

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Revised
 Amendment to: SB 2120

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill adds a fee for certain types of applications, and increases the minimum fee for processing siting applications submitted to the Public Service Commission.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact to the agency resulting from proposed legislation cannot be estimated because we do not know how many applications may be filed, or what type of applications may be filed in any given time frame. It is possible that no applications may be filed in that time frame.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

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- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Subsection 3 of section 49-22-22 of the North Dakota Century Code provides continuing appropriation to expend the funds upon receipt.

Name: Ilona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 12/22/2014

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Zero fiscal impact to the agency resulting from proposed legislation.

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2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2120

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
1/15/2015
22012

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Olwe

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees

Minutes:

2 Attachments

Chairman Schaible opened the hearing.

Illona A. Jeffcoat-Sacco with the Public Service Commission. See attached testimony #1.

Chairman Schaible: Subsection change to \$25,000 could they not charge that now?

Illona A. Jeffcoat-Sacco: Not for the ones that there is no discretion.

Chairman Schaible: You are sighting the application so it is based on something else?

Senator Hogue: When you engage outside consultants do you recover those costs or is there a limitation in statute?

Illona A. Jeffcoat-Sacco: Only when we don't have authority to pay the fee. We would cover the cost out of our operating budget.

Senator Hogue: Why can't we make a stature that when the commission feels it need an outside consultant?

Illona A. Jeffcoat-Sacco: The expenses are covered but there are no fees. That includes attorney. The sighting law has always had a fee. Every applicant shall pay \$500 for each mill of investment. It used to go to the gen fund and now it is going to something we can use and refund the difference if we don't do it all. There is no action needed so there is no cost, there is a fee we would like to have.

Patrick Faun: Director of Compliance and Competitive Markets Divisions for the Public Service Commission. The question was about the minimum of \$5,000, there are cases that are small enough that the application fee doesn't post that minimum.

Todd Kranda: Todd Kranda. See attachment #2.

Senator Hogue: Since we have passed this corridor legislation how many applications have the Public Service Commission received that seek some sort of mediation from that corridor?

Patrick Faun: We have received several places that we need to reroute outside of the designated corridor. Most of them do not involve an impact to an exclusion area.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
1/22/2015
22375

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees.

Minutes:

Senator Triplett: I would start by moving the amendments but I see they are not in Legislative Council format yet, is it your wish that we should get them into that format before we move them? The Public Service Commission attorney noted that there was a typographical error in her proposed amendment.

Chairman Schaible: My interpretation is that there was some heartache with that because they can already increase the minimum if they want to but this would make automatically a much higher level.

Senator Triplett: The industry did come in against it so we may decide to kill the bill but as a matter of courtesy that we should put the amendment on first and make the correction that the Public Service Commission asked to make.

Senator Triplett made a motion to adopt the amendment as presented by the Public Service Commission with the correction requested by the attorney for the Public Service Commission with a second by Senator Armstrong. Roll was taken; the amendment was adopted with a vote of 6-0-1.

Vice Chair Unruh then moved a Do Not Pass as Amended with a second by Senator Armstrong.

Senator Armstrong: Aren't a lot of these voluntary sight moves that are negotiated with the landowner?

Chairman Schaible: I believe you are correct, yes.

Senator Armstrong: And aren't we a little concerned that if we are trying to help the companies and land owners communicate with each other that increasing the fee may make these pipeline companies less apt to deal with the land owner?

Chairman Schaible: If they want a higher minimum they can do that anyway and this just would take that out of their realm and make it more burdensome by having a minimum? If there is an issue I believe that they can raise it anyway so it is a solution looking for a problem.

Vice Chair Unruh: We have spent a lot of time debating this whole process, streamlining it last session, figuring out what was best for the land owner and what was best the pipeline company, what would work for the Public Service Commission and I just feel like this is such a step back from the streamline process.

Senator Triplet: Maybe one reason to put this vote on hold until we actually see the bill as amended would be we would be able to read more clearly what it actually does. It occurred to me that the Public Service Commission had worked with the industry representatives because it was in the attorney for the Public Service Commission's testimony that they brought the amendment forward that they brought the same time they brought the bill itself. The amendment is removing the minimum fees for projects where the Commission has discretion. That is not to say that I am going to oppose the Do Not Pass motion I just want to be really clear what I am voting on before I vote on it.

