

Introduced by

Representatives Nehring, Nathe

Senators Kreun, Patten, Bell

1 A BILL for an Act to create and enact chapter 49-22.2 of the North Dakota Century Code,  
2 relating to electric energy conversion facility retirement, status report requirements, limitations  
3 for recovery of costs associated with electric generation built to replace a retiring electric energy  
4 conversion facility, and site reclamation and bond.

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

6 **SECTION 1.** Chapter 49-22.2 of the North Dakota Century Code is created and enacted as  
7 follows:

8 **49-22.2-01. Definitions.**

9 As used in this chapter:

- 10 1. "Avoided costs" means the incremental costs to an electric public utility which, but for  
11 the purchase from the retiring electric energy conversion facility, the utility would  
12 generate or incur in a purchase from another source. As may be determined by the  
13 commission, avoided costs may change over the course of an approved power  
14 purchase agreement at specified intervals set forth in the power purchase agreement.
- 15 2. "Electric energy conversion facility" means a plant, addition, or combination of plant  
16 and addition, including any necessary or dedicated transmission assets with exclusive  
17 use by the facility, designed for or capable of:
- 18 a. Generation by wind energy conversion exceeding one-half megawatt of  
19 electricity; or
- 20 b. Generation by any means other than wind energy conversion exceeding fifty  
21 megawatts of electricity.
- 22 3. "Retire" means the complete and permanent closure of an electric energy conversion  
23 facility. Retirement occurs on the date the electric energy conversion facility ceases to  
24 generate electricity.

1        **49-22.2-02. Two-year status report.**

2        The owner or operator of an electric energy conversion facility shall file a status report with  
3 the commission on or before July first of each even-numbered year. The report must contain:

- 4        1. The expected remaining useful life of the facility;  
5        2. A forecast of the future demands and load growth; and  
6        3. The number of eligible customers being served by or anticipated to be served by the  
7        facility.

8        **49-22.2-03. Facility retirement - Notice and public hearing - Requirements.**

9        1. An owner or operator of an electric energy conversion facility may not retire the facility  
10 unless:

- 11        a. The owner or operator provides written notice to the commission of the intent to  
12 retire the facility no later than three years before the planned retirement;  
13        b. Subject to subsection 3, the commission conducts a public hearing in accordance  
14 with this section to receive information concerning the reasonableness of the  
15 planned retirement; and

16        c. The commission determines:

- 17            (1) The owner or operator made a good faith effort to sell the facility before the  
18 facility's retirement and the owner or operator did not refuse a reasonable  
19 offer to purchase the facility; or  
20            (2) The commission determines, if a reasonable offer was received, the sale  
21 was not completed for a reason beyond the reasonable control of the owner  
22 or operator.

23        2. The written notice provided under subsection 1 must evaluate and address the factors  
24 listed in paragraphs 3, 4, and 7 of subdivision d of subsection 3 and in subsections 2,  
25 3, 6, and 7 of section 49-22.2-02. The commission may charge the owner or operator  
26 of an electric energy conversion facility a reasonable filing fee for the written notice.

27        3. The commission shall hold two public hearings in the county in which the electric  
28 energy conversion facility is located unless the commission deems the hearings  
29 unnecessary.

30        a. The public hearings must be scheduled no less than six months apart.

- 1           b. The commission shall have a comment period of at least thirty days during which  
2           data, views, and arguments concerning the planned retirement may be received  
3           and made part of the record. The thirty day comment period must be in between  
4           the two public hearings.
- 5           b. At the public hearing, any person may present testimony or evidence relating to  
6           the planned retirement.
- 7           c. Notice of a public hearing must be given by the commission by service on the  
8           persons and agencies the commission deems appropriate and twice by  
9           publication, once at least twenty days before the hearing and a second time  
10           within twenty days before the hearing.
- 11           d. After the public hearings, the commission shall issue the commission's analysis  
12           and conclusions concerning the reasonableness of the planned retirement based  
13           on the information received. The conclusions must include:
- 14           (1) The economical impact of the retirement on the community, county, and  
15           state;
- 16           (2) The labor impact the retirement will have on the community and county;
- 17           (3) The feasibility of the retirement and facility replacement;
- 18           (4) The cost and impact on electric rates from the retirement of the facility;
- 19           (5) The value of the electric energy and capacity generated from the facility;
- 20           (6) The value of any reliability benefits associated with the operation of the  
21           facility;
- 22           (7) An analysis of alternative installations for emissions reduction, including  
23           carbon capture, utilization, and storage; and
- 24           (8) Any other factor the commission deems appropriate.
- 25           e. Within one year of receiving the owner or operator's written notice, the  
26           commission shall conduct a reliability study evaluating the economic,  
27           environmental, and energy impact of the retirement. The commission may  
28           request a reliability study conclusion from a regional transmission organization on  
29           the economic, environmental, and electric distribution impact of the facility's  
30           retirement.

