

**HOUSE BILL NO. 1363**

Introduced by

Representatives Nelson, Kreidt, Weisz

Senators Holmberg, Triplett

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.

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

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

6 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

7 1. "Commercial wind energy conversion facility" means a wind energy conversion  
8 facility of equal to or greater than five hundred kilowatts in total nameplate  
9 generating capacity.

10 2. "Commission" means the public service commission.

11 3. "Wind turbine" means a wind turbine of equal to or greater than five hundred  
12 kilowatts in total nameplate generating capacity.

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

17 1. Investigate all methods and practices of commercial wind energy conversion  
18 facilities, subject to the provisions of this chapter;

19 2. Require the filing and determine the amount of a bond or other assurance,  
20 conditioned upon the full compliance with this chapter, and the rules and orders of  
21 the commission. The commission may accept under such terms and conditions as  
22 the commission may prescribe, a surety bond, collateral bond, self-bond, escrow  
23 account, or any alternative form of security or other financial assurance, or

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

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

- 8           1. The owner and operator must, at its expense, 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 removal  
17           of all physical material pertaining to the wind energy conversion facility to a depth  
18           of forty-eight inches [1.219 meters] beneath the soil surface and restoration of the  
19           disturbed area to substantially the same physical condition that existed  
20           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 commission rule. The commission shall consider the anticipated life  
30           of the project, the estimated decommissioning costs in current dollars, the method  
31           and schedule for updating the costs of decommissioning and restoration, the

- 1           method of ensuring that funds will be available for decommissioning and  
2           restoration, and the anticipated manner in which the project will be  
3           decommissioned and the site restored when adopting rules that detail the bond  
4           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 such action as may be  
7           necessary to complete decommissioning, including requiring forfeiture of the bond.  
8           The entry into 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 purpose  
13           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.