Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1383

Introduced by

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

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

A BILL for an Act to create and enact two new sections to chapter 4.1-01, a new section to chapter 49-22, and a new section to chapter 49-22.1 of the North Dakota Century Code, relating to the creation of an environmental impact mitigation fund and an environmental impact advisory board and to mitigating direct environmental impacts; to amend and reenact sections 49-22-05.1, 49-22-09, 49-22.1-03, and 49-22.1-09 of the North Dakota Century Code, relating to exclusion and avoidance areas and the factors considered by the public service commission when evaluating and designating sites, corridors, and routes; to provide for a report to the budget section; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Environmental impact mitigation fund.

1. The moneys accumulated in the environmental impact mitigation fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution by the agriculture commissioner:
   a. To political subdivisions and state agencies to offset impacts of energy development to agricultural land;
   b. To landowners for the mitigation of agricultural land impacted by energy development; and
   c. To landowners of agricultural land who are subject to excessive mitigation of wetlands.
2. Funding may be used only for:
   a. Contracting for consultation with environmental scientists, wildlife biologists, biologists, soil scientists, range scientists, engineers, economists, or scientists in

any other field determined to be relevant for services including the evaluation, assessment, and analysis of the physical composition and potential chemical properties of land determined to be impacted by energy development or land to be considered for mitigation;

b. Reclamation, restoration, or mitigation of land, water resources, or wildlife habitats adversely impacted directly by energy development; and

c. Offsetting or defraying costs of landowner mitigation in qualifying circumstances as determined by the advisory board.

3. The commissioner is not subject to chapter 54-44.4 when contracting for services under this chapter.

4. The environmental impact advisory board shall establish criteria for disbursement of environmental impact funds.

5. The commissioner shall make disbursements based upon the determinations made by the environmental impact advisory board.

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

Environmental impact advisory board - Members - Report to budget section.

1. There is created an environmental impact advisory board consisting of seventeen members. The advisory board consists of:

a. The commissioner, who shall serve as the presiding officer;

b. The governor or the governor's designee;

c. The majority leader of the house of representatives, or the majority leader's designee;

d. The majority leader of the senate, or the majority leader's designee;

e. One member of the legislative assembly from the minority party, selected by the chairman of legislative management;

f. One individual appointed by the lignite energy council;

g. One individual appointed by the North Dakota farm bureau;

h. One individual appointed by the North Dakota corn growers association;

i. One individual appointed by the North Dakota grain growers association;

j. One individual appointed by the North Dakota petroleum council;

k. One individual appointed by the North Dakota soybean growers association;

l. One individual appointed by the North Dakota stockmen's association;

m. One individual appointed by the North Dakota farmers union; and

n. Four members from the energy industry appointed by the governor based upon recommendations of entities representing the energy industry.

2. The advisory board shall hold at least one regular meeting each year and additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the presiding officer upon written request of any four members.

3. The advisory board shall make determinations for the disbursement of grants in accordance with subsection 2 of section 1 of this Act and provide those determinations to the commissioner.

4. The term of office of each appointed member of the board is four years and each term of office commences on the first day of July. The initial terms for the advisory board members must be staggered based upon a method determined by the board.

5. The advisory board shall provide a biennial report to the budget section of the legislative management.

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

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

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

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

3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred

foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.

~~3.~~4. Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

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

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

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

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

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

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

~~3.~~ c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.

~~4.~~ d. Adverse direct ~~and indirect~~ environmental effects that cannot be avoided should the proposed site or route be designated.

~~5.~~ e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.

~~6.~~ f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.

~~7.~~ g. The direct ~~and indirect~~ economic impacts of the proposed facility.

~~8.~~ h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.

~~9.~~ i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.

~~10.~~ j. The effect of the proposed site or route on areas ~~which are~~ unique because of biological wealth or because ~~they~~the areas are habitats for rare and endangered species.

~~11.~~ k. Problems raised by federal agencies, other state agencies, and local entities.

2. In the evaluation and designation of sites, corridors, and routes, the commission may not consider:

a. Adverse indirect environmental effects that cannot be avoided should the proposed site or route be designated; or

b. The indirect economic impacts of the proposed facility.

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

Mitigating direct environmental impacts.

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

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

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

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

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process.
2. The commission may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability.
3. Except for oil and gas transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas.
   a. This criterion does not apply to a water pipeline.
   b. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
   c. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

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

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

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

1. To aid in the evaluation and designation of sites, corridors, and routes, the commission shall consider:
   ~~1.~~ a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
   ~~2.~~ b. The effects of new gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects.
   ~~3.~~ c. The potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility.

~~4.~~ d. Adverse direct ~~and indirect~~ environmental effects that cannot be avoided should the proposed site or route be designated.

~~5.~~ e. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.

~~6.~~ f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.

~~7.~~ g. The direct ~~and indirect~~ economic impacts of the proposed facility.

~~8.~~ h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.

~~9.~~ i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.

~~10.~~ j. The effect of the proposed site or route on areas ~~that are~~ unique because of biological wealth or because the site or route is a habitat for rare and endangered species.

~~11.~~ k. Problems raised by federal agencies, other state agencies, and local entities.

2. In the evaluation and designation of sites, corridors, and routes, the commission may not consider:

a. Adverse indirect environmental effects that cannot be avoided should the proposed site or route be designated; or

b. The indirect economic impacts of the proposed facility.

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

Mitigating direct environmental impacts.

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

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

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum

of $5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of providing grants to political subdivisions for the mitigation of environmental impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.