

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1509

Introduced by

Representatives Nelson, DeKrey, Mueller

Senators Andrist, Klein, Triplett

1 A BILL for an Act to create and enact a new section to chapter 17-04 of the North Dakota
2 Century Code, relating to requirements for wind easement and wind energy leases.

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

4 **SECTION 1.** A new section to chapter 17-04 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Requirements for wind easements and wind energy leases.**

- 7 1. In a wind easement and a wind energy lease, the easement and lease:
- 8 a. Must be written in a clear and coherent manner using words with common
9 and everyday meanings, be appropriately divided and captioned as to various
10 subject matters, and be in at least fourteen-point type.
- 11 b. Must be delivered to the property owner with a cover page containing the
12 following paragraph with the correct term of years in the blank and in at least
13 sixteen-point type:
- 14 Special message to property owners
15 This is an important agreement our lawyers have drafted that will bind
16 you and your land for up to _____ years. We will give you enough
17 time to study and thoroughly understand it. We strongly encourage you
18 to hire a lawyer to explain this agreement to you. You may talk with
19 your neighbors about the wind project and find out if they also received
20 a proposed contract. You and your neighbors may choose to hire the
21 same attorney to review the agreement and negotiate changes on your
22 behalf.
- 23 c. Must be executed at least five business days after the easement or lease has
24 been delivered to the property owner.

- 1 d. May not contain a confidentiality clause keeping the terms of agreement or
2 related negotiations confidential.
- 3 e. Must preserve the right of the property owner to continue conducting business
4 operations as currently conducted for the term of the agreement.
- 5 f. May not make the property owner liable for any property tax associated with
6 the wind energy facility or other equipment related to wind generation.
- 7 g. May not make the property owner liable for any damages caused by the wind
8 facility and equipment or the operation of the generating facility and
9 equipment, including liability or damage to the property owner or to third
10 parties.
- 11 h. Must obligate the developer, owner, and operator of the wind energy facility to
12 comply with federal, state, and local laws and regulations and may not make
13 the property owner liable in the case of a violation.
- 14 i. Must contain a clear description of the development activities that will take
15 place within five years in order to avoid termination under section 17-04-03 or
16 17-04-05.
- 17 j. Must allow the property owner to terminate the agreement if the wind
18 generating facility has not operated for a period of at least three years.
- 19 k. Must state clearly any circumstances that will allow the developer, owner, and
20 operator of the wind energy facility to withhold payments from the property
21 owner.
- 22 l. Must contain in any indemnity obligation on the property owner an indemnity
23 obligation placed on the developer, owner, or operator of the wind energy
24 facility of at least equal terms.
- 25 2. The owner of the wind generating facility shall carry property insurance on the
26 facility and include the property owner as an additional insured on the policy and
27 waive subrogation actions against the property owner.
- 28 3. If the terms of the wind easement or wind energy lease are not in accordance with
29 this section or the owner of the facility does not carry property insurance as
30 required under subsection 2 as determined by a court as a matter of law, the court
31 may reform the easement or lease in accordance with this section, void the

1 easement or lease, or offer the relief as is requested by the property owner. The
2 court shall award reasonable attorney's fees to the property owner in a successful
3 action by the property owner under this section.
4 4. If the lessee provides up to five thousand dollars reimbursement for actual
5 attorney's fees and the wind easement or wind energy lease has the written
6 approval of an attorney representing the property owner, the easement or lease is
7 deemed not to violate this section.