

Sixty-sixth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1383

Introduced by

Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt

Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek

1 A BILL for an Act to create and enact a new section to chapter 4.1-01, and a new section to
2 chapter 49-22, ~~and a new section to chapter 49-22.1~~ of the North Dakota Century Code, relating
3 to the creation of an environmental impact mitigation fund and to mitigating direct environmental
4 impacts; to amend and reenact subsection 1 of section 4.1-01-18, sections 49-22-05.1, and
5 49-22-09, ~~49-22.1-03, and 49-22.1-09~~ and subsection 4 of section 49-22-16 of the North Dakota
6 Century Code, relating to the federal environmental law impact review committee, exclusion and
7 avoidance areas ~~and~~, the factors considered by the public service commission when evaluating
8 and designating sites, corridors, and routes, and state agency rules; to provide for a report to
9 the ~~budget section~~ legislative management; to provide an appropriation; and to provide a
10 continuing appropriation.

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

12 **SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century
13 Code is amended and reenacted as follows:

- 14 1. The federal environmental law impact review committee consists of:
- 15 a. The commissioner, who shall serve as the chairman;
- 16 b. The governor or the governor's designee;
- 17 c. The majority leader of the house of representatives, or the leader's designee;
- 18 d. The majority leader of the senate, or the leader's designee;
- 19 e. One member of the legislative assembly from the minority party, selected by the
20 chairman of the legislative management;
- 21 f. ~~One individual appointed by the lignite energy council;~~
- 22 ~~g.~~ g. One individual appointed by the North Dakota corn growers association;
- 23 ~~h.~~ h.g. One individual appointed by the North Dakota grain growers association;
- 24 ~~i.~~ ~~One individual appointed by the North Dakota petroleum council;~~

- 1 ~~j-h.~~ One individual appointed by the North Dakota soybean growers association; and
- 2 ~~k-i.~~ One individual appointed by the North Dakota stockmen's association;
- 3 ~~l-j.~~ One individual appointed by the North Dakota farm bureau;
- 4 ~~m-k.~~ One individual appointed by the North Dakota farmers union;
- 5 ~~n-l.~~ The chairman of the public service commission or the chairman's designee;
- 6 m. The state engineer or the state engineer's designee;
- 7 n. The director of the game and fish department, or the director's designee;
- 8 o. The director of the department of transportation, or the director's designee;
- 9 p. The director of the department of environmental quality, or the director's
- 10 designee;
- 11 q. One representative of an investor-owned utility companies; ~~and~~
- 12 ~~e-r.~~ One representative from the North Dakota association of rural electric
- 13 cooperatives; ~~and~~
- 14 s. Two individuals from the energy community appointed by the commissioner.

15 **SECTION 2.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Environmental impact mitigation fund - Report to ~~budget section~~ legislative**
18 **management - Continuing appropriation.**

- 19 1. ~~The moneys accumulated in the environmental impact mitigation fund must be~~
20 ~~allocated as provided by law and as appropriated by the legislative assembly~~ There is
21 created in the state treasury the environmental impact mitigation fund. The fund
22 consists of all moneys deposited in the fund under section 5 of this Act. All moneys in
23 the fund are appropriated to the commissioner on a continuing basis for distribution by
24 the agriculture commissioner:
- 25 ~~a. To political subdivisions and state agencies to offset impacts of energy~~
26 ~~development to agricultural land;~~
- 27 ~~b. To to landowners for the mitigation of agricultural land impacted by energy~~
28 ~~development; ~~and~~~~
- 29 ~~c. To landowners of agricultural land who are subject to excessive mitigation of~~
30 ~~wetlands as set forth under subsection 2.~~
- 31 2. Funding may be used only for:

- 1 a. Contracting for consultation with environmental scientists, ~~wildlife biologists,~~
2 biologists, soil scientists, range scientists, engineers, economists, or scientists in
3 any other field determined to be relevant for services including the evaluation,
4 assessment, and analysis of the physical composition and potential chemical
5 properties of land determined to be impacted by energy development or land to
6 be considered for mitigation; or engineers for relevant services to implement
7 mitigation required from the impact of development; and
8 b. Reclamation, ~~restoration,~~ or mitigation of ~~land, water resources, or wildlife~~
9 habitats adversely impacted directly by energy ~~adverse impacts from~~
10 development; and
11 ~~c. Offsetting or defraying costs of landowner mitigation in qualifying circumstances~~
12 ~~as determined by the advisory board.~~
13 3. The commissioner is not subject to chapter 54-44.4 when contracting for services
14 under this chapter.
15 4. The federal environmental law impact review committee shall establish criteria for
16 disbursement of environmental impact funds.
17 5. The commissioner shall make disbursements based upon the determinations made by
18 the federal environmental law impact review committee.
19 6. For purposes of this section, the federal environmental law impact review committee
20 shall hold ~~at least one regular meeting each year and additional~~ meetings as the
21 chairman determines necessary at a time and place set by the chairman. Upon written
22 request of any four members, the presiding officer shall call a special meeting of the
23 committee.
24 7. The federal environmental law impact review committee shall make determinations for
25 the disbursement of grants in accordance with subsection 2 and provide those
26 determinations to the commissioner.
27 8. The federal environmental law impact review committee shall provide a biennial report
28 to the ~~budget section of the~~ legislative management.
29 9. ~~All moneys in the environmental impact mitigation fund are appropriated to the~~
30 commissioner on a continuing basis for the purposes set forth under subsection 2 ~~For~~

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

3 **SECTION 3. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

- 6 1. The commission shall develop criteria to be used in identifying exclusion and
7 avoidance areas and to guide the site, corridor, and route suitability evaluation and
8 designation process. The criteria also may include an identification of impacts and
9 policies or practices which may be considered in the evaluation and designation
10 process.
- 11 2. The commission may not identify prime farmland, unique farmland, or irrigated land as
12 exclusion or avoidance areas when evaluating and designating geographical areas for
13 site, corridor, or route suitability.
- 14 3. Except for electric transmission lines in existence before July 1, 1983, areas within five
15 hundred feet [152.4 meters] of an inhabited rural residence must be designated
16 avoidance areas. This criterion does not apply to a water pipeline. The five hundred
17 foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be
18 waived by the owner of the inhabited rural residence in writing.
- 19 ~~3.4.~~ Areas less than one and one-tenth times the height of the turbine from the property
20 line of a nonparticipating landowner and less than three times the height of the turbine
21 or more from an inhabited rural residence of a nonparticipating landowner, must be
22 excluded in the consideration of a site for a wind energy conversion area, unless a
23 variance is granted. The commission may grant a variance if an authorized
24 representative or agent of the permittee, the nonparticipating landowner, and affected
25 parties with associated wind rights file a written agreement expressing the support of
26 all parties for a variance to reduce the setback requirement in this subsection. A
27 nonparticipating landowner is a landowner that has not signed a wind option or an
28 easement agreement with the permittee of the wind energy conversion facility as
29 defined in chapter 17-04. A local zoning authority may require setback distances
30 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 4. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **49-22-09. Factors to be considered in evaluating applications and designation of**
6 **sites, corridors, and routes.**

7 1. The commission shall be guided by, but is not limited to, the following considerations,
8 where applicable, to

9 ~~1. To aid in the evaluation and designation of sites, corridors, and routes, the commission~~
10 ~~shall consider:~~

