

**FIRST ENGROSSMENT  
with Senate Amendments**

Fifty-eighth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1435**

Introduced by

Representatives Severson, S. Kelsh, Monson

Senators Erbele, Grindberg, Mathern

1 A BILL for an Act to provide a renewable energy production incentive program; and to provide  
2 an appropriation.

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

4 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 5 1. "Commission" means the public service commission.
- 6 2. "Qualified wind energy conversion facility" means a wind energy conversion  
7 system in this state that begins generating electricity after the effective date of this  
8 Act, produces two megawatts or less of electricity as measured by nameplate  
9 rating, and is:
- 10 a. Owned by an individual who owns the land where the facility is sited;
- 11 b. Owned by a nonprofit organization organized under state law;
- 12 c. Owned by an Indian tribe if the facility is located within the boundaries of the  
13 reservation; or
- 14 d. Owned by a political subdivision of the state.

15 **SECTION 2. Incentive payment.** Incentive payments must be made according to this  
16 section to the owner or operator of a qualified wind energy conversion facility for electric energy  
17 generated and sold by the facility. Payment may only be made upon receipt by the commission  
18 of an incentive payment application that establishes that the applicant is eligible to receive the  
19 incentive payment and that satisfies other requirements the commission determines necessary.  
20 The application must be in the form and submitted at the time the commission establishes.

21 **SECTION 3. Eligibility.** Payments may be made under this section only for electricity  
22 generated from a qualified wind energy conversion facility that is operational in generating  
23 electricity before January 1, 2007.

1           **SECTION 4. Payment.** A facility may receive payments under this Act for a ten-year  
2 period. No payment under this Act may be made for electricity generated by a qualified wind  
3 energy conversion facility after December 31, 2017. The payment period begins and runs  
4 consecutively from the date the facility begins generating electricity.

5           **SECTION 5. Amount of payment.**

- 6           1. An incentive payment is based on the number of kilowatt hours of electricity  
7 generated. The amount of the payment is one and one-half cents per kilowatt hour  
8 for electricity generated by a qualified wind energy conversion facility with greater  
9 than a one hundred kilowatt nameplate capacity.
- 10          2. The commission shall establish a list of qualified wind energy conversion systems  
11 over one hundred kilowatt nameplate capacity. The commission shall place a  
12 proposed system with a nameplate capacity over one hundred kilowatts on the list  
13 when the commission determines that the system qualifies under this section and  
14 the system proposer submits to the commission a copy of a signed power  
15 purchase agreement or other agreement to sell power generated by the system to  
16 a third person. The commission shall add proposed systems to the list in the order  
17 in which proposers submit completed applications that include copies of power  
18 purchase agreements or other agreements to sell power. A proposed system  
19 remains on the list from the date it is added until it begins operation and begins  
20 receiving the production incentive or eighteen months, whichever time period is  
21 shorter.
- 22          3. When a proposed system on the list of qualified systems commences operation,  
23 the proposer shall notify the commission to begin payment of the incentive.  
24 Notification must include a sworn certificate confirming that the representations as  
25 to ownership, financing, and operation of the facility in its original application  
26 remain true and accurate. The commission may require additional documentation  
27 necessary to determine qualification of a system. The commission may rely on a  
28 certification for the purpose of paying the incentive.
- 29          4. For wind energy conversion systems installed and contracted for after the effective  
30 date of this Act, the total size of a wind energy conversion system under this  
31 section must be determined according to this subsection. Unless the systems are

- 1 interconnected with different distribution systems, the nameplate capacity of one  
2 wind energy conversion system must be combined with the nameplate capacity of  
3 any other wind energy conversion system that is:
- 4 a. Located within five miles of the wind energy conversion system;
  - 5 b. Constructed within the same calendar year as the wind energy conversion  
6 system; and
  - 7 c. Under common ownership.

8 In the case of a dispute, the commission shall determine the total size of the  
9 system and shall draw all reasonable inferences in favor of combining the systems.

