or defraying costs of landowner mitigation in qualifying circumstances
  - 30 as determined by the advisory board.

- 1       3. The commissioner is not subject to chapter 54-44.4 when contracting for services  
2           under this chapter.
- 3       4. The federal environmental law impact review committee shall establish criteria for  
4           disbursement of environmental impact funds.
- 5       5. The commissioner shall make disbursements based upon the determinations made by  
6           the federal environmental law impact review committee.
- 7       6. For purposes of this section, the federal environmental law impact review committee  
8           shall hold at least one regular meeting each year and additional meetings as the  
9           chairman determines necessary at a time and place set by the chairman. Upon written  
10          request of any four members, the presiding officer shall call a special meeting of the  
11          committee.
- 12       7. The federal environmental law impact review committee shall make determinations for  
13          the disbursement of grants in accordance with subsection 2 and provide those  
14          determinations to the commissioner.
- 15       8. The federal environmental law impact review committee shall provide a biennial report  
16          to the budget section of the legislative management.
- 17       9. All moneys in the environmental impact mitigation fund are appropriated to the  
18          commissioner on a continuing basis for the purposes set forth under subsection 2.

19       **SECTION 3. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21       **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 22       1. The commission shall develop criteria to be used in identifying exclusion and  
23          avoidance areas and to guide the site, corridor, and route suitability evaluation and  
24          designation process. The criteria also may include an identification of impacts and  
25          policies or practices which may be considered in the evaluation and designation  
26          process.
- 27       2. The commission may not identify prime farmland, unique farmland, or irrigated land as  
28          exclusion or avoidance areas when evaluating and designating geographical areas for  
29          site, corridor, or route suitability.
- 30       3. Except for electric transmission lines in existence before July 1, 1983, areas within five  
31          hundred feet [152.4 meters] of an inhabited rural residence must be designated

1 avoidance areas. This criterion does not apply to a water pipeline. The five hundred  
2 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be  
3 waived by the owner of the inhabited rural residence in writing.

4 ~~3.4.~~ Areas less than one and one-tenth times the height of the turbine from the property  
5 line of a nonparticipating landowner and less than three times the height of the turbine  
6 or more from an inhabited rural residence of a nonparticipating landowner, must be  
7 excluded in the consideration of a site for a wind energy conversion area, unless a  
8 variance is granted. The commission may grant a variance if an authorized  
9 representative or agent of the permittee, the nonparticipating landowner, and affected  
10 parties with associated wind rights file a written agreement expressing the support of  
11 all parties for a variance to reduce the setback requirement in this subsection. A  
12 nonparticipating landowner is a landowner that has not signed a wind option or an  
13 easement agreement with the permittee of the wind energy conversion facility as  
14 defined in chapter 17-04. A local zoning authority may require setback distances  
15 greater than those required under this subsection. For purposes of this subsection,  
16 "height of the turbine" means the distance from the base of the wind turbine to the  
17 turbine blade tip when it is in its highest position.

18 **SECTION 4. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **49-22-09. Factors to be considered in evaluating applications and designation of**  
21 **sites, corridors, and routes.**

22 ~~The commission shall be guided by, but is not limited to, the following considerations, where~~  
23 ~~applicable, to~~

24 1. To aid in the evaluation and designation of sites, corridors, and routes, the commission  
25 shall consider:

26 1. a. Available research and investigations relating to the effects of the location,  
27 construction, and operation of the proposed facility on public health and welfare,  
28 natural resources, and the environment.

29 2. b. The effects of new electric energy conversion and electric transmission  
30 technologies and systems designed to minimize adverse environmental effects.

- 1       3.   c.   The potential for beneficial uses of waste energy from a proposed electric energy  
2                   conversion facility.
- 3       4.   d.   Adverse direct and indirect environmental effects that cannot be avoided should  
4                   the proposed site or route be designated.
- 5       5.   e.   Alternatives to the proposed site, corridor, or route which are developed during  
6                   the hearing process and which minimize adverse effects.
- 7       6.   f.   Irreversible and irretrievable commitments of natural resources should the  
8                   proposed site, corridor, or route be designated.
- 9       7.   g.   The direct ~~and indirect~~ economic impacts of the proposed facility.
- 10      8.   h.   Existing plans of the state, local government, and private entities for other  
11                  developments at or in the vicinity of the proposed site, corridor, or route.
- 12      9.   i.   The effect of the proposed site or route on existing scenic areas, historic sites  
13                  and structures, and paleontological or archaeological sites.
- 14      10. j.   The effect of the proposed site or route on areas ~~which are~~ unique because of  
15                  biological wealth or because ~~they~~the areas are habitats for rare and endangered  
16                  species.
- 17      11. k.   Problems raised by federal agencies, other state agencies, and local entities.
- 18      2.   In the evaluation and designation of sites, corridors, and routes, the commission may  
19              not:
- 20              a.   Require payment for mitigation of any assessed adverse indirect impacts to  
21                  wildlife or habitat;
- 22              b.   Require payment to a third-party nongovernmental organization for any assessed  
23                  adverse direct or indirect impacts to wildlife or habitat; or
- 24              c.   Consider indirect economic impacts of the proposed facility.

