

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1283

2005 HOUSE NATURAL RESOURCES

HB 1283

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1283

House Natural Resources Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
1		x	1415-End
2	x		0-526

Committee Clerk Signature

*Karen Bonnet*

Minutes: **Chr. Nelson** opened the hearing on HB1283. Roll was taken, one absent at Senate hearing. Bill was read aloud.

**Rep. Mike Brandenburg, Dist. 28:** This bill before you is about some issues that we have with siting issues within North Dakota. In ND now, for siting of a wind farm or of a generating facility, it's 50 megawatts. If you go to South Dakota, it's 100 megawatts. I've been involved with a wind farm project that came about in the Edgely/Kulm/Ellendale area that turn out very successfully. That project worked out fine because they had two different entities that put up wind towers, Basin Electric and Ottertail Power. Siting issues became an issue in the process. Considering the economy of scale, one of the reasons why it's important that we look at siting issues is if we put in the wind farm at less than 50 megawatts, the cost or scale of economy in 25 years, a wind farm is cheaper if built at the larger 100 megawatt size even over 25-plus years. The cost of the infrastructure, of bringing in the people to put up towers, cement, roads, working with the substations that would handle that load, all comes into the cost. If you look at SD, the

infrastructure costs are so close, but they are building to accommodate the 100 megawatt structure, while we have been restricted to 50 megawatt structures. This bill is very necessary. It is possible that more wind farms will be built in North Dakota. We have people considering the best locations for future wind farms. When we look at the economy of scale as to who can provide the cheapest power, that is going to be a big issue. Mr. Chairman, I am in full support of this bill. I will take any questions.

**Chr. Nelson:** Are there any questions of Rep. Brandenburg? Seeing none, thank you. Is there further testimony in support of HB 1283?

**Sen. Robert Erbele, Dist. 28:** I support this bill. I provide testimony for the fact that living in the district where this wind farm is I have seen the excitement and the activity this has brought to our district. It has been a real boom to the communities of Kulm and Edgely. This bill is very similar to the one we passed in the 2001 session when we equalized the tax rate with Minnesota's. They were at 5% and we were at 18% and it was clear that 5% of something generates a whole lot more dollars than 18% of nothing. We get caught up in whether we should compare ourselves to other states or not, but that's what we really need to do. I just came from the ag committee, and we're talking about shipping out 80% of our ND commodities and only using anywhere from 12-20% of our commodities. How does that relate to wind? As you grow our economy you're going to grow your energy base. I see farmers being marketers of energy. In the future energy will be one of the major crops of the state. I think wind fits into that. Other states look at as these opportunities as economic windfalls and we tend to be fearful and hold back. The population of the world is growing, we tend to dwell so much on our decline. We'll

be rediscovered as population trends turn. Energy is a huge factor. I think we need to be competitive in this market. That's why I stand for this bill.

**Chr. Nelson:** Are there questions of the Senator? Seeing none, thank you. I would remind people who are testifying, please bring it to the clerk first. Is there further testimony in support of HB 1283?

**Rep. David Monson, Dist. 10:** I'm here to testify in favor of HB 1283. We have no oil, we have no coal (in our district), but we have lots of wind. I am hoping that we can get some wind generation and alternative energy sources in my area. I've always been a big supporter of wind energy. When I look at the layout of where the wind is at, we've got it, but we're a long ways from the population centers. If we don't do something to put us on a level playing field with South Dakota or Minnesota or other states, I see that as a major hurdle for us to develop our wind energy, simply because of the transmission requirements that we are going to have to build to get it to the population centers. I believe that we have to do everything we can to make it easier to make this industry competitive with our neighbors.

**Chr. Nelson:** Are there any questions for Rep. Monson? Is there further testimony in favor of HB 1283?

**Rep. Craig Headland, Dist. 29:** I'm here to testify for HB 1283. There is currently a wind tower near Cleveland, ND in my district that is monitoring wind sheer and speed. Anything that we can do to enhance wind development in the future is necessary.

**Chr. Nelson:** Are there any questions for Rep. Headland? Seeing none, thank you.

**Rep. Scott Kelsh, Dist. 11:** I want to go on record in support of HB 1283. I grew up in the Dickey County area where the word of a potential project that may fall between the 50 and 100

megawatt threshold. I know that many of the people there are excited about the possibility of having a wind facility being installed. It will create new tax revenues, and there is a lot of concern about counties having sufficient funds available to offer the services that they do. It's a small step to make us equal to South Dakota and I ask for your support.

**Chr. Nelson:** Are there questions for Rep. Kelsh? Seeing none, thank you for your testimony.

Is there further support for HB 1283?

**Commissioner Tony Clark, ND Public Service Commission:** Supports HB 1283 (WRITTEN TESTIMONY ATTACHED)

**Rep. DeKrey:** Why are setting it into statute at all? What's the downside to getting bigger?

**Clark:** Originally, the statute was certainly set for traditional generating facilities, in ND, probably coal. There are probably very good reasons why you'd want to have one agency that would handle the siting of a facility like a coal plant which has an environmental or cultural resources impact. Perhaps the coal industry likes the idea of being able to go to one place for all the authorization and permits needed; they don't have to go through 50 different agencies, but will be protected by law once they get the certificate of compatibility. I'm guessing that's why it came up, but you have to draw the line somewhere to make it equivalent to other states.

