

Wednesday, May 6, 2009

ND Legislature Passed Contracting Bill HB 1509

Sixty-first Legislative Assembly of North Dakota

In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1509

(Representatives Nelson, DeKrey, Mueller)

(Senators Andrist, Klein, Triplett)

AN ACT to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to requirements for wind easement and wind energy leases; and to provide for a legislative council study of wind easement and wind energy leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Requirements for wind easements and wind energy leases.

1. In a wind easement and a wind energy lease, the easement and lease:

a. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

Special message to property owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to _____ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

b. May not be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.

c. May not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.

d. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement. When a wind energy facility is being constructed and when it is completed, the property owner must make accommodations to the developer, owner, or operator of the facility for the facility's

business operations to allow the construction and operation of the wind energy facility.

e. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind energy generation.

f. May not make the property owner liable for any damages caused by the wind energy facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.

g. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.

h. Must allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years unless the property owner receives the normal minimum lease payments that would have occurred if the wind energy facility had been operating during that time. For the purposes of this subdivision, the term "normal minimum lease payments" means a payment in the lease or easement called a "base amount" or "minimum payment", or similar language, or if this language is not provided for in the lease or easement, payments at least equal to the periodic payments received by the property owner in the last calendar year that the wind energy facility was in full operation.

i. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.

2. The owner of the wind energy facility shall carry general liability insurance relating to claims for property damage or bodily injury arising out of the construction or operation of the wind energy facility project site and may include the property owner as an additional insured on the policy.

3. If the terms of the wind easement or wind energy lease are not in accordance with this section, the court may reform the easement or lease in accordance with this section, void the easement or lease, or order any relief allowed by law.

SECTION 2. LEGISLATIVE COUNCIL STUDY - WIND EASEMENTS AND WIND ENERGY LEASES. During the 2009-2010 interim, the legislative council shall consider studying wind easements and wind energy leases. The study must include consideration of confidentiality clauses, the liability of each party for damages and taxes, instrument provisions relating to insurance and the need for insurance, and the concerns of property owners and wind developers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Posted by Joe Richardson at [4:40 PM](#) [0 comments](#) 