

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2038
(Legislative Management)
(Natural Resources Committee)

AN ACT to amend and reenact sections 49-22-03, 49-22-14.1, 49-22-16, 49-22.1-01, 49-22.1-12, and subsection 2 of section 49-22.1-13 of the North Dakota Century Code, relating to energy conversion and transmission facility siting, gas and liquid energy conversion, and gas and liquid transmission facility siting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-22-03. Definitions.

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action ~~that would affect~~affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or

- (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.

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

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

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

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other

purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. ~~The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.~~

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

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

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2.
 - a. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and ~~no~~ a site may not be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
 - ~~b.~~ b. Except as provided in this section, ~~a~~ A permit for the construction of a gas or liquid or an electric transmission facility within a designated corridor supersedes and preempts ~~any~~ local land use or zoning regulations, or building rule, regulation, or ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as applied to the proposed route, is unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location. Without such a finding by the commission, a route may not be designated which violates a local land use, zoning, or building rule, regulation, or ordinance.
 - ~~c.~~ c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. ~~A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.~~
 - ~~d.~~ d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.
 - ~~e.~~ e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. ~~No~~ A site or route shall ~~may not~~ may not be designated which violates the rules of ~~any~~ any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall must clearly state whether the site, corridor, or route being considered for

designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such the agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

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

49-22.1-01. Definitions.

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action ~~that would affect~~ affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 5 or 12 and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new gas or liquid energy conversion facility;
 - (b) Of a new gas or liquid transmission facility;
 - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
 - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new gas or liquid energy conversion facility;
 - [2] Of a new gas or liquid transmission facility;

- [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
 - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new gas or liquid energy conversion facility;
 - [2] Of a new gas or liquid transmission facility;
 - [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
 - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
 - c. Incident to preliminary engineering or environmental studies.
- 4. "Corridor" means the area of land ~~in which~~where a designated route may be established for a gas or liquid transmission facility.
- 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.
- 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;

- b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:
- a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
 - b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
9. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
- ~~11.~~ "Site" means the location of a gas or liquid energy conversion facility.
- ~~12.~~13. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

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

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

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter. The commission shall cooperate and exchange

technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22.1-13.

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

2.
 - a. A certificate of site compatibility for ~~ana gas or liquid~~ energy conversion facility ~~does~~ may not supersede or preempt any local land use; zoning; or building rules, regulations, or ordinances, and a site may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances. A
 - b. Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and preempt any local land use; or zoning; or building rules, regulations, or ordinances, upon a finding by the commission that the rules, regulations, or ordinances, as applied to the proposed route,.
 - c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without that finding by the commission, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances, or are in direct conflict with state or federal laws or rules.
 - d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.
 - e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2038.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 86 Nays 0 Absent 8

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State