- 1           f. If the owner or operator seeks to retire the electric energy conversion facility  
2           because of a federal mandate, the commission may consider as part of the  
3           commission's analysis and conclusions whether at the time of the owner or  
4           operator's notice the federal mandate:  
5           (1) Was in force;  
6           (2) Has not expired or been revoked; or  
7           (3) Was not merely anticipated to be enacted.
- 8           4. In determining whether the owner or operator made a good faith effort to sell the  
9           retired electric energy conversion facility, the commission shall consider:  
10          a. Whether the owner or operator provided sufficient time before the retirement for  
11          potential purchasers to evaluate purchasing the facility;  
12          b. Whether the owner or operator used reasonable efforts to make potential  
13          purchasers aware of the opportunity to purchase the facility;  
14          c. Whether the owner or operator reasonably evaluated any offers received for the  
15          purchase of the facility; and  
16          d. Any other factor the commission deems appropriate.
- 17          5. Notwithstanding any other provision of law, the rates charged by an electric public  
18          utility, other than a cooperative electric utility, may not include any recovery of or  
19          earnings on the capital costs associated with new electric generation facilities built, in  
20          whole or in part, to replace the electricity generated from one or more electric energy  
21          conversion facilities located within the state and retired after December 31, 2020,  
22          unless the commission determines:  
23          a. The owner or operator of the retired electric energy conversion facility made a  
24          good faith effort to sell the facility before the facility's retirement and the owner or  
25          operator did not refuse a reasonable offer to purchase the facility; or  
26          b. If a reasonable offer was received, the commission determines the sale was not  
27          completed for a reason beyond the reasonable control of the owner or operator.
- 28          6. In determining whether an offer to purchase an electric energy conversion facility was  
29          reasonable, the commission shall consider whether accepting the offer to purchase  
30          the retired facility would have:  
31          a. Reduced costs to the public utility's customers as compared to retiring the facility;

- 1           b. Reduced risks, including any diminished environmental remediation risks, to the  
2           public utility's customers as compared to retiring the facility; and
- 3           c. Been in the public interest.
- 4        7. Upon receipt of the written notice by an owner or operator in accordance with  
5        subsection 1, the commission may approve procedures for the solicitation and review  
6        of offers to purchase a retiring electric energy conversion facility before a proposed  
7        retirement. If the owner or operator follows the procedures approved by the  
8        commission to solicit and review offers to purchase a retiring electric energy  
9        conversion facility, any restrictions under this section for recovery of costs or earnings  
10       associated with electric generation built to replace a retired electric energy conversion  
11       facility do not apply.
- 12       8. An agreement for the sale of a retiring electric energy conversion facility is not  
13       effective until approved by the commission. In reviewing the agreement the  
14       commission shall consider:
- 15           a. Whether the proposed purchaser has, or has contracted for, financial, technical,  
16           and managerial abilities sufficient to operate and maintain the facility reasonably;
- 17           b. Whether the proposed purchaser has, or has contracted for, financial, technical,  
18           and managerial abilities sufficient to decommission and retire the facility  
19           reasonably if and to the extent the facility is decommissioned and retired;
- 20           c. Whether the proposed purchaser has, or has contracted for, financial, technical,  
21           and managerial abilities sufficient to satisfy reasonably any environmental  
22           obligations associated with the operation, maintenance, or potential retirement of  
23           the facility;
- 24           d. If the electric energy conversion facility is comprised of one or more generation  
25           units at a larger power plant at which the owner or operator will continue to own  
26           and operate one or more generation units, whether the proposed purchaser and  
27           the owner or operator have made reasonable contractual arrangements for  
28           sharing the costs associated with any joint or common facilities at the plant;
- 29           e. Whether the proposed purchaser has agreed to reasonable terms and conditions  
30           for environmental remediation;