Chairman Schaible: If the members feel that way they should vote against the Do Not Pass.

The committee then took a 5 minuet break so Senator Triplett could look into this bill.

Senator Triplett: Thank you for the opportunity to take a few minutes and work with this information. I think that the negative testimony from Mr. Kranda was based on the bill as drafted and if you look carefully at the new language as it is incorporated into the bill that the Public Service Commission has retreated completely from what they were planning on doing and all that is really left of the bill is removing the old language, which everyone seemed to agree was unnecessary language that should be removed. This bill, as amended by us, removes the two unnecessary lines and I think we should pass the bill and get rid of those lines. If anyone disagrees with me I would be happy to hear what you have to say.

Chairman Schaible: My interpretation is that, the bill we have before us, is basically removing two unnecessary lines.

Senator Triplett: And leaving the avoidance things completely in the discretion of the Public Service Commission as you pointed out they already have the authority already, taking them out of the \$25,000 fee.

Chairman Schaible: So, either way, it won't have any affect.

Senator Triplett: Correct but I think we should be in favor of cleaning up the code if we have a chance.

Chairman Schaible: So the other things that they are raising the fee to as current, too? That is just the minimum, right? So they could go more than that, it does raise a minimum that they could already go to?

Senator Triplett: I think that I found the answer to your question in page 3 of the Public Service Commission testimony. I really believe that the PCS in good faith negotiated with the opposition before they got here and that the amendment takes care of it but the opposition already had the testimony written and so what we have here is written testimony is opposition to the bill as already written. I think that they were actually ok with the bill assuming that we put the amendment on. I think that we can all agree that the cost of everything has increased rather dramatically since 1975 and the Public Service Commission is required to recover most of the cost of doing business by the fees that they charge to the people who make applications before them. But they have exempted out the avoidance areas and the movement within and outside the corridors so I am comfortable with the bill and I think that we might want to reconsider.

Chairman Schaible: I am not sure of the rational for raising the minimum. I understand cost goes up, I understand that they need more money but they have the authority to charge that now.

Senator Triplett: I am not entirely sure of that, I would want that clarified before we vote on it. If they have that authority then what it means when we have a statue that says this is the minimum fee. I think that what it would mean is that they would have to analyze each case in advance, maybe not knowing how much it is going to cost and try to make a specific determination about what each case might end up costing so it adds an administrative burden to them and if 95% of the time the fees end up being at least \$25,000 then let them start where most of the fees are.

Senator Armstrong: I they need a raise in the minimum fee. As a fee situation, if you can go up I would prefer you can also go down to what is realistic.

Senator Triplett: They refund the difference if they can, according to their testimony. But I think that they were trying to get the minimum in place where it is more in line with what most of their cases are costing. By accepting the small issues of avoidance areas and establish corridors they did respond full, I believe, to the complaints brought by the opposition.

Senator Armstrong: I would agree with that.

Chairman Schaible: If there is a situation where it should be less than \$25,000 this would make sure that they have to do it anyway. I am not sure that creating a higher floor than is necessary.

Senator Triplett: If you look at the testimony of Mr. Kranda it talks about voluntary root adjustments. The questions is really that wasn't discussed and how frequently their expenses cost more than \$25,000 I think that we should get the Public Service Commission attorney back to clarify but I don't think we should kill the bill based on inadequate information in our committee.

There was no further discussion, roll was taken and the Do Not Pass motion was tied with a vote of 3-3-1. Senator Triplett then made a motion for a Do Pass as Amended.

Senator Hogue: I wasn't going to second the motion but I thought that we could take advantage of Illona Jeffcoat-Sacco's expertise and ask her to confirm for us what I think that Senator Triplett is saying.

Senator Triplett: I will withdraw my motion pending the opportunity for Ms. Jeffcoat-Sacco to come down.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

2120
1/22/2015
24402

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees.

Minutes:

Chairman Schaible called the committee back to order.

Chairman Schaible: We were looking at the bill with amendments included.

Illona Jeffcoat-Sacco: I have the amendments submitted and the bill. Are the amendments the same?

Chairman Schaible: The question that came up is that the minimum that has changed in page 2, line 3, raising that minimum from \$5,000 to \$25,000 with the corrections of this amendment. Where does this apply to what we are doing as far as which minimums are we still raising?