**Chr. Nelson:** Does our 50 megawatts statute coincide with other coal-generating states? Are you aware of how we rank with states other than South Dakota in this regard?

**Clark:** I don't know. Some states don't do siting for generation, some do, some set the threshold at 100 megawatts. Wind may not be included, but others are.

**Chr. Nelson:** Are there further questions of Mr. Clark? Seeing none, thank you. Is there further support for HB 1283?

**Clark:** If the committee is strongly in favor of the bill, you might think about an emergency clause. The time frames on this type of project has been indicated, especially with the introduction of the production tax credit. It can be fairly short in nature and it's a good idea to speed up location siting.

**Chr. Nelson:** Appreciate that. Thank you for your testimony. Is there further support for HB 1283?

**Kurt Beichel, construction Mgr. For FPL Energy, in upper Midwest of the U.S.:**

**(WRITTEN TESTIMONY ATTACHED)**

**Chr. Nelson:** I would ask you to please sign in. Are there any questions of Mr. Beichel? You mention that wind has less of a footprint as far as siting requirements. In your experience, do many states separate coal generation from wind siting requirements? Is this a common practice that we raise the siting megawatt requirement rather than setting different industries in different categories.

**Beichel:** In my experience, states don't differentiate between types of generation. It will usually be by size of a generation facility. In some states it's based on the voltage output of the facility. It varies.

**Chr. Nelson:** How many states are you familiar with their requirements?

**Beichel:** I've been construction manager for, and built wind farms in Wisconsin, Iowa, North Dakota, and South Dakota, and have developed projects in about 12 states.

**Chr. Nelson:** In the four states you mentioned, do they have siting requirements?

**Beichel:** Yes, Wisconsin and Iowa didn't have any requirements as far as the output of the wind farm. That's why I am familiar with it; it was the voltage that the system operated under. SD, I'm not really familiar with.

**Chr. Nelson:** SD is 100 (megawatts) now. Any further questions of Mr. Beichel? Seeing none, thank you for your testimony.

**Dale Niezwaag, Basin Electric Power Coop.:** (WRITTEN TESTIMONY ATTACHED)

**Chr. Nelson:** Are there questions of Mr. Niezwaag? Seeing none, is there further testimony in support of HB 1283?

**Mr. Schultz, Ottertail Power:** Dale covered the points as did other previous speakers and I wanted let you know that on behalf of Ottertail Power, we do support this bill.

**Chr. Nelson:** Are there questions of Mr. Shultz? Is there further testimony in support of HB 1283? Seeing none, is there any opposition of HB 1283?

**Susan Wefald, Public Service Commissioner:** Oppose (WRITTEN TESTIMONY ATTACHED)

**Chr. Nelson:** Is there a possibility of an expediated process, or is six months needed?

**Wefald:** The commission has worked with many for less time, six months is the maximum. If there is no controversy, it can be done in as little as two months.

**Rep. Keiser:** Do we have a preapproval process?

**Wefald:** No, but we do have a letter of intent. That helps facilitate the process. For example, MDU can file a siting project even if it doesn't have wind protection tax credit. You can site the facility as far as one year before you start the facility.

**Keiser:** ...but not until formal application.



**Wefald:** Correct, but you can file. You don't have to wait if time is short. For example the county could have filed last September for current federal tax credit.

**Kelsh:** One reason we support wind energy, we looked at a vested interest and community acceptance I support this bill and ask for your trust. It allows us to continue as good stewards and gives our community an increased economic base, and gives us a chance to compete with neighboring states in the field of wind energy. If it doesn't work, we could address that in the future.

**Wefald:** I appreciate your comments.

**Chr. Nelson:** Are there further questions of Commissioner Wefald? Seeing none, is there further testimony opposing HB 1283? Seeing none, I will close the hearing on HB 1283.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1283

House Natural Resources Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
2	x		30-668

Committee Clerk Signature *Karen Bonnet*

**Chr. Nelson** reopened the Hearing on HB 1283 for action this afternoon. What are the committee's wishes?

**Rep. Nottestad:** I make a motion to add an emergency clause.

**Chr. Nelson:** The motion by Rep. Nottestad to add the emergency clause has been made, is there a second to that?

**Rep. Solberg:** Second.

**Chr. Nelson:** Committee discussion.

**Rep. DeKrey:** Question.

**Chr. Nelson:** Question has been called. All those in favor, signify by saying AYE. Opposed?

Motion carried. What is the committee's wishes?