- 1           f. Whether the proposed purchase agreement contains a provision allowing the  
2           owner or operator, with commission approval, to revoke the sale if the purchaser  
3           is unable to obtain all necessary local, state, and federal permits in a timely  
4           manner;
- 5           g. Whether the proposed purchase agreement contains a provision allowing the  
6           owner or operator, with commission approval, to revoke the sale if the purchaser  
7           is unable to enter any necessary operational and labor agreements in a timely  
8           manner;
- 9           h. Whether the proposed purchaser has agreed in the purchase agreement to  
10          obtain commission approval before transferring, in whole or in part, the facility to  
11          any other person so the commission may ensure the proposed new purchaser  
12          and the new purchase agreement meet the requirements of this section; and
- 13          i. Any other factor the commission deems appropriate.

14          **49-22.2-04. Site reclamation.**

- 15          1. The commission shall adopt rules governing site reclamation of an electric energy  
16          conversion facility. The rules must address:
- 17               a. The estimated site reclamation costs in current dollars;  
18               b. The method and schedule for updating the costs of the site reclamation and  
19               restoration or site conversion to an alternate industrial use;  
20               c. The method of ensuring funds will be available for reclamation and restoration;  
21               d. The anticipated manner in which the site is restored; and  
22               e. Present and future natural resource development.
- 23          2. The owner or operator of an electric energy conversion facility subject to retirement  
24          shall provide the commission with a plan for site reclamation at least three years  
25          before the facility is retired. The plan must be consistent with the rules adopted by the  
26          commission for site reclamation and:
- 27               a. Include a detailed estimate of the cost to implement the plan based on the cost of  
28               hiring a third party to conduct all activities;
- 29               b. Demonstrate financial assurance to fund site reclamation of the retiring facility  
30               and provide methods by which this assurance may be demonstrated;

- 1           c. Include methods for estimating site reclamation costs, including full site  
2           reclamation under all applicable federal and state standards; and  
3           d. Address restoring physical topography, cleanup of all hazardous substances on  
4           the site, potential future uses of the site following restoration, and coordination  
5           with local and community plans for economic development in the vicinity of the  
6           site.

- 7           3. All cost estimates in the site reclamation plan must be in current dollars and may not  
8           include a net present value adjustment or offsets for salvage value of wastes or other  
9           property.  
10          4. Adoption of the site reclamation plan and significant revisions to the plan must be  
11          approved by the commission and the department of environmental quality.

12          **49-22.2-05. Reclamation bond requirements - Self-bond - Rules and procedures.**

- 13          1. Except as otherwise provided by law, the owner or operator of a retiring electric energy  
14          conversion facility shall file a reclamation bond with the commission ten years before  
15          the expected retirement of the facility. The bond must be payable to the commission to  
16          ensure proper reclamation of the facility site.  
17          2. The reclamation bond must be a minimum of one hundred thousand dollars for the first  
18          year and may be increased annually by the commission based on a calculation  
19          conducted by the commission. The reclamation bond may not be increased by more  
20          than one hundred thousand dollars per year. Any adjustment of the reclamation bond  
21          must be proposed through the rulemaking process.  
22          3. The calculation of the reclamation bond must include consideration of:  
23               a. The difficulty of reclamation;  
24               b. The topography, geology of the site, hydrology, and revegetation potential;  
25               c. The owner or operator's past environmental performance record;  
26               d. Whether the owner or operator, and any subcontractors have operated in this  
27               state less than three years; and  
28               e. The additional cost to the state of bringing in personnel and equipment if the  
29               owner or operator fails or the site is abandoned.  
30          4. The owner or operator of a retiring electric energy conversion facility may request  
31          release of the retained reclamation bond.

