

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1512**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1512  
2/2/2023

Relating to exclusion areas and factors to consider when evaluating applications and designation of electric energy conversion facility sites, and public hearings; and relating to electric energy conversion facility exclusion areas

10:59 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Rep M Ruby.

### Discussion Topics:

- Wind project permits
- Easements
- Out of state lease holders
- Mineral interest holders
- Large footprint
- Voltage control
- Property rights issue
- Renewables
- Site impact
- Exclusion zone
- Transparency
- Inexpensive land values
- Setbacks

### In Support:

Rep Novak, District 33, introduced HB 1512, Testimony #20930

Sen Keith Boehm, District 33, worked monitored the grid for 35 years, oral testimony

Lynn Helms, Director, Dept of Mineral Resources, oral testimony

David Straley, legal counsel, North American Coal, oral testimony

Geoff Simon, legal counsel, Western Dakota Energy Association, Testimony 18715

Mandy Berger, landowner and rancher in Oliver and Mercer, oral testimony

Keith Kessler, Dist 33, landowner in Mercer and Oliver Counties, Testimony 20867 and

<https://ndlegis.gov/downloads/bill-history-media-file/68-2023/HNAT/hnat-02022023-hb1512-Kessler.MP4>

### In opposition:

Doug Goehring, ND Ag Commissioner, Testimony 19093

Carlee McLeod, President, Utility Shareholders of ND, Testimony 18765

Levi Andrist, GA Group on behalf of Wind Energy of ND, Testimony 20871

House Energy and Natural Resources Committee

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**Additional written testimony:**

Mark Bring, Director, Public Policy & Government Affairs, Otter Tail Power, Testimony 18692

12:03 PM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1512  
2/16/2023

Relating to exclusion areas and factors to consider when evaluating applications and designation of electric energy conversion facility sites, and public hearings; and relating to electric energy conversion facility exclusion areas
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10:39 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Committee action

Rep Novak presented amendment 23.0638.05002 (Testimony 20930) and 23.0638.05003 (Testimony 21026)

Rep Novak moved to adopt amendment 23.0638.05003, seconded by Rep Bosch.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

**13-0-1 Motion carried.**

Rep Roers Jones moved a Do Pass as Amended, seconded by Rep Hagert.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y

Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

**13-0-1 Motion carried.** Rep D Anderson is carrier.

10:59 AM Chairman Porter closed the meeting.

*Kathleen Davis, Committee Clerk*

2-16-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1512

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to statutory provisions governing certification of site compatibility for electric energy conversion facilities.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC ENERGY CONVERSION FACILITIES - SITE COMPATIBILITY.** During the 2023-24 interim, the legislative management shall consider studying statutory provisions governing certification of site compatibility for electric energy conversion facilities. The study must include a review of the provisions of the North Dakota Century Code that allow the North Dakota public service commission to issue a certificate of site compatibility for electric energy conversion facilities, the certification process for site compatibility for electric energy conversion facilities, and the impact of certifying site compatibility of electric energy conversion facilities in conjunction with subsurface minerals rights for mineral owners or mineral lessees. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly. "

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1512: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1512 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to statutory provisions governing certification of site compatibility for electric energy conversion facilities.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC ENERGY CONVERSION FACILITIES - SITE COMPATIBILITY.** During the 2023-24 interim, the legislative management shall consider studying statutory provisions governing certification of site compatibility for electric energy conversion facilities. The study must include a review of the provisions of the North Dakota Century Code that allow the North Dakota public service commission to issue a certificate of site compatibility for electric energy conversion facilities, the certification process for site compatibility for electric energy conversion facilities, and the impact of certifying site compatibility of electric energy conversion facilities in conjunction with subsurface minerals rights for mineral owners or mineral lessees. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly. "

Renumber accordingly

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**HB 1512**



# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1512  
3/10/2023

A bill relating to statutory provisions governing certification of site compatibility for electric energy conversion facilities.
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11:01 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

### **Discussion Topics:**

- Wind power
- Carbon energy
- Energy solutions

11:02 AM Representative Novak introduced the bill #23632.

11:07 AM Troy Coons, Northwest Landowners Association, testified in favor of the bill and provided written testimony #23634.