**Rep. Nottestad:** Do pass as amended.

**Chr. Nelson:** Rep. Nottestad moves a do pass as amended. Second?

**Rep. Drovdal:** Second

Page 2

House Natural Resources Committee

Bill/Resolution Number HB ~~1322~~ 1283

Hearing Date January 20, 2005

**Chr. Nelson:** A second has been made by Rep. Drovdal. Committee discussion?

**Rep. Hunsakor:** Question.

**Chr. Nelson:** Question has been called.

**Rep. Drovdal:** Second

**Chr. Nelson:** I'll ask the clerk to call the roll on a **Do Pass as Amended** motion on HB 1283.

**Chr. Nelson:** End the hearing on HB 1283.

**Vote: 11 Ayes; 1 Nay; 2 Absent. Carrier: Kelsh**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/25/2005

Amendment to: HB 1283

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	(\$35,000)	(\$35,000)	\$0	(\$35,000)	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill changes the threshold for when a power plant is required to be sited under the siting act from 50 thousand kilowatts to 100 thousand kilowatts. Power plants between 50 thousand kilowatts and 100 thousand kilowatts would be sited under current law but not under this bill. Consequently, any fee revenue for plants in that range would be lost. We estimate one wind plant each biennium in that range (approx 70 thousand kilowatts each) which would under current law each produce a fee of approximately \$35,000. Consequently, we estimate the loss to the general fund of approx. \$35,000 each biennium. With an emergency clause, we estimate a similar impact in the current biennium because we understand that a wind facility of approximately this size is planned for the state and the siting application for that plant would likely have been filed before the end of the biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See note on fiscal effect, above. Estimate lost revenue to the general fund of \$35,000 per biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No expenditures are anticipated

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No appropriation is necessary.

**Name:** Illona Jeffcoat-Sacco  
**Phone Number:** 701-328-2407

**Agency:** PSC  
**Date Prepared:** 01/25/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2005

Bill/Resolution No.: HB 1283

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	(\$35,000)	\$0	(\$35,000)	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill changes the threshold for when a power plant is required to be sited under the siting act from 50 thousand kilowatts to 100 thousand kilowatts. Power plants between 50 thousand kilowatts and 100 thousand kilowatts would be sited under current law but not under this bill. Consequently, any fee revenue for plants in that range would be lost. We estimate one wind plant each biennium in that range (approx 70 thousand kilowatts each) which would under current law each produce a fee of approximately \$35,000. Consequently, we estimate the loss to the general fund of approx. \$35,000 each biennium.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See note on fiscal effect, above. Estimate lost revenue to the general fund of \$35,000 per biennium.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No expenditures are anticipated

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No appropriation is necessary.

**Name:** Illona Jeffcoat-Sacco  
**Phone Number:** 701-328-2407

**Agency:** PSC  
**Date Prepared:** 01/13/2005

January 20, 2005

VK  
1/21/05

...HOUSE AMENDMENTS TO HOUSE BILL NO. 1283 NAT. RES. 1-21-05

Page 1, line 2, after "facilities" insert "; and to declare an emergency"

Page 1, after line 13, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1/20/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1283

House

NATURAL RESOURCES

Committee

Check here for Conference Committee

Legislative Council Amendment Number : 50553.0101 Title. 0200

Action Taken : *Do Pass As Amended*

Motion Made By : *Nottestad* Seconded By : *Drovdal*

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	A		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	A		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser		✓			
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment *Kelsh*

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1283: Natural Resources Committee (Rep. Nelson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1283 was placed on the Sixth order on the calendar.**

Page 1, line 2, after "facilities" insert "; and to declare an emergency"

Page 1, after line 13, insert:

**"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."**

Renumber accordingly



2005 SENATE NATURAL RESOURCES

HB 1283

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1283

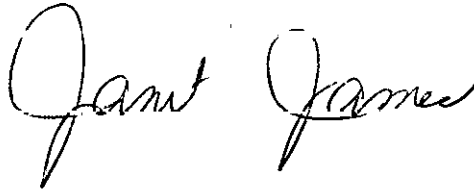
Senate Natural Resources Committee

Conference Committee

Hearing Date February 25, 2005

Tape Number	Side A	Side B	Meter #
1		X	3.4 - end
2	X		0.0 - 2.2

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on HB 1283 relating to siting of energy conversion facilities; and to declare an emergency.

All members of the committee were present.

**Representative Mike Brandenburg** of District 28 cosponsor of HB 1283 introduced the bill stating it deals with the siting issues concerning the change of going from 50 megawatts to 100 megawatts power generating sites. Previous law dealt with coal plants and did not relate to wind energy power sites. South Dakota is now at 100 megawatts, which creates competition for installation of wind farms by out of state companies. He further distributed testimony from **John DiDonato**, Director of Wind Development for FPL Energy in support of HB 1283 (See attached testimony).

**Senator John Traynor** asked if the increase of megawatt size will attract companies to install the facilities in the state.

**Representative Brandenburg** confirmed this to make North Dakota competitive on the playing field.

**Representative David Monson** of District 10 testified in support of HB 1283 as a proponent of energy resources and to help make the state more competitive for transmission lines, wind farms or any energy alternative.

**Tony Clark**, (9.9) President of the Public Service Commission testified on his own behalf and **Commission Kevin Cramer** in support of HB 1283. (See attached testimony).

**Senator Ben Tollefson** commented that the change was a matter of semantics and the bill the way it was written it would cover the same thing. It allows for the increase of megawatt capacity.

**Tony Clark** explained the change would move the line for the minimum of wattage and the words "capable" defines things for the commission.

**Senator Rich Wardner** questioned the benefits of the change of 50 to 100 megawatts and suggested lowering the bar instead of raising it. After explanations from Tony Clark, Senator Wardner came to understand why the increase instead of the decrease of wattage.

**Senator John Traynor** asked what the usual size or capacity of the wind farms.

**Tony Clark** answered that this varies as large as 150 megawatts.

**Dale Niezwaag** (18.7) representing Basin Electric Power Cooperative testified in support of HB 1283 (See attached testimony).