- 11 1. a. Available research and investigations relating to the effects of the location,
12 construction, and operation of the proposed facility on public health and welfare,
13 natural resources, and the environment.
- 14 2. b. The effects of new electric energy conversion and electric transmission
15 technologies and systems designed to minimize adverse environmental effects.
- 16 3. c. The potential for beneficial uses of waste energy from a proposed electric energy
17 conversion facility.
- 18 4. d. Adverse direct and indirect environmental effects that cannot be avoided should
19 the proposed site or route be designated.
- 20 5. e. Alternatives to the proposed site, corridor, or route which are developed during
21 the hearing process and which minimize adverse effects.
- 22 6. f. Irreversible and irretrievable commitments of natural resources should the
23 proposed site, corridor, or route be designated.
- 24 7. g. The direct and indirect economic impacts of the proposed facility.
- 25 8. h. Existing plans of the state, local government, and private entities for other
26 developments at or in the vicinity of the proposed site, corridor, or route.
- 27 9. i. The effect of the proposed site or route on existing scenic areas, historic sites
28 and structures, and paleontological or archaeological sites.
- 29 10. j. The effect of the proposed site or route on areas which are unique because of
30 biological wealth or because ~~they~~ the areas are habitats for rare and endangered
31 species.

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

2 ~~2. In the evaluation and designation of sites, corridors, and routes, the commission may~~
3 ~~not:~~

4 ~~a. Require payment for mitigation of any assessed adverse indirect environmental~~
5 ~~effects or impacts; or~~

6 ~~b. Require payment to a third party nongovernmental organization for any assessed~~
7 ~~adverse direct or indirect environmental effects or impacts. The commission may~~
8 ~~not condition the issuance of a certificate or permit on the applicant providing a~~
9 ~~mitigation payment assessed or requested by another state agency or entity to~~
10 ~~offset a negative impact on wildlife habitat.~~

11 **SECTION 5.** A new section to chapter 49-22 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Mitigating direct environmental impacts.**

14 1. ~~If an applicant elects to provide~~ An applicant may elect to provide payment to mitigate
15 ~~any assessed adverse direct environmental impact~~ impacts of a proposed site, corridor,
16 ~~route, or facility, the applicant shall make the payment to the agriculture commissioner.~~

17 The applicant may elect to provide the payment to the agriculture commissioner.

18 2. ~~Subject to subsection 3, the~~ The agriculture commissioner shall deposit into the
19 ~~environmental impact mitigation fund any moneys paid to mitigate the adverse direct~~
20 ~~environmental impacts of a proposed site, corridor, route, or facility.~~

21 ~~3. At the applicant's request, the agriculture commissioner may provide moneys directly~~
22 ~~to an organization approved by the federal environmental law impact review~~
23 ~~committee.~~

24 ~~**SECTION 6. AMENDMENT.** Section 49-22.1-03 of the North Dakota Century Code is~~
25 ~~amended and reenacted as follows:~~

26 ~~**49-22.1-03. Exclusion and avoidance areas -- Criteria.**~~

27 ~~1. The commission shall develop criteria to be used in identifying exclusion and~~
28 ~~avoidance areas and to guide the site, corridor, and route suitability evaluation and~~
29 ~~designation process.~~

1 ~~2. The commission may not identify prime farmland, unique farmland, or irrigated land as~~
2 ~~exclusion or avoidance areas when evaluating and designating geographical areas for~~
3 ~~site, corridor, or route suitability.~~

4 ~~3. Except for oil and gas transmission lines in existence before July 1, 1983, areas within~~
5 ~~five hundred feet [152.4 meters] of an inhabited rural residence must be designated~~
6 ~~avoidance areas.~~

7 ~~a. This criterion does not apply to a water pipeline.~~

8 ~~b. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural~~
9 ~~residence may be waived by the owner of the inhabited rural residence in writing.~~

10 ~~c. The criteria also may include an identification of impacts and policies or practices~~
11 ~~which may be considered in the evaluation and designation process.~~

12 ~~**SECTION 7. AMENDMENT.** Section 49-22.1-09 of the North Dakota Century Code is~~
13 ~~amended and reenacted as follows:~~