11:11 AM Carli McLeod, President Utility Shareholders of North Dakota, spoke in favor of the bill.

11:12 AM Levi Andrist, Lobbyist, Wind Industry of North Dakota, spoke in favor of the bill.

11:14 AM Jason Bohrer, President and CEO, Lignite Energy Council, spoke in favor of the bill.

11:15 AM Chairman Patten closed the public hearing.

11:15 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1512  
3/30/2023

A bill relating to statutory provisions governing certification of site compatibility for electric energy conversion facilities
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9:36 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

### Discussion Topics:

- Committee action

9:38 AM Senator Kannianen moved to Do Pass the bill. Motion seconded by Senator Kessel.

9:38 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Kannianen will carry the bill.

This bill does not affect workforce development.

9:38 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1512, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1512 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**HB 1512**

**Testimony of Mark Bring  
Director of Public Policy and Government Affairs  
Otter Tail Power Company**

**Before the House Energy & Natural Resources Committee  
February 2, 2023**

**Chairman Porter and members of the Committee, my name is Mark Bring and I serve as Director of Public Policy and Government Affairs for Otter Tail Power Company. I have been licensed as an attorney in North Dakota since 1992 and have been employed continuously in the electric industry since 1997. I respectfully submit this testimony regarding our company's opposition to House Bill 1512.**

**Otter Tail Power Company is one of the smallest investor-owned utilities in the nation and is a subsidiary of Otter Tail Corporation, which is traded on the NASDAQ as OTTR. Otter Tail Corporation also owns several manufacturing companies engaged in metal fabricating, custom plastic parts manufacturing, and PVC pipe manufacturing. These non-energy businesses include Northern Pipe Products in Fargo.**

**Otter Tail Power Company is headquartered in Fergus Falls, Minnesota, and provides electricity and energy services to more than 133,000 customers spanning 70,000 square miles in western Minnesota, eastern North Dakota, and northeastern South Dakota. Our service area is predominantly rural and agricultural. By way of example, a median-sized community we serve in North Dakota is Michigan in Nelson County. According to the most recent U.S. Census Bureau statistics, Michigan has a population of 263 people. We serve many towns that are smaller yet, including my hometown of Galesburg in Traill County. The largest North Dakota communities served by our company are Devils Lake, Jamestown, and Wahpeton. Following its incorporation in 1907, our company began serving its very first customer in Wahpeton in 1909.**

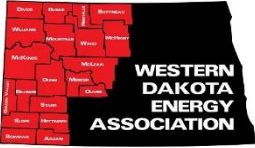
**There are a host of reasons that HB 1512 is either unnecessary or imprudent. Sections 1 and 2 of HB 1512 appear to be premised upon a misapprehension that counties do not presently have jurisdiction over commercial development within their boundaries. That is simply not the case. It is certainly not uncommon for counties to have adopted zoning ordinances on a variety of issues, including wind farm development.**

**While Section 3 of HB 1512 is confusing, it appears that the intention of this section is that a site certificate may be issued by the Public Service Commission only in circumstances where 60% or greater of the landowners are residents of the county. The Legislature should not be picking winners and losers when it comes to the landowner benefits associated with wind farm development or any other energy-related development. Moreover, it should certainly not be discriminating against landowners based upon their residency.**

**Finally, section 4 of HB 1512 appears to foreclose Public Service Commission issuance of an energy conversion facility site certificate unless and until a county holds a public hearing. However, as previously stated there is nothing in state law that prohibits a county from adopting and enforcing its own zoning requirements for commercial development, including requirements related to wind energy development. Indeed, most counties require conditional use permits for commercial development and both Mercer and McLean Counties have previously engaged in the adoption and enforcement of zoning authority specific to wind farm development.**

**Most problematic of all, section 4 of HB 1512 appears to hinder a surface landowner's rights and to stymie energy conversion facility development (of all fuel-types) if the development is proposed on land where there are lignite reserves. The former is contrary to the Surface Owner Protection Act found in Chapter 38-18 of the N.D. Century Code. The latter is contrary to the state's interest in energy development of all kinds.**

