

Sixty-eighth  
Legislative Assembly  
of North Dakota

# HOUSE BILL NO. 1512

Introduced by

Representatives Novak, Fisher, Heinert, Koppelman, Strinden

Senators Beard, Boehm, Kessel, Magrum, Patten

1 A BILL for an Act to create and enact a new subsection to section 49-22-08, ~~a new subsection~~  
2 ~~to section 49-22-09~~, and ~~two~~ a new subsection subsection to section 49-22-16 of the North  
3 Dakota Century Code, relating to exclusion areas and factors to consider when evaluating  
4 applications and designation of electric energy conversion facility sites, and public hearings;  
5 and ~~to amend and reenact subsection 4 of section 49-22-05.1 of the North Dakota Century~~  
6 ~~Code, relating to electric energy conversion facility exclusion areas~~ to provide for application.

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

8 ~~SECTION 1. AMENDMENT. Subsection 4 of section 49-22-05.1 of the North Dakota~~  
9 ~~Century Code is amended and reenacted as follows: —~~  
10 ~~4. Areas less than one and one-tenth times the height of the turbine from the~~  
11 ~~property line of a nonparticipating landowner and less than three times the height of~~  
12 ~~the turbine or more from an inhabited rural residence of a nonparticipating landowner,~~  
13 ~~must be excluded in the consideration of a site for a wind energy conversion area,~~  
14 ~~unless a variance is granted. The commission shall designate as an exclusion area~~  
15 ~~any geographical areas established as an exclusion zone by a county commission~~  
16 ~~under section 49-22-16. The commission may grant a variance if an authorized~~  
17 ~~representative or agent of the permittee, the nonparticipating landowner, and affected~~  
18 ~~parties with associated wind rights file a written agreement expressing the support of~~  
19 ~~all parties for a variance to reduce the setback requirement in this subsection. A~~  
20 ~~nonparticipating landowner is a landowner that has not signed a wind option or an~~  
21 ~~easement agreement with the permittee of the wind energy conversion facility as~~  
22 ~~defined in chapter 17-04. A local zoning authority may require setback distances~~  
23 ~~greater than those required under this subsection. For purposes of this subsection,~~

1       ~~"height of the turbine" means the distance from the base of the wind turbine to the~~  
2       ~~turbine blade tip when it is in its highest position.~~

3       **SECTION 1.** A new subsection to section 49-22-08 of the North Dakota Century Code is  
4       created and enacted as follows:

5       ~~Before a person submits~~Upon submission of an application for a certificate of site  
6       ~~compatibility for an electric energy conversion facility or secures any property leases~~  
7       ~~for a proposed electric energy conversion facility, the person, an applicant shall notify~~  
8       ~~each county in which any part of the proposed electric energy conversion facility would~~  
9       ~~be located. Within sixty days of receiving notice and after providing thirty days notice~~  
10      ~~of a public hearing to county residents, the county commission of each impacted~~  
11      ~~county:~~

12      a. ~~Shall~~May hold a public hearing to review the site location, needs of the operation  
13      ~~and company employees regarding roads, housing, and community facilities, and~~  
14      ~~county and community services; and~~

15      b. ~~Shall~~May consider input from organized townships within the area of the  
16      ~~proposed electric energy conversion facility, the road plan, impact on the local~~  
17      ~~economy, impact on other electrical generation sources, impact on mineable~~  
18      ~~lignite deposits, and residential property use and rights; and~~

19      ~~c. May designate exclusion zones for a proposed electric energy conversion facility~~  
20      ~~for areas in which placement of the electric energy conversion facility may~~  
21      ~~adversely impact the interests of the county, or require the commission condition~~  
22      ~~a certificate in a manner that alleviates mineral rights owners from the burden of~~  
23      ~~removing wind facilities before mineral rights are exercised.~~

24      ~~**SECTION 3.** A new subsection to section 49-22-09 of the North Dakota Century Code is~~  
25      ~~created and enacted as follows:~~

26      ~~Upon receipt of notification from the person applying for a certificate indicating sixty-~~  
27      ~~percent of the leases of the property within the footprint of the proposed electric~~  
28      ~~energy conversion facility subject to an easement under this chapter for the site are~~  
29      ~~owned by county residents, the commission may issue a certificate under this chapter.~~  
30      ~~For purposes of this subsection, "footprint" means the entire surface area within the~~  
31      ~~parameters of the wind farm.~~



1 ~~SECTION 4. Two new subsections to section 49-22-16 of the North Dakota Century Code~~  
2 ~~are created and enacted as follows:~~

3 ~~The commission may not issue a certificate of site compatibility under this section until~~  
4 ~~the board of county commissions of each impacted county has held a public hearing~~  
5 ~~under section 49-22-08.~~

6  
7 ~~If the proposed electric energy conversion facility site is physically located on top of~~  
8 ~~lignite reserves, the commission may not issue a certificate of site compatibility under~~  
9 ~~this section.~~

10 **SECTION 2.** A new subsection to section 49-22-16 of the North Dakota Century Code is  
11 created and enacted as follows:

12 Before issuing a certificate of site compatibility, the commission shall determine  
13 whether the proposed electric energy conversion facility site contains commercially  
14 valuable minerals and, if it does, the commission only may issue a certificate of site  
15 compatibility if the commission is satisfied that the interests of the mineral owners or  
16 mineral lessees will not be adversely affected or have been addressed in an  
17 arrangement entered by the mineral owners or mineral lessees and the electric energy  
18 conversion facility.

19 **SECTION 3. APPLICATION.** This Act does not apply to projects with power purchase  
20 agreements in effect as of the effective date of this Act.