Illona Jeffcoat-Sacco: As amended, the application fee that you figure out under A, B, or C shall not be less than \$25,000. So it only goes up for A, B, and C and there would be no minimum because there isn't one anywhere else. There would be no minimum, as I read it, for D or E. The theory there is that D and E, the ones that have no minimum, are not mandatory fees, either as they are discretionary to be set by the commission. Whereas A, B, and C are mandatory the applicant has to figure those out, send it in with the application.

Chairman Schaible: Going back to A, B, and C could they not set them at the \$25,000 now?

Illona Jeffcoat-Sacco: The commission has no discretion in the fee; it is done based on investment with a minimum and a maximum.

Chairman Schaible: In other words there are no projects or condition where below \$25,000 would exist as a fee?

Illona Jeffcoat-Sacco: There might be today but the problem is that the minimum of \$5,000 that would apply to the smallest projects is not enough to do a case.

Chairman Schaible: So if it small enough it is not worth doing, though.

Illona Jeffcoat-Sacco: There are certain parts of a case in A, B, and C; these parts of the process have to be done no matter what, even if it is a quarter mile pipeline you have to have a hearing, you have to publish the notice. If you add the things up that have nothing to do with size they come up to more than \$5,000.

Senator Triplett: I think that if I heard you correctly, do you really need our permission to increase the \$25,000 that perhaps you already have the legal authority to do that any way and having the minimum at \$5,000 doesn't stop you from telling people you want to start with \$10,000 in certain cases.

Illona Jeffcoat-Sacco: Yes we do. If the investment formula equals \$3,000 we can't charge any more than the minimum of \$5,000 applies. The problem is that these are repeating costs, we know that they will be there, they are not a special case that if we learn two years into it that we might need more money. We would be at the emergency commission for each application.

Senator Armstrong: This is a 500% increase in the minimum, is there a lower number that makes some sense?

Pat Faun: Public Service Commission staff. When we decide to change the minimum on that statue we looked at the typical cost for going to a hearing, no matter what size it is and this is what we came up with. It is slightly more than what we came up with a range of \$15,050-\$21,300 we know the costs will go up in the future and in a few months the minimum will reach \$25,000 pretty quickly.

Senator Armstrong: The actual fee is set by formula, correct?

Pat Faun: The fee that Illona was talking about for cases that fall under A, B, and C determine by formula according to the investment with a minimum and a maximum, but the minimum is just too low we can't process that application for that amount of money.

Senator Armstrong: If you say the average cost is between \$15,000 and \$20,000 so some are more and some are less.

Pat Faun: If there are dollars left over after we process the application those dollars are returned to the company.

Senator Armstrong: How long does it take for the money to be refund?

Pat Faun: Certain parts of the process that need to be completed before we can give that money back and then there is a process that continues for three years. It has to do with replacement of trees and shrubs and so after they are done constructing, and after our

construction inspectors have inspected the sight to see if it complies with the commission's order. Shortly after the sight has been conducted we can refund all but \$5,000 of the application fee. That \$5,000 is reserved for future inspections of the survival rate of the trees and shrubs that were planted to replace the ones that were removed during construction. So we have an interim refund that refunds all but \$5,000.

Senator Triplett: I didn't hear any opposition from Mr. Kranda when he testified regarding the \$25,000 minimum. His testimony was entirely about the matters which we fixed with the amendment.

Illona Jeffcoat-Sacco: You are correct, that is what that group has told us so we could produce the amendments.

A motion was made for a Do Pass as Amended by Senator Triplett with a second by Senator Hogue.

Senator Armstrong: I think that a 500% increase might be a lot. I understand that the minimum amount might now be covering it.

There was no further discussion, roll was taken and the motion passed 4-2-1 with Senator Triplett carrying the bill to the floor. Chairman Schaible then closed the discussion on SB 2120

January 22, 2015

1/22/15
JRE

PROPOSED AMENDMENTS TO SENATE BILL NO. 2120

Page 1, line 24, replace "subsections" with "obtaining siting authority under subdivision b of subsection"

Page 1, line 24, after the second "or" insert "subdivision c of subsection"

Page 1, line 24, replace "42-22-16.3" with "49-22-16.3"

Page 2, line 3, overstrike "this subsection shall" and insert immediately thereafter "subdivision a, b, or c may"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2120: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2120 was placed on the Sixth order on the calendar.