**Senator Traynor** asked Dale to walk through the siting requirements.

**Dale Niezwaag** referred the question to the PSC.

**Senator Wardner** asked what a 100 watt wind turbine site looks like.

**Dale Niezwagg** answered that would be about 75 turbines.

**Senator Michael Every** felt the committee might be being held hostage and asked if there is some large project in the making.

**Dale Niezwaag** answered that there is just more interest and activity in wind power development.

**Senator Lyson** asked for opposing testimony.

**Susan Wefald** (25.5) Public Service Commissioner testified in opposition to HB 1283 (See attached testimony). She further added that South Dakota has set their siting requirements at 100 megawatts, Minnesota sites everything over 5 megawatts and Iowa sites everything 25 megawatts or over. She feels there are important protection in place and should be thought about in making a decision regarding this bill.

**Senator Traynor** stated this committee has passed legislation to protect land owners.

**Susan Wefald** answered she was familiar with the legislation and that it did not do the same thing. It protects landowners from an entity that makes arrangements for easements so they do not use fraudulent means to obtain those easements.

**Senator Every** commented on the large amount of land acreage used for these wind farms.

**Susan Wefald** agreed.

**Senator Wardner** asked for clarification that the bill covers all energy producing facilities not just wind power development.

**Susan Wefald** confirmed this to be true.

**Senator Joel Heitkamp** asked why the PSC was split and if there was anything in the background where there were problems that caused this is change to be necessary.

**Susan Wefald** stated it was not so much that they have done anything wrong, but it might be more the fear of losing projects to other states that might be more the case.

**Senator Heitkamp** asked if there might a problem with property rights if this bill is passed.

**Susan Wefald** explained that is why she has suggested that section of the law be looked at carefully and what might be taken away from landowners if this bill is passed.

**Senator Wardner** asked about the siting procedure.

**Susan Wefald** cited a section of law, Chapter 49, Section 22.

**Senator Tollefson** asked if the HB 1283 was passed, any project under 100 megawatts of generation would not be supervised by the PSC.

**Susan Wefald** confirmed this to be true although the project developers would have to follow the rules of other agencies.

Discussion was held as to the economic scale of building larger energy producing projects and the public input into the siting process. The present siting process has too long of a time schedule in order to capitalize on these projects for development.

**Senator Every** asked if the economy of scales for a large project is worth stepping on the landowners rights.

**Senator Lyson** closed the hearing on HB 1283.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1283

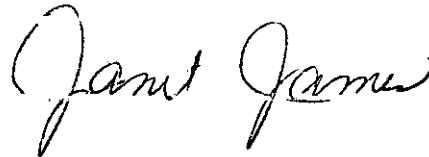
Senate Natural Resources Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1		X	19.6 - 28.9

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1283 relating to siting of energy conversion facilities: and declare an emergency.

All members of the committee were present except **Senator Ben Tollefson**.

**Senator Lyson** stated that he had tried to get the South Dakota Bill pertaining to siting that should have been divided but was not. He further asked the committee if they wanted to divide the bill so wind sites would be separate from coal power plants.

**Senator Joel Heitkamp** stated he thought it was a great idea to separate the wind from the coal generation and the bill addresses the issue of the wind farm near Dickey County. The bill will not stop a new coal plant because there is no out of state competition for one. He volunteered to have the amendment drawn up.

**Senator Rich Wardner** stated he did not think there would ever be a problem of a coal generated power plant being built under 100 megawatts.

**Senator Heitkamp** made a motion for a Do Pass of HB 1283.

**Senator Wardner** second the motion.

Roll call vote for a Do Pass of HB 1283 was taken indicating 4 YEAS, 2 NAYS AND 1 ABSENT.

**Senator Heitkamp** will carry HB 1283.

**Senator Lyson** explained why he is opposed to the bill stating he has a problem of how many miles of land will be covered by a 100 megawatt wind farm and there will be no siting regulations to govern these projects. Also, there could be a 100 megawatt coal generated power plant be built on the Missouri River and there would be no siting control at all.

Discussion was held by the committee expressing their concerns regarding control or regulations of out of state companies and their projects in North Dakota. Issues regarding clean up and reclamation will be visiting the committee in future sessions.

**Senator Lyson** closed the committee work on HB 1283.

Date: 3-11-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1283

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DO PASS

Motion Made By

Heitkamp

Seconded By

Wardner

Senators	Yes	No
Senator Stanley Lyson, Chairman		✓
Senator Ben Tollefson, Vice Chair		
Senator Layton Freborg	✓	
Senator Rich Wardner	✓	
Senator John Traynor	✓	

Senators	Yes	No
Senator Joel Heitkamp	✓	
Senator Michael Every		✓

Total (Yes)

4

No

2

Absent

1

Floor Assignment

11

- Heitkamp

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE (410)**  
March 11, 2005 1:45 p.m.

**Module No: SR-45-4784**  
**Carrier: Heitkamp**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1283, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)**  
recommends **DO PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1283 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1283

By: Tony Clark  
1/20/05

## **H. B. 1283**

**Presented by: Commissioner Tony Clark  
Public Service Commission**

**Before: House Natural Resources  
Hon. Jon Nelson, Chairman**

**Date: January 19, 2005**

### **TESTIMONY**

Mr. Chairman and members of the committee, for the record, I am Tony Clark, President of the Public Service Commission. I support HB 1283, as legislation that better positions North Dakota to compete for energy development projects, especially as it relates to wind generation.

