

Introduced by

Legislative Management

(Natural Resources Committee)

1 A BILL for an Act to amend and reenact sections 49-22-03, 49-22-14.1, 49-22-16, 49-22.1-01,
2 49-22.1-12, and subsection 2 of section 49-22.1-13 of the North Dakota Century Code, relating
3 to energy conversion and transmission facility siting, gas and liquid energy conversion, and gas
4 and liquid transmission facility siting.

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

6 **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-22-03. Definitions.**

9 In this chapter, unless the context or subject matter otherwise requires:

- 10 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
11 compatibility issued under this chapter.
- 12 2. "Commission" means the North Dakota public service commission.
- 13 3. "Construction" includes ~~any~~ clearing of land, excavation, or other action ~~that would~~
14 ~~affect~~affecting the environment of the site after April 9, 1975, but does not include
15 activities:
- 16 a. Conducted wholly within the geographic location for which a utility has previously
17 obtained a certificate or permit under this chapter, or on which a facility was
18 constructed before April 9, 1975, if:
- 19 (1) The activities are for the construction of the same type of facility as the
20 existing type of facility as identified in a subdivision of subsections 5 or 12 of
21 this section and the activities are:
- 22 (a) Within the geographic boundaries of a previously issued certificate or
23 permit;

- 1 (b) For an electric energy conversion facility constructed before April 9,
2 1975, within the geographic location on which the facility was built; or
3 (c) For an electric transmission facility constructed before April 9, 1975,
4 within a width of three hundred fifty feet [106.68 meters] on either side
5 of the centerline;
- 6 (2) Except as provided in subdivision b, the activities do not affect any known
7 exclusion or avoidance area;
- 8 (3) The activities are for the construction:
- 9 (a) Of a new electric energy conversion facility;
- 10 (b) Of a new electric transmission facility;
- 11 (c) To improve the existing electric energy conversion facility or electric
12 transmission facility; or
- 13 (d) To increase or decrease the capacity of the existing electric energy
14 conversion facility or electric transmission facility; and
- 15 (4) Before conducting any activities, the utility certifies in writing to the
16 commission that:
- 17 (a) The activities will not affect ~~any~~ known exclusion or avoidance area;
- 18 (b) The activities are for the construction:
- 19 [1] Of a new electric energy conversion facility;
- 20 [2] Of a new electric transmission facility;
- 21 [3] To improve the existing electric energy conversion or electric
22 transmission facility; or
- 23 [4] To increase or decrease the capacity of the existing electric
24 energy conversion facility or electric transmission facility; and
- 25 (c) The utility will comply with all applicable conditions and protections in
26 siting laws and rules and commission orders previously issued for any
27 part of the facility.
- 28 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
29 are expected to affect a known avoidance area and the utility before conducting
30 any activities:
- 31 (1) Certifies in writing to the commission that:

- 1 (a) The activities will not affect ~~anya~~ known exclusion area;
- 2 (b) The activities are for the construction:
- 3 [1] Of a new electric energy conversion facility;
- 4 [2] Of a new electric transmission facility;
- 5 [3] To improve the existing electric energy conversion facility or
- 6 electric transmission facility; or
- 7 [4] To increase or decrease the capacity of the existing electric
- 8 energy conversion facility or electric transmission facility; and
- 9 (c) The utility will comply with all applicable conditions and protections in
- 10 siting laws and rules and commission orders previously issued for any
- 11 part of the facility;
- 12 (2) Notifies the commission in writing that the activities are expected to impact
- 13 an avoidance area and provides information on the specific avoidance area
- 14 expected to be impacted and the reasons why impact cannot be avoided;
- 15 and
- 16 (3) Receives the commission's written approval for the impact to the avoidance
- 17 area, based on a determination that there is no reasonable alternative to the
- 18 expected impact. If the commission does not approve impacting the
- 19 avoidance area, the utility must obtain siting authority under this chapter for
- 20 the affected portion of the site or route. If the commission fails to act on the
- 21 notification required by this subdivision within thirty days of the utility's filing
- 22 the notification, the impact to the avoidance area is deemed approved.
- 23 c. Incident to preliminary engineering or environmental studies.
- 24 4. "Corridor" means the area of land ~~in which~~where a designated route may be
- 25 established for an electric transmission facility.
- 26 5. "Electric energy conversion facility" means ~~anya~~ plant, addition, or combination of
- 27 plant and addition, designed for or capable of:
- 28 a. Generation by wind energy conversion exceeding one-half megawatt of
- 29 electricity; or
- 30 b. Generation by any means other than wind energy conversion exceeding fifty
- 31 megawatts of electricity.