Page 1, line 24, replace "subsections" with "obtaining siting authority under subdivision b of subsection"

Page 1, line 24, after the second "or" insert "subdivision c of subsection"

Page 1, line 24, replace "42-22-16.3" with "49-22-16.3"

Page 2, line 3, overstrike "this subsection shall" and insert immediately thereafter "subdivision a, b, or c may"

Renumber accordingly

Page 1, line 9, replace "7" with "8"

Page 1, line 13, replace "eleven" with "seven"

Page 1, line 19, after "who" insert "are residents of this state and who"

Page 2, line 4, replace "five" with "three"

Page 2, after line 15, insert:

"SECTION 5. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Quorum.

A majority of the appointed members of the committee constitutes a quorum for the purpose of conducting business.

Page 2, line 20, replace "one hundred thirty-five dollars per day" with "the amount per diem established for members of the legislative assembly in accordance with section 54-03-20."

Page 2, line 26, overstrike "a."

Page 2, after line 29, insert:

"2. The foundation may retain up to one percent of any moneys received under this section for administrative purposes."

Page 2, line 30, replace "b." with "3."

Page 3, remove lines 3 through 9

Page 3, line 15, after "members" insert ", until the administrative fees retained by the foundation in accordance with section 7 of this Act are sufficient to fund the operating costs"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2093: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2093 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "for"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2120: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2120 was placed on the Sixth order on the calendar.

Page 1, line 24, replace "subsections" with "obtaining siting authority under subdivision b of subsection"

Page 1, line 24, after the second "or" insert "subdivision c of subsection"

Page 1, line 24, replace "42-22-16.3" with "49-22-16.3"

Page 2, line 3, overstrike "this subsection shall" and insert immediately thereafter "subdivision a, b, or c may"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2139: Transportation Committee (Sen. Oehlke, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Sixth order on the calendar.

Page 1, line 4, after the third comma insert "and"

Page 1, line 5, after the semicolon insert "to provide a penalty;"

Page 4, line 2, remove the overstrike over "five"

Page 4, line 2, remove "sixty"

Page 4, line 10, remove the overstrike over "~~For each snowmobile registered under the provisions of this chapter,~~"

Page 4, remove the overstrike over line 11

Page 5, line 31, remove the overstrike over "fifteen"

Page 5, line 31, remove "twenty"

Page 11, line 3, remove the overstrike over "not"

Page 13, line 20, overstrike "snowmobile,"

Page 13, line 23, replace "EXPIRATION" with "EFFECTIVE"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2146: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2146 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "and the resident season"

Page 1, line 10, remove "for using traps to take muskrats must end on May tenth"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2159: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2159 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2172: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2172 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2195: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2195 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SCR 4007: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SCR 4007 was placed on the Eleventh order on the calendar.

JOURNAL OF THE SENATE

Sixty-fourth Legislative Assembly

Bismarck, January 28, 2015

The Senate convened at 1:00 p.m., with President Wrigley presiding.

The prayer was offered by Pastor Tim Jenks, Bethel Lutheran Church, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

CORRECTION AND REVISION OF THE JOURNAL

MR. PRESIDENT: Your Committee on Correction and Revision of the Journal (Sen. Poolman, Chairman) has carefully examined the Journal of the Fourteenth and Fifteenth Days and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 167, line 35, replace "6 YEAS, 0 NAYS" with "4 YEAS, 2 NAYS"

Page 181, line 37, replace "line 3, replace engineering" with "replace lines 2 and 3"

SEN. POOLMAN MOVED that the report be adopted, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2278: SEN. POOLMAN (Industry, Business and Labor Committee) MOVED that the amendments be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed on a voice vote.

SB 2278 was referred to the **Appropriations Committee**.

CONSIDERATION OF AMENDMENTS

SB 2047: SEN. WARNER (Human Services Committee) MOVED that the amendments be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

MOTION

SEN. KLEIN MOVED that SB 2088 be returned to the Senate floor from the **Appropriations Committee**, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2286: A BILL for an Act to amend and reenact section 57-38-01.21 of the North Dakota Century Code, relating to a charitable gifts and qualified endowments income tax credit for charitable gifts to a border city hospital, nursing home, or medical center foundation; and to provide an effective date.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Anderson; Armstrong; Axness; Bekkedahl; Bowman; Burckhard; Campbell; Carlisle; Casper; Cook; Davison; Dever; Dotzenrod; Erbele; Flakoll; Grabinger; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Marcellais; Mathern; Miller; Murphy; Nelson; O'Connell; Oban; Oehlke; Poolman; Robinson; Rust; Schaible; Schneider; Sinner; Sorvaag; Triplett; Unruh; Wanzek; Wardner; Warner

SB 2286 passed.

