

SECTION 16. AMENDMENT. Section 4.1-01-21.1 of the North Dakota Century Code is amended and reenacted as follows:

4.1-01-21.1. Environmental impact mitigation fund - Report to legislative management - Continuing appropriation.

1. There is created in the state treasury the environmental impact mitigation fund. The fund consists of all moneys deposited in the fund under section 49-22-09.2. All moneys in the fund are appropriated to the commissioner on a continuing basis for ~~distribution~~disbursement by the agriculture commissioner ~~to landowners for the mitigation of agricultural land impacted by development as set forth under subsection 2~~in accordance with this section.

2. ~~Funding~~Moneys in the fund may be used only for:

a. ~~Contracting for c~~Consultation with environmental scientists, ~~or~~ engineers, ~~industry specialists, or others~~ for relevant services to analyze or implement mitigation required from the impact of development; and

b. ~~Reclamation or~~ To create, restore, or otherwise mitigate similar habitat affected by the construction or operation of an energy conversion or transmission facility. ~~m~~Mitigation of adverse impacts from development under this section shall be conducted in areas in the following order of priority:

- (1) The area immediately impacted by the development;
- (2) The county impacted by the development;
- (3) The region impacted by the development; and
- (4) Other areas within the state.

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

4. ~~The~~In consultation with the federal environmental law impact review committee, ~~the~~ commissioner shall adopt rules under chapter 28-32 to implement the provisions of this section ~~shall establish criteria for disbursement of moneys in the environmental impact funds~~mitigation fund.

5. ~~The commissioner shall make disbursements of moneys in the environmental impact mitigation fund based upon the determinations made by the federal environmental law impact review committee~~Easements or leaseholds purchased by a person to mitigate adverse environmental effects of the construction or life of an energy conversion or transmission facility under chapter 49-22 must be limited to the operational life of the facility as defined under chapter 49-22. Any payment made to mitigate adverse environmental effects of the construction or life of an energy conversion or transmission facility under chapter 49-22 must be made to the commissioner who shall deposit the payment into the environmental impact mitigation fund. Prior to the public service commission issuing a permit or certificate to an applicant under chapter 49-22, the commissioner shall notify the commission of mitigation efforts under this section to create, restore, or otherwise mitigate similar habitat affected by the construction or operation of an energy conversion or transmission facility

6. ~~For purposes of this section, the federal environmental law impact review committee shall hold meetings as the chairman determines necessary at a time and place set by the chairman.~~

Upon written request of any four members, the presiding officer shall call a special meeting of the committee.

7. The federal environmental law impact review committee shall make determinations for the disbursement of environmental impact mitigation fund grants in accordance with subsection 2 and provide those determinations to the commissioner.

8. The federal environmental law impact review committee commissioner shall provide a biennial report of environmental impact mitigation fund disbursements to the legislative management.

97. For purposes of this section, the environmental impact mitigation fund is not subject to subsection 2 of section 4.1-01-18.

SECTION 17. 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.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

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.

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

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

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

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

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

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

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.

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

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

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

l. Written comments from the agriculture commissioner.

2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

SECTION 18. AMENDMENT. Section 49-22-09.2 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09.2. Mitigating direct or indirect environmental impacts.

1. An applicant may elect to ~~shall~~ ~~may elect to~~ provide payment to mitigate any assessed adverse ~~direct or indirect~~ environmental impacts of a proposed site, corridor, route, or facility. The applicant may elect to ~~shall~~ provide a minimum of fifty percent of the payment to the agriculture commissioner.

2. The agriculture commissioner shall deposit any moneys paid to mitigate the adverse environmental impacts of a proposed site, corridor, route, or facility as follows:

- a. Fifty percent into the environmental impact mitigation fund; and
- b. Fifty percent into the federal environmental law impact review fund.

If an applicant elects to provide a payment to mitigate environmental impact of the construction or life of an energy conversion facility or transmission facility, such payment must be made to the agriculture commissioner who shall deposit the payment into the environmental impact mitigation fund established under section 4.1-01-21.1. Nothing in this section shall be construed to limit an applicant from conducting mitigation activities.

SECTION XX

LEGISLATIVE MANAGEMENT STUDY – ENERGY CONVERSION OR TRANSMISSION FACILITY – ENVIRONMENTAL MITIGATION. During the 2023-24 interim, the legislative management shall study plans for mitigation of adverse wildlife and environmental impact and monetary payments made by applicants or other persons for that mitigation during the siting and operation of energy conversion or transmission facilities. The payments include applicant payments to state agencies, contractors, nongovernmental organizations, and others. The study must include a review of the provisions of the North Dakota Century Code that affect the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects. The legislative management shall report its findings and recommendations, together with the legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.