

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1095
(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact a new subsection to section 49-22-07 of the North Dakota Century Code, relating to the siting of a repowered wind conversion facility that has not previously been issued a certificate of site compatibility; and to amend and reenact sections 49-22-03 and 49-22-16.4 of the North Dakota Century Code, relating to the definition of repower for a wind facility and waivers or extensions for light mitigation technology systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of ~~subsection~~subsection 5 or ~~42in~~subsection 13 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or

- (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.

4. "Corridor" means the area of land where a designated route may be established for an electric transmission facility.
5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
 - a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or
 - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.
8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
9. "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. "Repower" means construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.
12. "Route" means the location of an electric transmission facility within a designated corridor.
- ~~12-13.~~ "Site" means the location of an electric energy conversion facility.
- ~~13-14.~~ "Utility" means a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

SECTION 2. A new subsection to section 49-22-07 of the North Dakota Century Code is created and enacted as follows:

A wind energy conversion facility that has not been issued a certificate of site compatibility and exceeds five megawatts of electricity may not repower the wind energy conversion facility without first having obtained a certificate of site compatibility. A variance may be granted for impacts to exclusion and avoidance areas resulting from the repowering of existing

infrastructure upon a showing of good cause. A requested variance must comply with local land use, zoning, building rules, regulations, and ordinances.

SECTION 3. AMENDMENT. Section 49-22-16.4 of the North Dakota Century Code is amended and reenacted as follows:

49-22-16.4. Light-mitigating technology system - Rules.

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.
2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems are the sole responsibility of the wind energy conversion facility owner.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1095.

House Vote: Yeas 79 Nays 11 Absent 4

Senate Vote: Yeas 45 Nays 1 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State