

Hamre, John G.

From: Schuh, John M.
Sent: Wednesday, May 15, 2019 8:36 AM
To: Hamre, John G.
Cc: Kahl, Steven M.; Jeffcoat-Sacco, Illona
Subject: FW: Administrative Rules

From: -Adm-Legislative Council <lcouncil@nd.gov>

Sent: Wednesday, May 15, 2019 8:24 AM

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Cc: Richter, Vonette J. <vrichter@nd.gov>

Subject: Administrative Rules

ADMINISTRATIVE RULES COMMITTEE MEETING

The Legislative Management's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on Tuesday, June 11, 2019, in the Roughrider Room, State Capitol.

You are invited to appear before the committee and describe the procedure followed by your agency in adopting the rules published in the July 2019 supplement to the North Dakota Administrative Code.

A copy of the agenda can be found at <http://www.legis.nd.gov/assembly/66-2019/interim/21-5014-02000-meeting-agenda.pdf> for your reference. Please note the time on the agenda scheduled for your presentation. If you or a representative are unable to appear at that time, please notify me as soon as possible.

With respect to the rules published in the July 2019 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules.
7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.
9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.
10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.
11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

Please submit an electronic version of your testimony to me in advance of the meeting if possible. Also on the day of the meeting, please provide the committee with **written** testimony. Please bring 20 copies.

The July 2019 rules of your agency can be found at <http://www.legis.nd.gov/admcode/arc201907373.pdf> in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

VONETTE J. RICHTER – LEGAL DIVISION DIRECTOR

VJR/BM

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NORTH DAKOTA LEGISLATIVE MANAGEMENT

Tentative Agenda

ADMINISTRATIVE RULES COMMITTEE

Tuesday, June 11, 2019
Roughrider Room, State Capitol
Bismarck, North Dakota

- 9:00 a.m. Call to order
Roll call
Consideration of the minutes of the March 15, 2019, meeting
- 9:05 a.m. Presentation by a representative of the Retirement Board regarding the rules of the Retirement Board carried over from the March 15, 2019, meeting (pages 79-82)
- 9:20 a.m. Presentation by a representative of the Attorney General (Lottery) regarding July 2019 rules of the Attorney General (pages 29-54)
- 9:35 a.m. Presentation by a representative of the Highway Patrol regarding the July 2019 rules of the Highway Patrol (pages 55-60)
- 9:55 a.m. Presentation by a representative of the Superintendent of Public Instruction regarding the July 2019 rules of the Superintendent of Public Instruction (pages 61-72)
- 10:15 a.m. Presentation by a representative of the Public Service Commission regarding the July 2019 rules of the Public Service Commission (pages 73-78)
- 10:35 a.m. Presentation by a representative of the Real Estate Appraiser and Qualifications and Ethics Board regarding the July 2019 rules of the Real Estate Appraiser and Qualifications and Ethics Board (pages 83-129)
- 10:55 a.m. Committee discussion and directives
- 11:15 a.m. Adjourn

Committee Members

Representatives: Bill Devlin (Chairman), Josh Boschee, Kim Koppelman, Scott Louser, Brandy Pyle, Mike Schatz, Mary Schneider, Nathan Toman, Robin Weisz
Senators: Howard C. Anderson, Jr., Joan Heckaman, Jerry Klein, Curt Kreun, Scott Meyer, Nicole Poolman, David S. Rust

Staff Contact: Vonette J. Richter, Legal Division Director

TITLE 69
PUBLIC SERVICE COMMISSION

JULY 2019

CHAPTER 69-06-08

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. ~~Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.~~
 - ~~e. Irrigated land.~~
 - ~~f. Areas critical to the life stages of threatened or endangered animal or plant species.~~
 - g.e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h.f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

- a. Areas within:
 - (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from ~~any~~the nearest edge of railroad right of way;
 - (4) One and one-tenth times the height of the turbine from the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.

4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at

an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
- b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
- c. The impact upon:
 - (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Light-sensitive land uses.
 - (4) Rural residences and businesses.
 - (5) Aquifers.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
 - (9) Temporary and permanent housing.
 - (10) Temporary and permanent skilled and unskilled labor.
- d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Recycling of the conversion byproducts and effluents.
 - b. Energy conservation through location, process, and design.
 - c. Training and utilization of available labor in this state for the general and specialized skills required.
 - d. Use of a primary energy source or raw material located within the state.
 - e. Not relocating residents.
 - f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
 - g. Economies of construction and operation.
 - h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
 - i. Use of citizen coordinating committees.
 - j. A commitment of a portion of the energy produced for use in this state.
 - k. Labor relations.
 - l. The coordination of facilities.
 - m. Monitoring of impacts.
 - n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July 1, 2018; [July 1, 2019](#).

General Authority: NDCC 28-32-02, 49-22-18

Law Implemented: NDCC 49-22-05.1, 49-22.1-03