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

27       **Mitigating direct environmental impacts.**

- 28       1.   If an applicant elects to provide payment to mitigate any assessed adverse direct  
29              environmental, wildlife, or economic impact of a proposed site, corridor, route, or  
30              facility, the applicant shall make the payment to the agriculture commissioner.

1       2. Subject to subsection 3, the agriculture commissioner shall deposit into the  
2       environmental impact mitigation fund any moneys paid to mitigate the adverse direct  
3       environmental, wildlife, or economic impacts of a proposed site, corridor, route, or  
4       facility.

5       3. At the applicant's request, the agriculture commissioner may provide moneys directly  
6       to an organization approved by the federal environmental law impact review  
7       committee.

8       **SECTION 6. AMENDMENT.** Section 49-22.1-03 of the North Dakota Century Code is  
9       amended and reenacted as follows:

10       **49-22.1-03. Exclusion and avoidance areas - Criteria.**

11       1. The commission shall develop criteria to be used in identifying exclusion and  
12       avoidance areas and to guide the site, corridor, and route suitability evaluation and  
13       designation process.

14       2. The commission may not identify prime farmland, unique farmland, or irrigated land as  
15       exclusion or avoidance areas when evaluating and designating geographical areas for  
16       site, corridor, or route suitability.

17       3. Except for oil and gas transmission lines in existence before July 1, 1983, areas within  
18       five hundred feet [152.4 meters] of an inhabited rural residence must be designated  
19       avoidance areas.

20       a. This criterion does not apply to a water pipeline.

21       b. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural  
22       residence may be waived by the owner of the inhabited rural residence in writing.

23       c. The criteria also may include an identification of impacts and policies or practices  
24       which may be considered in the evaluation and designation process.

25       **SECTION 7. AMENDMENT.** Section 49-22.1-09 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **49-22.1-09. Factors to be considered in evaluating applications and designation of**  
28       **sites, corridors, and routes.**

29       ~~The commission is guided by, but is not limited to, the following considerations, when~~  
30       ~~applicable, to~~

- 1        1. To aid in the evaluation and designation of sites, corridors, and routes, the commission  
2        shall consider:
- 3        1. a. Available research and investigations relating to the effects of the location,  
4                construction, and operation of the proposed facility on public health and welfare,  
5                natural resources, and the environment.
- 6        2. b. The effects of new gas or liquid energy conversion and gas or liquid transmission  
7                technologies and systems designed to minimize adverse environmental effects.
- 8        3. c. The potential for beneficial uses of waste energy from a proposed gas or liquid  
9                energy conversion facility.
- 10       4. d. Adverse direct and indirect environmental effects that cannot be avoided should  
11               the proposed site or route be designated.
- 12       5. e. Alternatives to the proposed site, corridor, or route that are developed during the  
13               hearing process and which minimize adverse effects.
- 14       6. f. Irreversible and irretrievable commitments of natural resources should the  
15               proposed site, corridor, or route be designated.
- 16       7. g. The direct ~~and indirect~~ economic impacts of the proposed facility.
- 17       8. h. Existing plans of the state, local government, and private entities for other  
18               developments at or in the vicinity of the proposed site, corridor, or route.
- 19       9. i. The effect of the proposed site or route on existing scenic areas, historic sites  
20               and structures, and paleontological or archaeological sites.
- 21       10. j. The effect of the proposed site or route on areas ~~that are~~ unique because of  
22               biological wealth or because the site or route is a habitat for rare and endangered  
23               species.
- 24       11. k. Problems raised by federal agencies, other state agencies, and local entities.
- 25       2. In the evaluation and designation of sites, corridors, and routes, the commission may  
26        not:
- 27        a. Require payment for mitigation of any assessed adverse indirect impacts to  
28                wildlife or habitat;
- 29        b. Require payment to a third-party nongovernmental organization for any assessed  
30                adverse direct or indirect impacts to wildlife or habitat; or
- 31        c. Consider indirect economic impacts of the proposed facility.

1       **SECTION 8.** A new section to chapter 49-22.1 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Mitigating direct environmental impacts.**

- 4       1. If an applicant elects to provide payment to mitigate any assessed adverse direct  
5       environmental, wildlife, or economic impact of a proposed site, corridor, route, or  
6       facility, the applicant shall make the payment to the agriculture commissioner.  
7       2. Subject to subsection 3, the agriculture commissioner shall deposit into the  
8       environmental impact mitigation fund any moneys paid to mitigate the adverse direct  
9       environmental, wildlife, or economic impacts of a proposed site, corridor, route, or  
10       facility.  
11       3. At the applicant's request, the agriculture commissioner may provide moneys directly  
12       to an organization approved by the federal environmental law impact review  
13       committee.

14       **SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the  
15 environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum  
16 of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for  
17 the purpose of providing grants to political subdivisions for the mitigation of environmental  
18 impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.