2015 HOUSE ENERGY AND NATURAL RESOURCES

SB 2120

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

SB 2120
3/5/2015
Job # 24408

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees.

Minutes:

Attachments 1

Chairman Porter opens hearing.

Illona Jeffcoat-Sacco, General Counsel Public Service Commission gives written testimony #1

Chairman Porter: Inside the original intent of the law, was it felt that the application fee was supposed to cover the total cost of the project and if so, is it really an application fee or is it that the utility is covering all the cost of the project? You're a general fund agency and those employees are there regardless of whether someone is building a utility. I'm unclear on what we are trying to recapture and who does the money go to?

Jeffcoat-Sacco: My understanding of the original intent of the law was the application fee went to the General Fund. The commission's expenses were paid by the commission's operating budget. Now the fee is to pay for the out of pocket expenses. The difference goes back to the company. The General Fund gets nothing, except for the savings in our budget by not paying those expenses for processing out of operating. The money goes to a special fund that is used to pay out of pocket expenses, and then eventually a refund is given to the applicant.

Chairman Porter: It seems that the application fees aren't even coming close.

Jeffcoat-Sacco: You're right, I'm guessing that they probably came from maximum fee projects. The fee is based on investment, up to a maximum of 100,000 dollars. The problem comes when the investment is so small that you only get the minimum, and it isn't big enough to pay for costs that don't fluctuate with size of the investment.

Rep. George Keiser: What comfort level can we have that the fees don't just increase dramatically because they can? How do we protect the businesses so that they are not taken advantage of indirectly?

Jeffcoat-Sacco: What we were trying to convey is that there are certain fixed costs that aren't going to fluctuate, whether we have it at 5,000 dollars or 25,000 dollars. We do hire ALJ, so there is the time is billed by the hour. We hire outside counsel in the lot of these. That's why we don't need to ask for more staff. Hopefully legal is not going to have a higher rate because we have a higher minimum. The Sound equipment is another one, we make sure that the cases are recorded and docketed because there is no physical transcript from a court reporter. We now hire out inspectors on contract because volume has gone up. Those costs are relatively fixed, they fluctuate based on what the project is.

Rep. George Keiser: I don't have a lot of comfort with that.

Jeffcoat-Sacco: That's a legitimate concern, we are very careful to watch for it. I will introduce Mr. Fahn, Public Service Commission.

Chairman Porter: Before Mr. Fahn comes up I have a question. Using Rep. George Kaiser's analogy; are you, as an agency, doing RFPs (request for proposal) to secure the contract ALJs (administrative law judges), are you using the state ALJs? How are those procured inside this process?

Jeffcoat-Sacco: For ALJs the commission does use the Central Panel Office of Administrative Hearings. They have a bargain rate compared to what I hear around the country. We use them for all of our cases. For counsel hiring an attorney is not under the state procurement rules because you want to be picking your attorney solely on bid. Both the attorneys we use most give us very good rates. We do watch that and the rates have not changed in a couple of years.

Rep. George Keiser: Do you do a scope of practice and a time parameter, do you give them some direction in terms of their work product?

Jeffcoat-Sacco: We haven't done that for the siting cases, but the internal staff does a lot if not most of the work. The internal staff writes the order, the outside counsel is reviewing it.

Rep. Roger Brabandt: Are there any other fees by any agency in the state of North Dakota that are 25,000 dollars?

Jeffcoat-Sacco: The commission has fees that are higher than that for other types of cases. I'm not familiar with other agency's fees for these types of applications.

Rep. Roger Brabandt: The people who pay these 25,000 dollar fees, are they shocked by them?

Jeffcoat-Sacco: I'm not aware of it.

Rep. Mike Nathe: How do other states compare to us?

Jeffcoat-Sacco: I don't know, but I will find out.

Patrick Fahn, Public Service Commission-Compliance and Competitive Markets Division: Regarding how we go about contracting with a third party inspector; we follow the engineering and architecture rules. In that chapter if you think the inspection will cost 25,000 dollars or less you can negotiate directly with a contractor. If it goes over 25,000 dollars then we do a request for qualification. It goes to all the entities on the list registered with the Office of Management and Budget, and then they send the qualifications to determine the best company for the work.