Current state law regarding the siting of generation facilities was not written at a time when wind generation was contemplated. In fact, we probably would not be here today if not for the unique attributes of building wind generation. The planning horizon for wind generation projects entails a much shorter time frame than that of other types of projects. This means that especially important factors wind developers will take into consideration when planning where to locate a facility, are the time and cost of siting that facility. All other things being roughly equal, these considerations could tip the scales for or against a project being sited in our state. Frankly, no one wants to see a day when North Dakota would lose out on any wind project because our statutes were out of sync with others in our region.

On the other hand, there can be important and sound reasons for having facility siting decision rest in one location, such as the Public Service Commission, regardless of what type of generation is being planned. I believe this bill balances those interests in a prudent way. The question for the legislature is: where do you draw the line for what needs to be sited under our statutes and what does not. Frankly, it is arbitrary. The best option seems to be to set our laws equivalent to the states that are our most likely competitors for these projects. This bill effectively sets our threshold at the current threshold in South Dakota law. This seems to be a reasonable way to both promote the development of our state's wind energy potential, while continuing to protect the public's interest in siting larger facilities of all kinds.

This concludes my testimony, I'd be happy to answer any questions you may have.

By: Kurt Beichel  
HB 1283  
1/20/05

My name is Kurt Beichel, and I am the Construction Manager for FPL Energy in the Upper Midwest of the United States. I live in Aberdeen South Dakota. I was responsible for the construction of FPL Energy's Wind Energy Center located between Edgeley and Kulm. Normally a member of our Development Team would provide testimony on such a bill, however due to the short notice, I have been asked by our Development Team to read this letter in support of House Bill 1283.

First, I would like to thank the Committee for allowing FPL Energy to provide comments here today. I would ask the members of the committee that, should there be any policy questions regarding this testimony, that they submit them in writing, and I will see to it that those questions get to the person in the FPL Energy organization that can provide answers. I will be glad to answer any construction questions you may have.

FPL Energy, the nation's largest wind energy developer, owner and operator, and for that matter North Dakota's largest owner and operator of wind energy, supports House Bill 1283.

Wind energy development in North Dakota is in its infancy. Wind energy as compared to any form of new electric generation is the least expensive way to generate electricity. The Edgeley Wind Energy Center provides an abundance of affordable renewable energy. That is good for the State and the Nation. Wind energy brings affluence to rural Dakota communities. Our projects in the Edgeley/Kulm area a mere sample of what could be for North Dakota and its wind energy future. FPL Energy has been diligently developing sites throughout this region, including those in North Dakota, and we are hopeful that additional projects will reach construction here in North Dakota in the near future.

It is no secret that wind energy development is closely tied to the continuation of the federal production tax credit. Recent history regarding extension of the federal production tax credit has not been steady, as the credit has continued to be extended for not more than two years at a time. It is a kind of boom and bust cycle. This puts tremendous pressure on wind energy developers to develop projects quickly. In such an environment, long regulatory proceedings add significant risk that a project may not get done in time to qualify for the production tax credit. This is a risk that could kill an otherwise viable project in North Dakota.

However the risk to the public from a wind energy center is minimal. There are no emissions into the environment, no material use of water, and no creation of solid waste. Wind plants do not require large improvements in the public infrastructure.

Additionally, even without going through Siting, there are still certain permits that must be obtained by a wind developer prior to construction, such as storm water discharge permits, local road construction permits, and others. The collective result of these permit reviews is ample to protect local interests. In fact, most states in the Midwest do not require wind energy projects to go through Siting due to their minimal impact on the environment, infrastructure and local community as a whole.

By: Kurt Beichel  
HB 1283  
1/20/05

So, with the aforementioned in mind, FPL Energy believes that it is appropriate to raise the threshold for siting energy conversion facilities to 100 MW as it will facilitate wind energy development in the state, and thus, we support House Bill 1283.

By: Dale Niezwaag  
HB 1283  
1/20/05

**Dale Niezwaag - Basin Electric Power Cooperative  
North Dakota House Bill No. 1283 – Siting of Energy Conversion Facilities  
House Natural Resources Committee  
January 20, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, I am here representing Basin Electric Power Cooperative in support of HB 1283

As a regional generation and transmission cooperative, Basin Electric generates and transmits electricity to 120 member systems in nine states. These member systems distribute electricity to about 1.7 million consumers. We currently operate three coal-based power plants in the region with a fourth plant to be built in Wyoming over the next several years. We operate nine combustion-turbine generators, one oil peaking plant and four wind turbines. We also purchase the entire output of two 40-megawatt wind farms owned by FPL Energy in North and South Dakota. These two projects were constructed only because Basin Electric agreed to a long-term purchase of 100% of the output and the projects could get constructed in time to meet the expiration of the federal production tax credit at that time.

We feel this legislation would be a positive step for the wind energy industry in North Dakota. There are two main reasons we support this legislation: 1) Due to national legislative issues beyond our control, the time-frame for developing wind projects is very short and it is prudent that North Dakota's policy framework respond to this problem. 2) It is reasonable to not adversely impact North Dakota's ability to compete for wind projects with some of the other state's experiencing growth in wind. Currently, most states experiencing growth have found it unnecessary or adverse to implement siting requirements.