**For the foregoing reasons, we urge a DO NOT PASS on HB 1512.**



# WESTERN DAKOTA ENERGY ASSOCIATION

February 2, 2023

**EXECUTIVE COMMITTEE**

Trudy Ruland  
President  
Mountrail County

Supt. Leslie Bieber  
Vice President  
Alexander PSD

Zach Gaaskjolen  
City of Stanley

Keith Harris  
Dickinson PSD

Supt. Tim Holte  
Stanley PSD

Shannon Holter  
City of Bowbells

Lyn James  
City of Bowman

Nick Klemisch  
Garrison PSD  
Coal Conversion  
Counties

David Montgomery  
Williams County

Craig Pelton  
Dunn County

John Phillips  
Coal Conversion  
Counties

Testimony of:

Geoff Simon, Lobbyist #144  
in support of HB 1512 – Exclusion Areas for Electric Generation  
House Energy & Natural Resources Committee

Chairman Porter and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our strong support for HB 1512 which would require notice to counties by companies planning to build an electric energy conversion facility, and that a public hearing be held before any property leases are secured.

This is good public policy both for the citizens in the affected area of the proposed facility as well as the entity planning to build it. WDEA has received documented reports that representatives of wind energy companies have sought lease agreements with landowners long before notifying the affected county. Most concerning for local residents is that the company’s earliest efforts to secure leases focused on absentee landowners, rather than county residents whose lives and property would be directly affected by a proposed wind farm. Let’s just say this is not the way to conduct business in North Dakota.

Section 2 of HB 1512 would require notification of each affected county before a company submits an application for a certificate of site compatibility or secures any property leases for its proposed facility. It also directs the county commission to conduct a public hearing to review the proposed site for adequacy of infrastructure and various economic and social impacts. The legislation also specifies that counties may designate “exclusion zones,” areas off limits to development, a power which WDEA believes counties already possess. Examples may include areas of significant wildlife habitat, hunting and recreation hotspots, scenic areas attractive to tourists, and perhaps most significantly, property overlying valuable lignite coal reserves or other mineral resources subject to future exploitation.

WDEA urges the House Energy and Natural Resources Committee to respect the rights of our state’s citizens and their elected leaders to be provided advance notice of plans to develop energy conversion projects, and give HB 1512 a Do Pass recommendation.

Thank you for the opportunity to offer testimony on this important issue.





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## **House Bill 1512 Testimony in Opposition**

House Energy and Natural Resources Committee, Representative Porter, Chair

February 2, 2023

Chairman Porter, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including ALLETE, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose HB 1512.

This bill is problematic for a variety of reasons. First, it interjects county jurisdiction into state jurisdiction. If a county wants to create additional requirements for zoning, it has that ability. If a refinement is desired, that refinement should occur in the chapter of code defining county powers or at the county level. Second, there are significant constitutional issues with landowner restrictions placed in sections 3 and 4 of the bill.

An unlawful, unconstitutional taking of property occurs if the owner cannot use her land in a lawful manner because of a condition placed upon it by someone else. There are limited instances where eminent domain can be used, but it cannot be used without paying just compensation to the landowner. A person is no less of a property owner because she resides somewhere else, and her rights are no less constitutional than other landowners. Further, section 4 protection for a mineral owner over a surface owner runs afoul of the Surface Owner Protection Act (NDCC 38-18) developed to properly balance the rights of each estate owner.

38-18-03. Purpose and interpretation. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development, without their consent, of minerals underlying their surface. This chapter is to be interpreted in light of the legislative intent expressed herein. The provisions of this chapter shall be interpreted to benefit surface owners, regardless of how the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct mining operations on the land.

We ask you to oppose this bill and its unnecessary and unconstitutional effects.

Thank you.

COMMISSIONER  
DOUG GOEHRING



[ndda@nd.gov](mailto:ndda@nd.gov)  
[www.nd.gov/ndda](http://www.nd.gov/ndda)

NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE  
STATE CAPITOL  
600 E. BOULEVARD AVE. - DEPT. 602  
BISMARCK, ND 58505-0020

**Testimony of Doug Goehring  
Agriculture Commissioner  
House Energy and Natural Resources  
Coteau AB Room  
February 2, 2023**

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Chairman Porter and members of the house energy and natural resources committee, I am Agriculture Commissioner Doug Goehring. I am here today in opposition of HB 1512.