14 ~~**49-22.1-09. Factors to be considered in evaluating applications and designation of**~~
15 ~~**sites, corridors, and routes.**~~

16 ~~The commission is guided by, but is not limited to, the following considerations, when~~
17 ~~applicable, to~~

18 ~~1. To aid in the evaluation and designation of sites, corridors, and routes, the commission~~
19 ~~shall consider:~~

20 ~~1. a. Available research and investigations relating to the effects of the location,~~
21 ~~construction, and operation of the proposed facility on public health and welfare,~~
22 ~~natural resources, and the environment.~~

23 ~~2. b. The effects of new gas or liquid energy conversion and gas or liquid transmission~~
24 ~~technologies and systems designed to minimize adverse environmental effects.~~

25 ~~3. c. The potential for beneficial uses of waste energy from a proposed gas or liquid~~
26 ~~energy conversion facility.~~

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

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

- 1 ~~6. f.~~ Irreversible and irretrievable commitments of natural resources should the
2 proposed site, corridor, or route be designated.
- 3 ~~7. g.~~ The direct and indirect economic impacts of the proposed facility.
- 4 ~~8. h.~~ Existing plans of the state, local government, and private entities for other
5 developments at or in the vicinity of the proposed site, corridor, or route.
- 6 ~~9. i.~~ The effect of the proposed site or route on existing scenic areas, historic sites
7 and structures, and paleontological or archaeological sites.
- 8 ~~10. j.~~ The effect of the proposed site or route on areas that are unique because of
9 biological wealth or because the site or route is a habitat for rare and endangered
10 species.
- 11 ~~11. k.~~ Problems raised by federal agencies, other state agencies, and local entities.
- 12 ~~2. In the evaluation and designation of sites, corridors, and routes, the commission may~~
13 ~~not:~~
- 14 ~~a. Require payment for mitigation of any assessed adverse indirect environmental~~
15 ~~effects or impacts; or~~
- 16 ~~b. Require payment to a third party nongovernmental organization for any assessed~~
17 ~~adverse direct or indirect environmental effects or impacts.~~
- 18 **SECTION 8.** A new section to chapter 49-22.1 of the North Dakota Century Code is created
19 and enacted as follows:
- 20 **Mitigating direct environmental impacts.**
- 21 ~~1. If an applicant elects to provide payment to mitigate any assessed adverse direct~~
22 ~~environmental impact of a proposed site, corridor, route, or facility, the applicant shall~~
23 ~~make the payment to the agriculture commissioner.~~
- 24 ~~2. Subject to subsection 3, the agriculture commissioner shall deposit into the~~
25 ~~environmental impact mitigation fund any moneys paid to mitigate the adverse direct~~
26 ~~environmental impacts of a proposed site, corridor, route, or facility.~~
- 27 ~~3. At the applicant's request, the agriculture commissioner may provide moneys directly~~
28 ~~to an organization approved by the federal environmental law impact review~~
29 ~~committee.~~

30 **SECTION 6. AMENDMENT.** Subsection 4 of section 49-22-16 of the North Dakota Century
31 Code is amended and reenacted as follows:

1 4. ~~No~~A site or route ~~shall~~may not be designated which violates the rules of any state
2 agency. A state agency with jurisdiction over any aspect of a proposed facility shall
3 present the position of the agency at least thirty days before the public hearing on an
4 application for a certificate, a permit, or a waiver, which position ~~shall~~ clearly must
5 state whether the site, corridor, or route being considered for designation will be in
6 compliance with ~~such~~the agency's rules. For purposes of this chapter it ~~shall be~~is
7 presumed ~~that~~ a proposed facility will be in compliance with a state agency's rules if
8 ~~such~~the agency fails to present its position on the proposed site, corridor, or route at
9 least thirty days before the appropriate public hearing.

10 **SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the
11 environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum
12 of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for
13 the purpose of providing grants to political subdivisions for the mitigation of environmental
14 impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.