

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1317

Introduced by

Representatives Brandenburg, Dahl, S. Kelsh, Kretschmar

Senators Erbele, Wanzek

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century
2 Code, relating to the decommissioning of commercial wind energy facilities; to amend and
3 reenact the new section to chapter 57-06 of the North Dakota Century Code as created by
4 section 2 of House Bill No. 1072, as approved by the sixtieth legislative assembly, relating to
5 centrally assessed wind turbine electric generators; and to provide an effective date.

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

7 **SECTION 1.** A new chapter to title 49 of the North Dakota Century Code is created and
8 enacted as follows:

9 **Definitions.** In this chapter, unless the context otherwise requires:

- 10 1. "Commercial wind energy conversion facility" means a wind energy conversion
11 facility of equal to or greater than five hundred kilowatts in total nameplate
12 generating capacity.
13 2. "Commission" means the public service commission.
14 3. "Wind turbine" means a wind turbine of equal to or greater than five hundred
15 kilowatts in total nameplate generating capacity.

16 **Jurisdiction of the commission for decommissioning of commercial wind energy**
17 **conversion facilities.** The commission has continuing jurisdiction and authority over all
18 persons and property necessary to enforce this chapter. The commission may:

- 19 1. Investigate all methods and practices of commercial wind energy conversion
20 facilities, subject to this chapter.
21 2. Require the filing and determine the amount of a bond or other assurance,
22 conditioned upon the full compliance with this chapter and the rules and orders of
23 the commission. The commission may accept under the terms and conditions as
24 the commission may prescribe a surety bond, collateral bond, self-bond, escrow

- 1 account, or any alternative form of security or other financial assurance, or
2 combination thereof, by which an owner or operator assures faithful performance
3 of all requirements of this chapter and the rules and orders of the commission.
4 3. Regulate the decommissioning of a commercial wind energy conversion system.
5 4. Adopt and enforce rules and orders to effectuate the purposes and the intent of
6 this chapter.

7 **Decommissioning of commercial wind energy conversion facilities.**

- 8 1. The owner and operator, at its expense, shall complete decommissioning of the
9 commercial wind energy conversion facility, or individual wind turbines, within
10 twelve months after the end of the useful life of the commercial wind energy
11 conversion facility or individual wind turbines. The commercial wind energy
12 conversion facility or individual wind turbine is presumed to be at the end of its
13 useful life if no electricity is generated for a continuous period of twelve months
14 unless a plan is developed and submitted to the commission outlining the steps
15 and schedule for returning the turbine to service.
16 2. Decommissioning of commercial wind energy conversion facilities includes
17 removal of all physical material pertaining to the wind energy conversion facility to
18 a depth of forty-eight inches [1.219 meters] beneath the soil surface and
19 restoration of the disturbed area to substantially the same physical condition that
20 existed immediately before construction.
21 3. Disturbed earth must be graded and reseeded, unless the landowner requests in
22 writing that the access roads or other land surface areas not be removed and
23 restored to substantially the same physical condition that existed immediately
24 before construction.
25 4. The commission may require a performance bond to provide for the
26 decommissioning and removal of a commercial wind energy conversion facility.
27 The performance bond may be in the form of a surety bond, collateral bond,
28 self-bond, cash, or any alternative form of security or other financial assurance as
29 prescribed by the commission by rule. The commission shall consider the
30 anticipated life of the project, the estimated decommissioning costs in current
31 dollars, the method and schedule for updating the costs of decommissioning and

- 1 restoration, the method of ensuring that funds will be available for
2 decommissioning and restoration, and the anticipated manner in which the project
3 will be decommissioned and the site restored when adopting rules that detail the
4 bond requirements and when determining the amount of any required bond.
5 5. If the commercial wind energy conversion facility owner or operator does not
6 complete decommissioning, the commission may take any action necessary to
7 complete decommissioning, including requiring forfeiture of the bond. The
8 execution of a participating landowner agreement constitutes agreement and
9 consent of the parties to the agreement, their respective heirs, successors, and
10 assigns, that the commission may take such action as may be necessary to
11 implement the decommissioning plan, including the exercise by the commission,
12 commission staff, and contractors of the right of ingress and egress for the
13 purpose of decommissioning the commercial wind energy conversion facility.
14 6. An easement or lease between a landowner and the owner or operator of a
15 commercial wind energy facility or wind turbine may contain provisions for
16 decommissioning that are more restrictive than this chapter.

17 **SECTION 2. AMENDMENT.** The new section to chapter 57-06 of the North Dakota
18 Century Code as created by section 2 of House Bill No. 1072, as approved by the sixtieth
19 legislative assembly, is amended and reenacted as follows:

20 **Taxable valuation of centrally assessed wind turbine electric generators.** A
21 centrally assessed wind turbine electric generation unit with a nameplate generation capacity of
22 one hundred kilowatts or more, on which construction is completed before January 1, 2011,
23 must be valued at three percent of assessed value to determine taxable valuation of the
24 property. ~~However, a~~ except:

- 25 1. A centrally assessed wind turbine electric generation unit with a nameplate
26 generation capacity of one hundred kilowatts or more, for which a purchased
27 power agreement has been executed after April 30, 2005, and before January 1,
28 2006, and construction is ~~begun~~ completed after April 30, 2005, and before July 1,
29 2006, must be valued at one and one-half percent of assessed value to determine
30 taxable valuation of the property and this reduced valuation applies for that

1 ~~property~~ for the duration of the initial purchased power agreement for that
2 generation unit; and
3 2. A centrally assessed wind turbine electric generation unit with a nameplate
4 generation capacity of one hundred kilowatts or more, on which construction is
5 completed after June 30, 2006, and before January 1, 2011, must be valued at one
6 and one-half percent of assessed value to determine taxable valuation of the
7 property.

8 **SECTION 3. EFFECTIVE DATE.** Section 2 of this Act is effective for taxable years
9 beginning after December 31, 2006.