Let me elaborate on the first point. The current state of incentives for wind generation has created a tremendous boom and bust cycle that makes it very difficult for the wind energy industry to develop and install projects and to systematically plan for the equipment needed. The main culprit for this confusion is the federal production tax credit. This credit has constantly been an on again, off again incentive. After a multi-year run, the credit expired at the end of 2003 and was not reinstated until October of 2004, but it was only extended until the end of 2005. One of the reasons for the gaps in offering the credit is because it is held hostage to gain support for other legislation. The current available time frame leaves only 14 months to get projects designed, equipment ordered, easements obtained, buyers lined up, and transmission paths established. 14 months is not a lot of time in that scenario. This legislation would help projects under 100 MW's get installed more quickly.

Secondly, it is our understanding that the states of Texas, Kansas, Oklahoma, New Mexico, and Wyoming have no siting requirements for wind energy facilities. That these states have experienced significant wind growth and not found the siting requirements to be necessary is telling. We should not move forward with siting requirements that are more onerous than other state's without a demonstrated reason for doing so.

That concludes my testimony and I would be happy to answer any questions at this time.

**House Bill 1283**

**Presented by: Susan Wefald, Commissioner  
Public Service Commission**

**Before: Natural Resources  
Honorable Jon O. Nelson, Chairman**

**Date: January 20, 2005**

**TESTIMONY**

Mr. Chairman and committee members, I am Public Service Commissioner Susan Wefald. I am appearing today to discuss concerns about changing the standard for siting Energy Conversion Facilities from 50 to 100 hundred thousand kilowatts of electricity. I am concerned about this for two main reasons: It is important to continue to site all Energy Conversion Facilities in this state from 50 thousand kilowatts on up; and (2) wind may be different from other types of energy conversion facilities, but wind issues need public attention as much as other types of electric generation. Due to these concerns, I cannot support the bill at this time. The comments that I am making today reflect my own thinking on this bill.

We all want energy conversion facilities to locate in our state. They provide good jobs and are an important tax base. So why



shouldn't we change our siting laws to attract these businesses to our state? There are 4 good reasons why this should not be done.

1. Our siting laws have stood the test of time, and have proven to be some of the most efficient and effective in the country. The Commission has 6 months to complete a siting proceeding and issue an order. A public hearing is an important part of the process. Everyone in the state has an opportunity to know all of the important information about the proposed project and has a chance to raise concerns or offer support for the project.
2. The siting process does not need to add any time to a project, and may speed up the process. The Commission rules specify 21 agencies who we notify when in a siting proceeding. Many of these agencies have laws or rules that must be obeyed. The Commission acts as a clearing house, and ensures that any issues raised by these agencies are addressed. We are able to do this in a timely manner, and ensure that all state laws and rules are being followed.
3. Can you imagine if you were a citizen or business interested in a siting project, and you had to contact 21 different agencies to register your concerns? This would not be good government,

and our North Dakota citizens deserve to be able to use the siting process we have in place now. Now they can just contact the Commission to register their thoughts and concerns and learn how to participate in a single proceeding.

4. The Heskett Station, across the river in Mandan, is a 50 thousand kilowatt facility. If another coal-conversion facility of this size is needed, it is important that our siting law is in place for such a project.

Now let us look at 4 specific issues that relate to wind development in our state and these siting issues.

1. I have been a strong supporter of wind development in our state for the 12 years I have served on the Commission. One of the reasons that I support wind is because the industry has seemed to care about the environment and the people in our region. However, I am very disappointed that wind interests have promoted this bill which would not allow everyone to know that all environmental laws and rules are being followed, and which does not allow everyone to participate easily in the siting process.

2. I agree that wind turbines raise different siting issues than coal fired generation facilities. However, just because these issues are different, does not mean that they are unimportant to address. For example, a 75 thousand kilowatt wind facility could use 75 one megawatt towers, costing about 1 million dollars each. Each tower needs to be spaced to most efficiently use the wind resources, which means that 150 acres or more of land could be impacted. Some of the state agencies that have laws and rules that could be impacted include the Aeronautics Commission, the Department of Agriculture, the Game and Fish Department, the Highway Department, the Land Department, Parks and Recreation, the Soil Conservation Committee, and the State Historical Society of ND.
3. What happens when the next wind farm is proposed, and this farm is a 150 thousand kilowatt facility? Will these same interests be advocating changing the law again? We have a good siting law, and we should want to use it the way it was intended.
4. The primary impact of the siting act on Wind development is the fees required of the applicant. One initiative the Commission

has taken this session to alleviate this impact and help attract wind energy facilities to our state is proposed in Bill 2133. This bill would reduce the maximum amount of money that a company may have to pay upfront for a state siting permit, and refunds any money that is not used in the siting proceedings.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions that you may have.

## House Bill 1283

**Presented by:** Susan Wefald, Commissioner  
Public Service Commission

**Before:** Natural Resources  
Honorable Stanley W. Lyson, Chairman

**Date:** February 25, 2005

### TESTIMONY

Mr. Chairman and committee members, I am Public Service Commissioner Susan Wefald. I am appearing today to discuss concerns about changing the standard for siting Energy Conversion Facilities from 50 to 100 hundred thousand kilowatts of electricity. I am concerned about this for two main reasons: It is important to continue to site all Energy Conversion Facilities in this state from 50 thousand kilowatts on up; and (2) wind may be different from other types of energy conversion facilities, but wind issues need public attention as much as other type of electric generation. Due to these concerns, I cannot support the bill at this time. The comments that I am making today reflect my own thinking on this bill.