- 1 6. "Electric transmission facility" means an electric transmission line and associated
2 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission
3 facility" does not include:
- 4 a. A temporary electric transmission line loop that is:
- 5 (1) Connected and adjacent to an existing electric transmission facility that was
6 sited under this chapter;
- 7 (2) Within the corridor of the sited facility and does not cross known exclusion
8 or avoidance areas; and
- 9 (3) In place for less than one year; or
- 10 b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 11 7. "Facility" means an electric energy conversion facility, electric transmission facility, or
12 both.
- 13 8. "Permit" means the permit for the construction of an electric transmission facility within
14 a designated corridor issued under this chapter.
- 15 9. "Person" includes anyan individual, firm, association, partnership, cooperative,
16 corporation, limited liability company, or any department, agency, or instrumentality of
17 a state or of the federal government, or any subdivision thereof.
- 18 10. "Power emergency" means an electric transmission line and associated facilities that
19 have been damaged or destroyed by natural or manmade causes resulting in a loss of
20 power supply to consumers of the power.
- 21 11. ~~"Road use agreement" means permits required for extraordinary road use, road-~~
22 ~~access points, approach or road crossings, public right of way setbacks, building-~~
23 ~~rules, physical addressing, dust control measures, or road maintenance and any repair-~~
24 ~~mitigation plans.~~
- 25 12. "Route" means the location of an electric transmission facility within a designated
26 corridor.
- 27 ~~13.~~ 12. "Site" means the location of an electric energy conversion facility.
- 28 ~~14.~~ 13. "Utility" means anya person engaged in and controlling the electric generation, the
29 transmission of electric energy, or the transmission of water from or to any electric
30 energy conversion facility.

1 **SECTION 2. AMENDMENT.** Section 49-22-14.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-22-14.1. Cooperation with state and federal agencies and ~~political subdivisions.~~**

4 The commission may, and is encouraged to, cooperate with and receive and exchange
5 technical information and assistance from and with any department, agency, or officer of any
6 state or of the federal government to eliminate duplication of effort, to establish a common
7 database, or for any other purpose relating to the provisions of this chapter and in furtherance
8 of the statement of policy contained herein. ~~The commission shall cooperate and exchange~~
9 ~~technical information with directly impacted political subdivisions as outlined in subsection 2 of~~
10 ~~section 49-22-16.~~

11 **SECTION 3. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or**
14 **building rules, regulations, or ordinances - State agency rules.**

15 1. The issuance of a certificate of site compatibility or a route permit shall, subject to
16 subsections 2 and 3, be the sole site or route approval required to be obtained by the
17 utility.

18 2. a. A certificate of site compatibility for an electric energy conversion facility may
19 not supersede or preempt any local land use, zoning, or building rules, regulations, or
20 ordinances and ~~no~~ a site may not be designated which violates local land use, zoning,
21 or building rules, regulations, or ordinances.

22 b. ~~Except as provided in this section, a~~ permit for the construction of a gas or
23 liquid ~~or an~~ electric transmission facility within a designated corridor supersedes and
24 preempts any local land use ~~or~~ zoning regulations, or building rule, regulation, or
25 ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as
26 applied to the proposed route, is unreasonably restrictive in view of existing
27 technology, factors of cost or economics, or needs of consumers regardless of
28 location. Without such a finding by the commission, a route may not be designated
29 which violates a local land use, zoning, or building rule, regulation, or ordinance.

30 c. ~~Before a gas or liquid transmission facility is approved, the commission shall~~
31 ~~require the applicant to comply with the road use agreements of the impacted~~

1 ~~political subdivision. A permit may supersede and preempt the requirements of a~~
2 ~~political subdivision if the applicant shows by a preponderance of the evidence~~
3 ~~the regulations or ordinances are unreasonably restrictive in view of existing~~
4 ~~technology, factors of cost or economics, or needs of consumers regardless of~~
5 ~~their location, or are in direct conflict with state or federal laws or rules.~~

6 ~~d. When an application for a certificate for a gas or liquid transmission facility is~~
7 ~~filed, the commission shall notify the townships with retained zoning authority,~~
8 ~~cities, and counties in which any part of the proposed corridor is located. The~~
9 ~~commission may not schedule a public hearing sooner than forty five days from~~
10 ~~the date notification is sent by mail or electronic mail. Upon notification, a political~~
11 ~~subdivision shall provide a listing to the commission of all local requirements~~
12 ~~identified under this subsection. The requirements must be filed at least ten days~~
13 ~~before the hearing or the requirements are superseded and preempted.~~

14 ~~e. An applicant shall comply with all local requirements provided to the commission~~
15 ~~pursuant to subdivision d, which are not otherwise superseded by the~~
16 ~~commission.~~

17 3. Utilities subject to this chapter shall obtain state permits that may be required to
18 construct and operate electric energy conversion facilities and electric transmission
19 facilities. A state agency in processing a utility's facility permit application shall be
20 bound to the decisions of the commission with respect to the site designation for the
21 electric energy conversion facility or the corridor or route designation for the electric
22 transmission facility and with respect to other matters for which authority has been
23 granted to the commission by this chapter.

