

HOUSE BILL NO. 1363

Introduced by

Representatives Nelson, Kreidt, Weisz

Senators Holmberg, Triplett

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century
2 Code, relating to the decommissioning of commercial wind energy facilities.

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

4 **SECTION 1.** A new chapter to title 49 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

- 7 1. "Commercial wind energy conversion facility" means a wind energy conversion
8 facility of equal to or greater than five hundred kilowatts in total nameplate
9 generating capacity.
10 2. "Commission" means the public service commission.
11 3. "Wind turbine" means a wind turbine of equal to or greater than five hundred
12 kilowatts in total nameplate generating capacity.

13 **Jurisdiction of the commission for decommissioning of commercial wind energy**
14 **conversion facilities.** The commission has continuing jurisdiction and authority over all
15 persons and property necessary to enforce the provisions of this chapter. The commission has
16 the authority to:

- 17 1. Investigate all methods and practices of commercial wind energy conversion
18 facilities, subject to the provisions of this chapter;
19 2. Require the filing and determine the amount of a bond or other assurance,
20 conditioned upon the full compliance with this chapter, and the rules and orders of
21 the commission. The commission may accept under such terms and conditions as
22 the commission may prescribe, a surety bond, collateral bond, self-bond, escrow
23 account, or any alternative form of security or other financial assurance, or

- 1 combination thereof, by which an owner or operator assures faithful performance of
2 all requirements of this chapter and the rules and orders of the commission;
3 3. Regulate the decommissioning of a commercial wind energy conversion system;
4 and
5 4. Adopt and enforce rules and orders to effectuate the purposes and the intent of this
6 chapter.

7 **Decommissioning of commercial wind energy conversion facilities.**

- 8 1. The owner and operator must, at its expense, complete decommissioning of the
9 commercial wind energy conversion facility, or individual wind turbines, within
10 twelve months after the end of the useful life of the commercial wind energy
11 conversion facility or individual wind turbines. The commercial wind energy
12 conversion facility or individual wind turbine is presumed to be at the end of its
13 useful life if no electricity is generated for a continuous period of twelve months,
14 unless a plan is developed and submitted to the commission outlining the steps
15 and schedule for returning the turbine to service.
16 2. Decommissioning of commercial wind energy conversion facilities includes removal
17 of all physical material pertaining to the wind energy conversion facility to a depth
18 of forty-eight inches [1.219 meters] beneath the soil surface and restoration of the
19 disturbed area to substantially the same physical condition that existed
20 immediately before construction.
21 3. Disturbed earth must be graded and reseeded, unless the landowner requests in
22 writing that the access roads or other land surface areas not be removed and
23 restored to substantially the same physical condition that existed immediately
24 before construction.
25 4. The commission may require a performance bond to provide for the
26 decommissioning and removal of a commercial wind energy conversion facility.
27 The performance bond may be in the form of a surety bond, collateral bond,
28 self-bond, cash, or any alternative form of security or other financial assurance as
29 prescribed by commission rule. The commission shall consider the anticipated life
30 of the project, the estimated decommissioning costs in current dollars, the method
31 and schedule for updating the costs of decommissioning and restoration, the

- 1 method of ensuring that funds will be available for decommissioning and
2 restoration, and the anticipated manner in which the project will be
3 decommissioned and the site restored when adopting rules that detail the bond
4 requirements and when determining the amount of any required bond.
- 5 5. If the commercial wind energy conversion facility owner or operator does not
6 complete decommissioning, the commission may take such action as may be
7 necessary to complete decommissioning, including requiring forfeiture of the bond.
8 The entry into a participating landowner agreement constitutes agreement and
9 consent of the parties to the agreement, their respective heirs, successors, and
10 assigns, that the commission may take such action as may be necessary to
11 implement the decommissioning plan, including the exercise by the commission,
12 commission staff, and contractors of the right of ingress and egress for the purpose
13 of decommissioning the commercial wind energy conversion facility.
- 14 6. An easement or lease between a landowner and the owner or operator of a
15 commercial wind energy facility or wind turbine may contain provisions for
16 decommissioning that are more restrictive than this chapter.