

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1509

Introduced by

Representatives Nelson, DeKrey, Mueller

Senators Andrist, Klein, Triplett

1 A BILL for an Act to create and enact a new section to chapter 17-04 of the North Dakota
2 Century Code, relating to requirements for wind easement and wind energy leases.

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

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

6 **Requirements for wind easements and wind energy leases.**

- 7 1. In a wind easement and a wind energy lease, the easement and lease:
- 8 a. Must be written in a clear and coherent manner using words with common
9 and everyday meanings, be appropriately divided and captioned as to various
10 subject matters, and be in at least fourteen-point type.
- 11 b. Must be delivered to the property owner with a cover page containing the
12 following paragraph with the correct term of years in the blank and in at least
13 sixteen-point type:
- 14 Special message to property owners
15 This is an important agreement our lawyers have drafted that will bind
16 you and your land for up to _____ years. We will give you enough
17 time to study and thoroughly understand it. We strongly encourage you
18 to hire a lawyer to explain this agreement to you. You may talk with
19 your neighbors about the wind project and find out if they also received
20 a proposed contract. You and your neighbors may choose to hire the
21 same attorney to review the agreement and negotiate changes on your
22 behalf.
- 23 c. Must be executed at least five business days after the easement or lease has
24 been delivered to the property owner.

- 1 d. May not contain a confidentiality clause keeping the terms of agreement or
- 2 related negotiations confidential.
- 3 e. Must preserve the right of the property owner to continue conducting business
- 4 operations as currently conducted for the term of the agreement.
- 5 f. May not make the property owner liable for any property tax associated with
- 6 the wind energy facility or other equipment related to wind generation.
- 7 g. May not make the property owner liable for any damages caused by the wind
- 8 facility and equipment or the operation of the generating facility and
- 9 equipment, including liability or damage to the property owner or to third
- 10 parties.
- 11 h. Must obligate the developer, owner, and operator of the wind energy facility to
- 12 comply with federal, state, and local laws and regulations and may not make
- 13 the property owner liable in the case of a violation.
- 14 i. Must contain a clear description of the development activities that will take
- 15 place within five years in order to avoid termination under section 17-04-03 or
- 16 17-04-05.
- 17 j. Must allow the property owner to terminate the agreement if the wind
- 18 generating facility has not operated for a period of at least three years.
- 19 k. Must state clearly any circumstances that will allow the developer, owner, and
- 20 operator of the wind energy facility to withhold payments from the property
- 21 owner.
- 22 l. Must contain in any indemnity obligation on the property owner an indemnity
- 23 obligation placed on the developer, owner, or operator of the wind energy
- 24 facility of at least equal terms.
- 25 2. The owner of the wind generating facility shall carry property insurance on the
- 26 facility and include the property owner as an additional insured on the policy and
- 27 waive subrogation actions against the property owner.
- 28 3. If the terms of the wind easement or wind energy lease are not in accordance with
- 29 this section or the owner of the facility does not carry property insurance as
- 30 required under subsection 2 as determined by a court as a matter of law, the court
- 31 may reform the easement or lease in accordance with this section, void the

1 easement or lease, or offer the relief as is requested by the property owner. The
2 court shall award reasonable attorney's fees to the property owner in a successful
3 action by the property owner under this section.
4 4. If the lessee provides up to five thousand dollars reimbursement for actual
5 attorney's fees and the wind easement or wind energy lease has the written
6 approval of an attorney representing the property owner, the easement or lease is
7 deemed not to violate this section.