While I can and understand the approach behind this bill, I have concerns about the risk and liability this will be place on local county commissioners having to host public hearing on matters they may lack expertise in. I have concerns regarding the ability of counties making determinations on impacts on other generation sources. This interpretation would tend to be emotionally charged and may ignore the facts and information. Finally, this will only expand the NIMBY or Not in My Backyard approach of some local areas, only making development of energy conversion facilities that more difficult.

Chairman Porter and committee members, thank you for your time. I urge a do not pass on HB 1512. I would be happy to answer any questions you may have.

Keith Kessler

6001 26th ST SW

Glen Ullin, ND 58631

I am here to speak on bill 1512

I am in support of the bill because there needs to be more restriction on permitting wind projects to protect land owners.

I feel there should be an amendment for set backs from property line and residents for all land owners.

The setback from a property lines should be a minimum of 1400 feet or 3 times the height of the tower, reason being blades from a tribune are capable of throwing ice up to 1400 feet. Blade tip speed can go up to 190 mile an hour. Recommendation from most tribune manufactures.

The set back from a residents should be a minimum of 2500 feet. (Shadow flickering and noise)

And if the land owner choses to have it closer, they can sign a waver.

I feel there should be a rule of 60% participation from land owner just like other industry in the state. Because it lowers property values if you are in a wind project area.



February 2, 2023

House Energy & Natural Resources Committee

**Re: Oppose HB 1512**

Chairman Porter and members of the committee,

Wind Industry of ND (WIND) is a coalition that advocates for the continued support of wind as one of North Dakota's many valuable natural resources.

We oppose HB 1512 for a variety of reasons.

First, Section 1 unnecessarily duplicates county zoning authority. A county already has the authority to create zoning districts where it would like to see certain types of development or not. The siting act does not preempt local zoning over wind projects. Counties already have the right to approve or deny a permit application for various established grounds. Further, the bill does not provide any criteria by which an exclusion zone could be established.

Second, Section 2 of the bill compromises property rights of landowners who want to lease land for a wind project by requiring multiple steps of government intervention beforehand. This is not required for pipelines. This is not required for electric transmission. And it's not required for oil, gas, or lignite extraction. It's not required for large commercial or industrial projects. And we don't believe it should be required for wind leases. If a landowner wants to lease property, they should be free to do so without government interference.

Additionally, holding a public hearing that considers everything contemplated in Section 2 of the bill will raise more questions than it will answer. How can the community assess the impact on roads, housing, and community facilities if the project has not yet been designed (because few or no leases have yet been secured)? Good communication with landowners, agencies, counties, townships, and stakeholders must occur for a project to ultimately be successful. PSC hearings already must be held under the current law. County zoning hearings already must be held under the current law. A project must have county zoning approval before it can be built. If a project developer does not communicate effectively or appropriately with the impacted communities and stakeholders, the developer does so at its own risk. Injecting additional hearings and processes before a project can be designed creates the exact uncertainty and frustration that the bill is trying to seemingly address.

Third, creating separate classes of landowners—landowners who are “county residents” and landowners who are not—is a questionable restriction of property rights that raises concerning legal questions. Why should government decide what a landowner chooses to do on their property? Why should a landowner have their rights taken away just because they live in the neighboring county? Other types of land use do not have similar restrictions. All landowners within a county, regardless of where they live, pay property taxes on the land they own to the county and therefore have rights to use their land for any legal purpose they deem appropriate.

23.0638.05002

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~~ <sup>a</sup> new ~~subsections~~ 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.~~

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 an application for a certificate of site compatibility for an~~  
6           ~~electric energy conversion facility or secures any property leases for a proposed~~  
7           ~~electric energy conversion facility, the person~~ An applicant shall notify each county in  
8           which any part of the proposed electric energy conversion facility would be located  
9           within sixty days before submission of an application for a certificate of site  
10           compatibility or securing leases for a proposed electric energy conversion facility.

