

FIRST ENGROSSMENT
with Senate Amendments

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; to provide a
3 contingent effective date; and to declare an emergency.

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

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

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

8 1. In a wind easement and a wind energy lease, the easement and lease:

9 a. Must be delivered to the property owner with a cover page containing the
10 following paragraph with the correct term of years in the blank and in at least
11 sixteen-point type:

12 Special message to property owners
13 This is an important agreement our lawyers have drafted that will bind
14 you and your land for up to _____ years. We will give you enough
15 time to study and thoroughly understand it. We strongly encourage you
16 to hire a lawyer to explain this agreement to you. You may talk with
17 your neighbors about the wind project and find out if they also received
18 a proposed contract. You and your neighbors may choose to hire the
19 same attorney to review the agreement and negotiate changes on your
20 behalf.

21 b. Must be executed at least ten business days after the easement or lease has
22 been delivered to the property owner.

23 c. May not contain a confidentiality clause keeping the terms of agreement or
24 related negotiations confidential.

- 1 d. Must preserve the right of the property owner to continue conducting business
2 operations as currently conducted for the term of the agreement. When a
3 wind energy facility is being constructed and when it is completed, the
4 property owner must make accommodations to the developer, owner, or
5 operator of the facility for the facility's business operations to allow the
6 construction and operation of the wind energy facility.
- 7 e. May not make the property owner liable for any property tax associated with
8 the wind energy facility or other equipment related to wind generation.
- 9 f. May not make the property owner liable for any damages caused by the wind
10 facility and equipment or the operation of the generating facility and
11 equipment, including liability or damage to the property owner or to third
12 parties.
- 13 g. Must obligate the developer, owner, and operator of the wind energy facility to
14 comply with federal, state, and local laws and regulations and may not make
15 the property owner liable in the case of a violation.
- 16 h. Must contain a clear description of the development activities that will take
17 place within five years in order to avoid termination under section 17-04-03 or
18 17-04-05.
- 19 i. Must allow the property owner to terminate the agreement if the wind
20 generating facility has not operated for a period of at least three years, unless
21 the property owner receives the normal lease payments that would have
22 occurred if the turbine had been operating during that time. For the purposes
23 of this subdivision, the term "normal lease payments" means payments at
24 least equal to the periodic payments received by the property owner in the
25 last calendar year that the turbine was in full operation.
- 26 j. Must state clearly any circumstances that will allow the developer, owner, and
27 operator of the wind energy facility to withhold payments from the property
28 owner.
- 29 k. Must contain in any indemnity obligation on the property owner an indemnity
30 obligation placed on the developer, owner, or operator of the wind energy
31 facility of at least equal terms.

- 1 2. The owner of the wind generating facility shall carry general liability insurance
2 relating to events occurring on the wind energy facility project site. At minimum,
3 the insurance must include the property owner as an additional insured on the
4 policy.
- 5 3. If the terms of the wind easement or wind energy lease are not in accordance with
6 this section or the owner of the facility does not carry property insurance as
7 required under subsection 2 as determined by a court as a matter of law, the court
8 may reform the easement or lease in accordance with this section, void the
9 easement or lease, or offer the relief as is requested by the property owner. The
10 court shall award reasonable attorney's fees to the property owner in a successful
11 action by the property owner under this section.

12 **SECTION 2. CONTINGENT EFFECTIVE DATE.** Subdivision h of subsection 1 of
13 section 1 of this Act becomes effective if Senate Bill No. 2245 as enacted by the sixty-first
14 legislative assembly does not become effective.

15 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.