We all want energy conversion facilities to locate in our state. They provide good jobs and are an important tax base. So why

shouldn't we change our siting laws to attract these businesses to our state? There are 5 good reasons why this should not be done.

1. Our siting laws have stood the test of time, and have proven to be some of the most efficient and effective in the country. The Commission has 6 months to complete a siting proceeding and issue an order. A public hearing is an important part of the process. Everyone in the state has an opportunity to know all of the important information about the proposed project and has a chance to raise concerns or offer support for the project.
2. The siting process does not need to add any time to a project, and may speed up the process. The Commission rules specify 21 agencies who we notify when in a siting proceeding. Many of these agencies have laws or rules that must be obeyed. The Commission acts as a clearing house, and ensures that any issues raised by these agencies are addressed. We are able to do this in a timely manner, and ensure that all state laws and rules are being followed.
3. Can you imagine if you were a citizen or business interested in a siting project, and you had to contact 21 different agencies to register your concerns? This would not be good government,

and our North Dakota citizens deserve to be able to use the siting process we have in place now. Now they can just contact the Commission to register their thoughts and concerns and learn how to participate in a single proceeding.

4. Section 49-22-16.1 of the Siting Chapter includes important provisions that protect landowners from unfair tactics when public utilities acquire land or easements.
5. The Heskett Station, across the river in Mandan, is a 50 thousand kilowatt facility. If another coal-conversion facility of this size is needed, it is important that our siting law is in place for such a project.

Now let us look at 4 specific issues that relate to wind development in our state and these siting issues.

1. I have been a strong supporter of wind development in our state for the 12 years I have served on the Commission. One of the reasons that I support wind, is because the industry has seemed to care about the environment and the people in our region. However, I am very disappointed that wind interests have promoted this bill which would not allow everyone to know that all environmental laws and rules are being followed, and

which does not allow everyone to participate easily in the siting process.

2. I agree that wind turbines raise different siting issues than coal fired generation facilities. However, just because these issues are different, does not mean that they are unimportant to address. For example, a 75 thousand kilowatt wind facility could use 75 one megawatt towers, costing about 1 million dollars each. Each tower needs to be spaced to most efficiently use the wind resources. For example, the existing 61.5 thousand kilowatt wind facility located near Edgeley uses 3,900 acres of land for its 41 turbine facility. Agency laws and rules that could be impacted include the Aeronautics Commission, the Department of Agriculture, the Game and Fish Department, the Highway Department, the Land Department, Parks and Recreation, the Soil Conservation Committee, and the State Historical Society of ND.
3. What happens when the next wind farm is proposed, and this farm is a 150 thousand kilowatt facility? Will these same interests be advocating changing the law again? We have a



good siting law, and we should want to use it the way it was intended.

4. The primary impact of the siting act on Wind development is the fees required of the applicant. One initiative the Commission has taken this session to alleviate this impact and help attract wind energy facilities to our state is proposed in SB 2133. This bill would reduce the maximum amount of money that a company may have to pay upfront for a state siting permit, and refunds any money that is not used in the siting proceedings.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions that you may have.

My name is John DiDonato, and I am the Director of Wind Development for FPL Energy in the Upper Midwest of the United States. I am submitting this written testimony in support of House Bill 1283.

FPL Energy, the nation's largest wind energy developer, owner and operator, supports House Bill 1283.

Wind energy development in North Dakota is in its infancy. Our projects in the Edgeley/Kulm area are mere samples of what could be for North Dakota and its wind energy future. FPL Energy has been diligently developing sites throughout this region, including those in North Dakota, and we are hopeful that additional projects will reach construction here in North Dakota in the near future.

It is no secret that wind energy development is closely tied to the continuation of the federal production tax credit. Recent history regarding extension of the federal production tax credit has not been good, as the credit has continued to be extended for not more than two years at a time. This puts tremendous pressure on wind energy developers to develop projects quickly. In such an environment, long regulatory proceedings can add significant risk that a project may not get done in time to qualify for the production tax credit. This is a risk that could kill an otherwise viable project.

Additionally, even without going through Siting, there are still certain permits that must be obtained by a wind developer prior to construction, such as storm water discharge permits, local road construction permits, and others. The collective result of these permit reviews is ample to protect local interests. In fact, most states in the Midwest do not require wind energy projects to go through Siting due to their minimal impact on the environment, infrastructure and local community as a whole.

Regarding the amendment to House Bill 1283 pertaining to free transferability of the Geothermal, Solar and Wind Tax Credit, let me first commend the North Dakota Legislature and the Governor for establishing this credit in 2001. However, this tax credit, as it is currently implemented, is not providing the incentives that FPL Energy believes it was intended to provide.

The Geothermal, Solar and Wind Tax Credit is an investment tax credit equal to 3% of the total cost of a qualifying project for the first five years of said project. If it is not used during those five years, it cannot be carried forward to future years. Additionally, wind energy projects qualify for 5-year MACRS depreciation for North Dakota Income Tax purposes. This accelerated depreciation typically causes wind energy projects to experience tax losses during the first five years of the project. Therefore, in almost all cases, the Geothermal, Solar and Wind Tax Credit, as it is currently implemented, will not be able to be utilized by a qualifying project.