11           Within sixty days of receiving notice and after providing thirty days notice of a public  
12           hearing to county residents, the county commission of each impacted county:

- 13           a. Shall hold a public hearing to review the site location, needs of the operation and  
14           company employees regarding roads, housing, and community facilities, and  
15           county and community services;  
16           b. Shall consider input from organized townships within the area of the proposed  
17           electric energy conversion facility, the road plan, impact on the local economy,  
18           impact on other electrical generation sources, impact on mineable lignite  
19           deposits, and residential property use and rights; and  
20           c. May designate exclusion zones for a proposed electric energy conversion facility  
21           for areas in which placement of the electric energy conversion facility may  
22           adversely impact the interests of the county, or require the commission condition-  
23           ~~a certificate in a manner that alleviates mineral rights owners from the burden of~~  
24           ~~removing wind facilities before mineral rights are exercised.~~

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

27           ~~Upon receipt of notification from the person applying for a certificate indicating sixty~~  
28           ~~percent of the leases of the property within the footprint of the proposed electric~~  
29           ~~energy conversion facility subject to an easement under this chapter for the site are~~  
30           ~~owned by county residents, the commission may issue a certificate under this chapter.~~

1 ~~For purposes of this subsection, "footprint" means the entire surface area within the~~  
2 ~~parameters of the wind farm.~~

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

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

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

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

14 If an adversely affected mineral owner or mineral lessee files an objection to a  
15 proposed electric energy conversion facility site because the site contains  
16 commercially valuable minerals, the commission may not issue a certificate of site  
17 compatibility unless the impacted area is excluded from the site.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1512

Page 1, line 1, remove ", a new subsection"

Page 1, line 2, remove "to section 49-22-09,"

Page 1, line 2, replace "two" with "a"

Page 1, line 2, replace "subsections" with "subsection"

Page 1, line 4, remove "; and to amend and"

Page 1, remove line 5

Page 1, line 6, remove "electric energy conversion facility exclusion areas"

Page 1, remove lines 8 through 23

Page 2, remove lines 1 and 2

Page 2, remove lines 5 and 6

Page 2, line 7, replace "electric energy conversion facility, the person" with "An applicant"

Page 2, line 8, after "located" insert "within sixty days before submission of an application for a certificate of site compatibility or securing leases for a proposed electric energy conversion facility"

Page 2, line 20, remove ", or require the commission condition"

Page 2, remove line 21

Page 2, line 22, remove "removing wind facilities before mineral rights are exercised"

Page 2, remove lines 23 through 30

Page 3, replace lines 1 through 9 with:

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

If an adversely affected mineral owner or mineral lessee files an objection to a proposed electric energy conversion facility site because the site contains commercially valuable minerals, the commission may not issue a certificate of site compatibility unless the impacted area is excluded from the site."

Renumber accordingly



23.0638.05003

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 ~~subsections~~ 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.



# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Anna S. Novak

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## COMMITTEES:

Education  
Energy and Natural Resources

March 8, 2023

Mr. Chairman, members of the committee-

For the record, my name is Anna Novak, Representative for District 33. You have before you the Christmas tree version of HB1512. This bill started off as redefining the way our Public Service Commission permits wind farms in the state. The original bill tackled many of the problems associated with the wind industry but in hindsight, it was probably too aggressive, which is why it was changed to a study. But I'm thankful that I had a vehicle to have the conversation on this side of the chamber to try again.

The first wind farm in ND was permitted about 25 years ago. At that time, there was extra room on our transmission lines so adding a few megawatts of wind power wasn't displacing our baseload power and it didn't jeopardize the jobs at our local coal mines and power plants. But both of those things have changed. And in addition to those issues, the majority of land leased for wind projects is leased by non-resident landowners, which can lead to lower property values for the people that actually live in an area. There are also no public notices given to the local communities affected by the wind farms until the leases are secured, the developer or utility requests permitting and not much can be done to reverse the course.

Much of the wind permitting process seems to be shrouded in secrecy, which is frustrating to our local communities because wind projects have such a large footprint. You can't really compare it to any other business or industry because they can literally take up miles of land and are visible from so far away.