- 1           a. Within ninety days of receipt of the request, the commission in coordination with  
2           the department of environmental quality shall inspect and evaluate the  
3           reclamation work and report the findings to the commission.
- 4           b. If the commission finds the reclamation meets the requirements of this chapter,  
5           the commission shall notify the owner or operator of the retired facility and  
6           release the reclamation bond.
- 7           c. If the commission does not approve of the reclamation performed by the owner or  
8           operator, the commission shall notify the owner or operator by registered mail  
9           within a reasonable time after the request is filed. The notice must state the  
10          reasons for denial and recommend corrective actions.
- 11          d. Upon correction of the noted deficiency, the commission shall release the  
12          reclamation bond.
- 13          e. The commission may not release the reclamation bond until reclamation of the  
14          site has been completed and approved by the commission or the retirement date  
15          has been adjusted to extend beyond the ten-year retirement expectation.
- 16      5. The commission may accept a self-bond from the owner or operator if the owner or  
17      operator demonstrates a history of financial solvency, continuous business operation,  
18      continuous efforts to achieve compliance with all federal and state environmental laws  
19      and state insurance laws and regulations, to the satisfaction of the commission,  
20      insurance commissioner, and the department of environmental quality, and meets all  
21      of the following requirements:
- 22          a. The owner or operator is incorporated or authorized to do business in the state  
23          and designates an agent in the state to receive service of suits, claims, demands,  
24          or other legal process;
- 25          b. The owner or operator provides audited financial statements covering the most  
26          recent three fiscal years, prepared by a certified public accountant in accordance  
27          with generally accepted accounting principles. Upon request of the owner or  
28          operator, the commission shall maintain the confidentiality of the financial  
29          statements if the financial statements are not disclosed otherwise to other  
30          government agencies or the public;



- 1           c. During the last three years, the owner or operator has not defaulted in the  
2           payment of any dividend or sinking fund installment, preferred stock or  
3           installment on any indebtedness for borrowed money, payment of rentals under  
4           long-term leases, or any reclamation fees payment due;
- 5           d. The owner or operator has been in business and operating no less than ten years  
6           unless the owner or operator's existence results from a reorganization,  
7           consolidation, or merger involving a company with ten years longevity. However,  
8           the owner or operator is deemed to have met this requirement if the facility is a  
9           majority-owned subsidiary of a corporation that has been in business and  
10          operating no less than ten years; and
- 11          e. The owner or operator has a net worth of at least six times the aggregate amount  
12          of all bonds applied for by the operator under this section.

13          6. The commission shall adopt rules in conformity with this chapter and prescribe  
14          methods and procedures required by this chapter.

15          **49-22.2-06. Exemption for purchase of electric energy conversion facility - Public**  
16          **utility purchase requirements - Conditions for exemption.**

- 17          1. This chapter and chapter 49-02 do not apply to a person that operates an electric  
18          energy conversion facility purchased under an agreement approved by the  
19          commission under section 49-22.2-03.
- 20          2. An electric public utility, other than a cooperative electric utility, shall purchase  
21          electricity generated from an electric energy conversion facility purchased under  
22          agreement approved by the commission under section 49-22.2-03 provided:
- 23               a. The person purchasing the retiring electric energy conversion facility offers to sell  
24               some or all of the electricity from the facility to an electric public utility;
- 25               b. The electricity is sold at a price no greater than the purchasing electric utility's  
26               avoided cost as determined by the commission;
- 27               c. The electricity is sold under a power purchase agreement with a specified term  
28               length and any other terms and conditions as approved by the commission; and
- 29               d. The commission approves a one hundred percent cost recovery in rates for the  
30               cost of the power purchase agreement, and the agreement is one hundred

- 1                   percent allocated to the public utility's customers within the state unless  
2                   otherwise agreed to by the public utility.
- 3       3. In determining an electric public utility's avoided costs under this section, the  
4       commission may consider:
- 5           a. The value of the electric energy and capacity generated from the facility;  
6           b. The value of any reliability benefits associated with the operation of the facility;  
7           and  
8           c. Any other factor the commission deems appropriate.
- 9       4. The commission may set the avoided cost price and other terms and conditions for the  
10       purchase of electricity from a retiring electric energy conversion facility before the  
11       facility's proposed retirement date to allow potential purchasers to know the avoided  
12       cost price and other terms and conditions for sales from that facility before entering an  
13       agreement to purchase the facility.