FPL Energy believes this unintended result would be eliminated if the credit was freely transferable to any taxpayer that has a North Dakota tax liability. This would allow qualifying projects to monetize the credit in a manner more consistent with the original

intent of the credit. What's more, the transfer of the credit merely changes the taxpayer that actually receives the tax credit from the State of North Dakota; it does not result in additional credits or other losses in revenue. In fact, since the credit is most likely to be transferred via sale of the credit, the proceeds from that sale would also be taxable in North Dakota.

So, with the aforementioned in mind, FPL Energy believes that it is appropriate to raise the threshold for siting energy conversion facilities to 100 MW and to amend the Geothermal, Solar and Wind Tax Credit to include free transferability. We, therefore, support House Bill 1283 and the amendment thereto.

## **H. B. 1283**

**Presented by:**        **Commissioner Tony Clark**  
                                 **Public Service Commission**

**Before:**                **Senate Natural Resources**  
                                 **Hon. Stan Lyson, Chairman**

**Date:**                  **February 25, 2005**

### **TESTIMONY**

Mr. Chairman and members of the committee, for the record, I am Tony Clark, President of the Public Service Commission. The testimony I am delivering today is on behalf of myself and Commissioner Kevin Cramer. We support HB 1283, as legislation that better positions North Dakota to compete for energy development projects, especially as it relates to wind generation.

Current state law regarding the siting of generation facilities was not written at a time when wind generation was contemplated. In fact, we probably would not be here today if not for the unique attributes of building wind generation. The planning horizon for wind generation projects entails a much shorter time frame than that of other types of projects. This means that the time and cost of siting a facility are especially important factors that wind developers consider when choosing a location. All other things being roughly equal, these considerations could tip the scales for or against a project being sited in our state. Frankly, we do not want to see a day when North Dakota would lose out

on any wind project because our statutes were out of sync with others in our region.

On the other hand, there can be important and sound reasons for having facility siting decision rest in one location, such as the Public Service Commission, regardless of what type of generation is being planned. We believe this bill balances those interests in a prudent way. The question for the legislature is: where do you draw the line for what needs to be sited under our statutes and what does not. Frankly, it is arbitrary. The best option seems to be to set our laws equivalent to the states that are our most likely competitors for these projects. This bill effectively sets our threshold at the current threshold in South Dakota law. This seems to be a reasonable way to both promote the development of our state's wind energy potential, while continuing to protect the public's interest in siting larger facilities of all kinds. I would also note that there was a bill in the South Dakota legislature this session that created a new section on siting wind turbines. Originally, their threshold was set at 40 MW, but the bill was amended in late January to a 100 MW threshold, no doubt in response to the activities of this legislature. This activity underscores the importance of these state laws as they relate to competitive decisions about where to site facilities.

This concludes our testimony, I'd be happy to answer any questions you may have.

**Dale Niezwaag - Basin Electric Power Cooperative**  
**Supporting House Bill No. 1283 – Siting of Energy Conversion Facilities**  
**Senate Natural Resources Committee**  
**February 25, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, I am here representing Basin Electric Power Cooperative in support of HB 1283

As a regional generation and transmission cooperative, Basin Electric generates and transmits electricity to 120 member systems in nine states. These member systems distribute electricity to about 1.7 million consumers. We currently operate three coal-based power plants in the region with a fourth plant to be built in Wyoming over the next several years. We operate nine combustion-turbine generators, one oil peaking plant and four wind turbines. We also purchase the entire output of two 40-megawatt wind farms owned by FPL Energy in North and South Dakota. These two projects were constructed only because Basin Electric agreed to a long-term purchase of 100% of the output and the projects could get constructed in time to meet the expiration of the federal production tax credit at that time.

We feel this legislation would be a positive step for the wind energy industry in North Dakota. There are two main reasons we support this legislation: 1) Due to national legislative issues beyond our control, the time-frame for developing wind projects is very short and it is prudent that North Dakota's policy framework respond to this problem. 2) It is reasonable to not adversely impact North Dakota's ability to compete for wind projects with some of the other state's experiencing growth in wind. Currently, most states experiencing growth have found it unnecessary to implement siting requirements.

Let me elaborate on the first point. The current state of incentives for wind generation has created a tremendous boom and bust cycle that makes it very difficult for the wind energy industry to develop and install projects and to systematically plan for the equipment needed. The main culprit for this confusion is the federal production tax credit. This credit has constantly been an on again, off again incentive. After a multi-year run, the credit expired at the end of 2003 and was not reinstated until October of 2004, but it was only extended until the end of 2005. One reason for the gaps in offering the credit is because it is held hostage to gain support for other legislation. The current available time frame leaves only 14 months to get projects designed, equipment ordered, easements obtained, buyers lined up, and transmission paths established. 14 months is not a lot of time in that scenario. This legislation would help projects under 100 MW's get installed more quickly.

Secondly, it is our understanding that the states of Texas, Kansas, Oklahoma, New Mexico, and Wyoming have no siting requirements for wind energy facilities. That these states have experienced significant wind growth and not found the siting requirements to be necessary is telling. We should not move forward with siting requirements that are more onerous than other state's without a demonstrated reason for doing so.

That concludes my testimony and I would be happy to answer any questions at this time.