- 10 5. In making a determination under subsection 4, the commission may determine that  
11 two wind energy conversion systems are under common ownership when the  
12 underlying ownership structure contains similar persons or entities, even if the  
13 ownerships differ between the two systems. Wind energy conversion systems are  
14 not under common ownership solely because the same person or entity provided  
15 equity financing for the systems.
- 16 6. A place on either list established under this section is not transferable by sale or  
17 any other conveyance to any person or entity. The commission shall remove a  
18 proposed facility from either list if the project proposer attempts to transfer, by any  
19 means, the system place on the list.

20 **SECTION 6. Ownership, financing, and cure.**

- 21 1. For purposes of this Act, a wind energy conversion facility qualifies if it is owned at  
22 least fifty-one percent by one or more of any combination of the entities listed in  
23 subsection 2 of section 1 of this Act.
- 24 2. A subsequent owner of a qualified facility may continue to receive the incentive  
25 payment for the duration of the original payment period if the subsequent owner  
26 qualifies for the incentive under section 1 of this Act.
- 27 3. This section does not deny incentive payment to an otherwise qualified facility that  
28 has obtained debt or equity financing for construction or operation as long as the  
29 ownership requirements of section 1 of this Act are met. If, during the incentive  
30 payment period for a qualified facility, the owner of the facility is in default of a  
31 lending agreement and the lender takes possession and operates the facility and

1 makes reasonable efforts to transfer ownership of a facility to an entity other than  
2 the lender, the lender may continue to receive the incentive payment for electricity  
3 generated and sold by the facility for a period not to exceed eighteen months. A  
4 lender who takes possession of a facility shall notify the commission immediately  
5 on taking possession and, at least quarterly, document efforts to transfer  
6 ownership of the facility.

7 4. If, during the incentive payment period a qualified facility loses the right to receive  
8 the incentive because of changes in ownership, the facility may regain the right to  
9 receive the incentive upon cure of the ownership structure that resulted in the loss  
10 of eligibility and may reapply for the incentive, but in no case may the payment  
11 period be extended beyond the original ten year limit.

12 5. A subsequent or requalifying owner under this section retains the facility's original  
13 priority order for incentive payments as long as the ownership structure requalifies  
14 within two years from the date the facility became unqualified or two years from the  
15 date a lender takes possession.

16 6. An owner or principal beneficiary of a wind energy conversion system qualified to  
17 receive the incentive, including immediate family members for an individual and  
18 subsidiaries, parents, affiliates, and otherwise related entities for a corporation,  
19 company, cooperative, or other organization, may not own or be the principal  
20 beneficiary of wind energy conversion systems that represent a combined total of  
21 more than seven megawatts. For purposes of this subsection, immediate family  
22 member means a spouse, a minor child, and any other person who is a dependent  
23 for tax purposes and principal beneficiary means a person or entity who receives  
24 or is expected to receive more than twenty percent of the financial benefits of the  
25 system in any form over its projected life. The commission shall combine the  
26 interests of persons or entities listed above to determine the total number of  
27 megawatts they own or of which they are principal beneficiaries.

28 **SECTION 7. APPROPRIATION.**

29 1. There is appropriated out of any moneys in the general fund in the state treasury,  
30 not otherwise appropriated, the sum of \$500,000, or so much of the sum as may  
31 be necessary, to the public service commission for the purpose of making

- 1 renewable energy production incentive payments under this Act, for the biennium  
2 beginning July 1, 2003, and ending June 30, 2005.
- 3 2. The appropriation provided in subsection 1 is contingent upon an increase in  
4 income tax revenues to the state from qualified wind energy conversion facilities in  
5 an amount sufficient to fund the appropriation. The tax commissioner shall certify  
6 to the state treasurer the amount of income tax revenue deposited in the state  
7 general fund from qualified wind energy facilities at least annually, beginning  
8 May 1, 2004. The state treasurer may not release more state general fund  
9 moneys than the amounts certified by the tax commissioner under this subsection  
10 during the 2003-05 biennium or the amount appropriated by subsection 1,  
11 whichever is less.