24 4. ~~No~~A site or route ~~shall~~may not be designated which violates the rules of ~~any~~a state
25 agency. A state agency with jurisdiction over any aspect of a proposed facility shall
26 present the position of the agency at the public hearing on an application for a
27 certificate, a permit, or a waiver, which position ~~shall~~must clearly state whether the
28 site, corridor, or route being considered for designation will be in compliance with such
29 agency's rules. For purposes of this chapter it ~~shall be~~is presumed that a proposed
30 facility will be in compliance with a state agency's rules if ~~such~~the agency fails to

1 present its position on the proposed site, corridor, or route at the appropriate public
2 hearing.

3 **SECTION 4. AMENDMENT.** Section 49-22.1-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **49-22.1-01. Definitions.**

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

7 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
8 compatibility issued under this chapter.

9 2. "Commission" means the North Dakota public service commission.

10 3. "Construction" includes ~~any~~ clearing of land, excavation, or other action ~~that would~~
11 ~~affect~~affecting the environment of the site after April 9, 1975, but does not include
12 activities:

13 a. Conducted wholly within the geographic location for which a utility has previously
14 obtained a certificate or permit under this chapter, or on which a facility was
15 constructed before April 9, 1975, if:

16 (1) The activities are for the construction of the same type of facility as the
17 existing type of facility as identified in subsection 5 or 12 and the activities
18 are:

19 (a) Within the geographic boundaries of a previously issued certificate or
20 permit;

21 (b) For a gas or liquid energy conversion facility constructed before
22 April 9, 1975, within the geographic location on which the facility was
23 built; or

24 (c) For a gas or liquid transmission facility constructed before April 9,
25 1975, within a width of three hundred fifty feet [106.68 meters] on
26 either side of the centerline;

27 (2) Except as provided in subdivision b, the activities do not affect any known
28 exclusion or avoidance area;

29 (3) The activities are for the construction:

30 (a) Of a new gas or liquid energy conversion facility;

31 (b) Of a new gas or liquid transmission facility;

- 1 (c) To improve the existing gas or liquid energy conversion facility, or gas
2 or liquid, transmission facility; or
- 3 (d) To increase or decrease the capacity of the existing gas or liquid
4 energy conversion facility or gas or liquid transmission facility; and
- 5 (4) Before conducting any activities, the utility certifies in writing to the
6 commission that:
- 7 (a) The activities will not affect ~~any~~ known exclusion or avoidance area;
- 8 (b) The activities are for the construction:
- 9 [1] Of a new gas or liquid energy conversion facility;
- 10 [2] Of a new gas or liquid transmission facility;
- 11 [3] To improve the existing gas or liquid energy conversion or gas or
12 liquid transmission facility; or
- 13 [4] To increase or decrease the capacity of the existing gas or liquid
14 energy conversion facility or gas or liquid transmission facility;
15 and
- 16 (c) The utility will comply with all applicable conditions and protections in
17 siting laws and rules and commission orders previously issued for any
18 part of the facility.
- 19 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
20 are expected to affect a known avoidance area and the utility before conducting
21 any activities:
- 22 (1) Certifies in writing to the commission:
- 23 (a) The activities will not affect any known exclusion area;
- 24 (b) The activities are for the construction:
- 25 [1] Of a new gas or liquid energy conversion facility;
- 26 [2] Of a new gas or liquid transmission facility;
- 27 [3] To improve the existing gas or liquid energy conversion facility or
28 gas or liquid facility; or
- 29 [4] To increase or decrease the capacity of the existing gas or liquid
30 energy conversion facility or gas or liquid transmission facility;
31 and

- 1 (c) The utility will comply with all applicable conditions and protections in
2 siting laws and rules and commission orders previously issued for any
3 part of the facility;
- 4 (2) Notifies the commission in writing that the activities are expected to impact
5 an avoidance area and provides information on the specific avoidance area
6 expected to be impacted and the reasons why impact cannot be avoided;
7 and
- 8 (3) Receives the commission's written approval for the impact to the avoidance
9 area, based on a determination that there is no reasonable alternative to the
10 expected impact. If the commission does not approve impacting the
11 avoidance area, the utility must obtain siting authority under this chapter for
12 the affected portion of the site or route. If the commission fails to act on the
13 notification required by this subdivision within thirty days of the utility's filing
14 the notification, the impact to the avoidance area is deemed approved.
- 15 c. Incident to preliminary engineering or environmental studies.
- 16 4. "Corridor" means the area of land ~~in which~~where a designated route may be
17 established for a gas or liquid transmission facility.
- 18 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission
19 facility, or both.
- 20 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of
21 plant and addition, designed for or capable of:
- 22 a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic
23 meters] or more of gas per day, regardless of the end use of the gas;
- 24 b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or
25 more of liquid hydrocarbon products per day; or
- 26 c. Enrichment of uranium minerals.
- 27 7. "Gas or liquid transmission facility" means any of the following:
- 28 a. A gas or liquid transmission line and associated facilities designed for or capable
29 of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or
30 carbon dioxide. This subdivision does not apply to:
- 31 (1) An oil or gas pipeline gathering system;