Chairman Porter: If I'm the company, do I have the ability to say to the commission, that's awfully high?

Fahn: After we receive the request for qualifications then we would negotiate price. We would base that negotiation for prices on what we've received in the past for similar sized projects.

Chairman Porter: However, would the company have input if they think that it's 10,000 dollars more than it should be?

Fahn: When we approve the contract it goes before the commission to for approval before they act on it so the contractor would be able to go before the commission.

Rep. George Keiser: You pay the fee up front, and then you do the contracting and the works done. So the bill is not negotiable after the fact?

Fahn: That's correct, our contracts have a fixed cap.

Rep. Roger Brabandt: What would a small construction project run?

Fahn: The smallest is about 5,000 filing fee for every 1 million dollars. The smallest projects we have are close to 5,000 dollars.

Todd Kranda, North Dakota Petroleum Counsel. We did not like the original form of the bill, I did testify against it in the senate. It was amended to satisfy our concerns and we now support the bill with the amendments.

Chairman Porter: Are there concerns by companies that the fees are getting excessive?

Kranda: I haven't had experience with small sized projects.

Rep. George Keiser: The reality is that companies are looking at this as the cost of business in North Dakota, they will pay it, they will not object to it because they are regulated by this entity. Do you think that's true?

Kranda: That's an interesting comment, we are thankful there is a cap to the fee.

OPPOSITION: None.

Chairman Porter closes hearing.

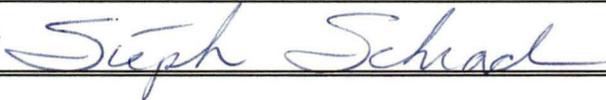
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2120
3/12/2015
Job # 24774

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees.

Minutes:

Attachments 0

Chairman Porter opens discussion.

Rep. George Keiser: I would amend this bill by taking the overstrike away from five and removing 25.

Rep. Dick Anderson: Seconds.

Rep. George Keiser: They can still charge anything between 5,000 and 1,000. They don't have to go up to 25,000, but it does provide a little bit of protection from over payment, when it may not be necessary, and waiting for a refund.

Rep. Bill Devlin: The bill only raises the minimum fee on fees that are set by statute; it doesn't change anything on the ones that are discretionary. I'm not so sure that in that case that we have to make that change, but whatever the committee wants to do is fine.

Voice vote: Carries

Chairman Porter: We have an amended bill before us.

Rep. George Keiser: I move a Do Pass as Amended.

Rep. Dick Anderson: Second.

Vote: yes 12, no 1, absent 0.

Rep. George Keiser: Carrier

Chairman Porter closes discussion.

15.8079.02001
Title.03000

Adopted by the Energy and Natural Resources
Committee

March 12, 2015

AK
3-13-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

Page 2, line 4, remove the overstrike over "five"

Page 2, line 4, remove "twenty-five"

Renumber accordingly

Date: 3/12/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 2120**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.8079.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Keiser Seconded By Rep. D. Andersen

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Void Vote
Carries

Total (Yes) _____ No _____

Absent 0

Floor Assignment Rep. -

If the vote is on an amendment, briefly indicate intent:
Page 2, line 4, remove the overstrike over "five"
Page 2, line 4, remove "twenty-five"
Renumber accordingly

Date: 3/12/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2120

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Keiser Seconded By Rep D. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunsakor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt		✓			
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2120, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2120 was placed on the Sixth order on the calendar.

Page 2, line 4, remove the overstrike over "five"

Page 2, line 4, remove "twenty-five"

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2120

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
4/2/2015
25779

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katrina Oliver

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees

Minutes:

Senator Laffen called the conference committee on SB 2120 to order, roll was taken and all members were present.

Senator Laffen: The House amendments to this bill are pretty simple; the only thing we are debating is the application minimum fee. It started at \$5,000, the Senate raised it to \$25,000 based on testimony that we heard and the House set it back to \$5,000. What did you hear in the House that lead you to believe that was a good idea?

Representative Froseth: What I heard was that there are a lot of small projects that don't cost the Public Service Commission \$5,000 and it seemed like there was not much reason to raise the minimum because I think that they are able to access actual charges that they have in conducting the siting and configuration so forth to review the sighting that is being asked for. \$25,000 for a small contractor to come up with and have the Public Service Commission hold that amount until the bills are finalized and then return what is unused we didn't see the point in raising the minimum.