One of my constituents from Oliver County testified at the hearing on the House side. She and her husband have a decent amount of land and ranch on their property. She has been vocal in that they do not want wind or solar projects near their property but they obviously can't control what their neighbors do. She testified that in the last two years, there have been multiple wind and solar project developers approaching their neighbors and other local landowners about obtaining leases. She has contacted the companies and even the local county officials and she can't seem to get any information about the projects that are possibly taking place around her property. Why can't our communities know what is happening around them? Why does the process have to be so secretive? And shouldn't resident landowners have more of a say about what happens in their communities than non-resident landowners that might live in another state?

I'm hopeful that these questions will be answered and that there will be a full evaluation of how the permitting of wind projects takes place with this study. And I respectfully urge a due pass recommendation on HB1512.

With that, I'll stand for questions, thank you.

Introduced by

Representatives Novak, Fisher, Heinert, Koppelman, Strinden

Senators Beard, Boehm, Kessel, Magrum, Patten

1 A BILL for an Act to provide for a legislative management study relating to statutory provisions  
2 governing certification of site compatibility for electric energy conversion facilities.

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

4 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC ENERGY**

5 **CONVERSION FACILITIES - SITE COMPATIBILITY.** During the 2023-24 interim, the legislative  
6 management shall consider studying statutory provisions governing certification of site  
7 compatibility for electric energy conversion facilities. The study must include a review of the  
8 provisions of the North Dakota Century Code that allow the North Dakota public service  
9 commission to issue a certificate of site compatibility for electric energy conversion facilities, the  
10 certification process for site compatibility for electric energy conversion facilities, and the impact  
11 of certifying site compatibility of electric energy conversion facilities in conjunction with  
12 subsurface minerals rights for mineral owners or mineral lessees. The legislative management  
13 shall report its findings and recommendations, together with any legislation necessary to  
14 implement the recommendations, to the sixty-ninth legislative assembly.

Legislative Assembly  
of North Dakota

**HOUSE BILL NO.**

Introduced by

1 A Bill to require a study concerning the impact of wind energy development on land and  
2 landowners.

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

4 **SECTION 1.** A new section to the North Dakota Century Code is created and enacted as  
5 follows:

6 1. During the 2023-24 interim, the legislative management shall study the impact of wind  
7 energy development, address and research issues common to North Dakota  
8 landowners, and identify potential issues for legislation. The legislative management  
9 shall report its findings and recommendations, together with any legislation required to  
10 implement the recommendations, to the Sixty-ninth Legislative Assembly. The study  
11 shall include consideration of:

12 a. The impact of wind energy development on the environment including aesthetic  
13 impacts;

14 b. The impact of wind energy development on property values;

15 c. The impact of wind energy development on agriculture;

16 d. The issue of “wind wake” and the overall impact on the wind resources of  
17 nonparticipating landowners when the North Dakota Public Service  
18 Commission sites a wind facility with islands of nonparticipating land in the  
19 middle of the project area; and

20 e. The advantages and disadvantages to implementing legislation for pooling or  
21 unitization of wind resources similar to that of oil and gas resources in chapter

1                   38-08 of the North Dakota Century Code, or of a similar regulatory structure to  
2                   ensure that the nonparticipating owners in a wind project receive their just and  
3                   equitable share of the wind resource being captured; and

4                   f. The advantages and disadvantages of requiring compensation for  
5                   nonparticipating landowners who are within a project area and siting boundary  
6                   set by the North Dakota Public Service Commission for the impact to and loss  
7                   of their own wind resources; and

8                   g. The necessity of including local control and input from local governments when  
9                   wind facilities are sited by the North Dakota Public Service Commission; and

10                  h. The necessary processes for the decommissioning of a wind energy project and  
11                  the success of prior decommissioning efforts.

12                  2. In this study, legislative management may consult the relevant departments of the  
13                  University of North Dakota, North Dakota State University, the North Dakota Public  
14                  Service Commission, and the North Dakota Department of Health, as well as other  
15                  stakeholders, including local governments and landowner organizations.

16                  **SECTION 2. EXPIRATION DATE.** Section 1 of this Act is effective through  
17                  December 31, 2024, and after that date is ineffective.