- 1 (2) A pipeline with an outside diameter of four and one-half inches
2 [11.43 centimeters] or less which will not be trenched and will be plowed in
3 with a power mechanism having a vertical knife or horizontally directionally
4 drilled, and its associated facilities; or
- 5 (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of
6 this chapter, a gathering system includes the pipelines and associated
7 facilities used to collect oil from the lease site to the first pipeline storage
8 site where pressure is increased for further transport, or pipelines and
9 associated facilities used to collect gas from the well to the gas processing
10 facility at which end-use consumer-quality gas is produced, with or without
11 the addition of odorant.
- 12 b. A liquid transmission line and associated facilities designed for or capable of
13 transporting water from or to an energy conversion facility.
- 14 8. "Permit" means the permit for the construction of a gas or liquid transmission facility
15 within a designated corridor issued under this chapter.
- 16 9. "Person" includes ~~any~~an individual, firm, association, partnership, cooperative,
17 corporation, limited liability company, or any department, agency, or instrumentality of
18 a state or of the federal government, or any subdivision thereof.
- 19 10. "Road use agreement" means permits required for extraordinary road use, road
20 access points, approach or road crossings, public right-of-way setbacks, building
21 rules, physical addressing, dust control measures, or road maintenance and any repair
22 mitigation plans.
- 23 11. "Route" means the location of a gas or liquid transmission facility within a designated
24 corridor.
- 25 ~~11-12.~~ "Site" means the location of a gas or liquid energy conversion facility.
- 26 ~~12-13.~~ "Utility" means ~~any~~a person engaged in and controlling the generation, manufacture,
27 refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon
28 products, including coal gasification, coal liquefaction, petroleum refinement, uranium
29 enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid
30 hydrocarbon products, or the transmission of water from or to any gas or liquid energy
31 conversion facility.

1 **SECTION 5. AMENDMENT.** Section 49-22.1-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-22.1-12. Cooperation with state and federal agencies and political subdivisions.**

4 The commission may, and is encouraged to, cooperate with and receive and exchange
5 technical information and assistance from and with any department, agency, or officer of any
6 state or of the federal government to eliminate duplication of effort, to establish a common
7 database, or for any other purpose relating to the provisions of this chapter. The commission
8 shall cooperate and exchange technical information with directly impacted political subdivisions
9 as outlined in subsection 2 of section 49-22.1-13.

10 **SECTION 6. AMENDMENT.** Subsection 2 of section 49-22.1-13 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 2. a. A certificate of site compatibility for ~~ana gas or liquid~~ energy conversion facility
13 ~~does~~may not supersede or preempt any local land use; zoning; or building rules,
14 regulations, or ordinances, and a site may not be designated which violates local
15 land use; zoning; or building rules, regulations, or ordinances. A
16 b. Except as provided in this section, a permit for the construction of a gas or liquid
17 transmission facility within a designated corridor ~~may supersede~~supersedes and
18 ~~preempt~~preempts any local land use; ~~or zoning; or building rules,~~ regulations, ~~or~~
19 ~~ordinances, upon a finding by the commission that the rules, regulations, or~~
20 ~~ordinances, as applied to the proposed route,~~
21 c. Before a gas or liquid transmission facility is approved, the commission shall
22 require the applicant to comply with the road use agreements of the impacted
23 political subdivision. A permit may supersede and preempt the requirements of a
24 political subdivision if the applicant shows by a preponderance of the evidence
25 the regulations or ordinances are unreasonably restrictive in view of existing
26 technology, factors of cost or economics, or needs of consumers regardless of
27 their location. ~~Without that finding by the commission, a route may not be~~
28 ~~designated which violates local land use; zoning; or building rules, regulations, or~~
29 ~~ordinances, or are in direct conflict with state or federal laws or rules.~~
30 d. When an application for a certificate for a gas or liquid transmission facility is
31 filed, the commission shall notify the townships with retained zoning authority.

1 cities, and counties in which any part of the proposed corridor is located. The
2 commission may not schedule a public hearing sooner than forty-five days from
3 the date notification is sent by mail or electronic mail. Upon notification, a political
4 subdivision shall provide a listing to the commission of all local requirements
5 identified under this subsection. The requirements must be filed at least ten days
6 before the hearing or the requirements are superseded and preempted.
7 e. An applicant shall comply with all local requirements provided to the commission
8 pursuant to subdivision d, which are not otherwise superseded by the
9 commission.