Senator Hogue move that the Senate accede to the House amendments with a second by Representative Lefor.

Senator Triplett: I think that we need a little more discussion on this, my recollection was that we heard from the Public Service Commission that their minimum fees virtually always were well over \$20,000 and we amended the bill to take out the small things that some people objected to which are the modest changes to corridors to avoid small issues. For the projects that were being discussed by the Public Service Commission they had a pretty clear listing of fees and services that they said always ended up being more than that.

Senator Laffen: Do you remember as the bill was amended by the House, is the range now between \$5,000-\$100,000 so does the Public Service Commission really have the latitude to set that now.

Representative Lefor: I believe they do.

Senator Laffen: As I read it now it seems like there is a range and the Public Service Commission can set the fee.

Senator Triplett: They felt like they didn't have the authority to set the fee without our permission so unless I am not seeing something that the House did.

Senator Laffen: The House just put it back to where it was and it seems like the minimum fee was \$5,000 so they always had to ask for that amount. They can still access a \$25,000 if they wish to my understanding.

Senator Triplett: That is not how it was presented to us that I recall. It was that the minimum was the minimum and that is what they had to go with until things were expended. Maybe we need to get someone from the Public Service Commission down here.

Representative Froseth: They calculate what cost they will have to grant that siting request and they will determine what those costs are and set their siting fee at that. They have had one instance that cost them \$110,000 it seems to me that changing the upper limits is where to go but they didn't ask for that.

Representative Lefor: I think that taking up to \$25,000 and for smaller projects \$6,000 the company would have to come up with \$25,000 and we didn't feel it was fair.

Senator Laffen: If I understand right that works differently than the section we dealt with.

Senator Triplett: That is the one we dealt with at the request of Mr. Kranda his concern being the small variances in already sited corridors that if they were making a change generally at the request of a landowner and had to go through this large process they likely wouldn't do it and the Public Service Commission willingly agreed to take that section out. I don't think that the Public Service Commission would have brought this bill if they didn't feel like they needed it.

Senator Laffen: The original statute says the application fee under the section may not be less than \$5,000 no more than \$100,000. Unless somebody can explain that.

Representative Hunskor: Reading my notes I had in there a discussion on the \$5,000 and then what was possible that the Public Service Commission had. They can change.

Senator Triplett: I think that we should check with the attorney at the Public Service Commission before we vote.

Senator Hogue then withdrew his motion and Representative Lefor removed his second.

Senator Laffen then closed the conference committee on SB 2120.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
4/6/2015
25820

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katrina Oliver

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees

Minutes:

1 Attachment

Senator Laffen called the committee to order, roll was taken and all committee members were present besides Senator Triplett.

Senator Laffen: I think that we wanted to hear from Illona Jeffcoat-Sacco on this bill.

Illona Jeffcoat-Sacco: Public Service Commission. See attachment #1.

Senator Laffen: The one issue that we are debating is the change in the application fee. We had heard testimony of raising the bottom limit of the fee up to \$25,000 and the House put it back to \$5,000. Explain all of that to us.

Illona Jeffcoat-Sacco: I did talk about this issue with the Public Service Commission; there are 2 types of fees in the statute: mandatory fees, they are set by the amount of investment. The reason we asked to raise the minimum is that sometimes we adjust down as much as possible so we do not have to take a hit. There are situations that we expect that minimum not to cover the fixed cost. There is no discretion in those three things, they are set in statute, based on investment, maximum and minimum; the testimony that you are recalling is how we set the \$25,000 we had talked about a range of cost for publishing notice. If you have a long pipeline that goes through eight counties you need to publish notices in eight papers twice that will have a bigger investment too. Travel costs, 3 commissioners, an engineer or analysis, an attorney, an administrative law judge, the services of the administrative law judge which we pay for by the hour, the services of outside council that we pay by the hour, sound equipment professionals for a good electronic recording. Engineering outsourcing on the back end, that is going out and walking the line and that is fairly new to outsourcing and it is impossible to do it ourselves. These are more proactive responses. The rest of the bill added some discretionary funds with no limit. You don't expect to those fees can be down to \$500 or \$100. Anything we do not spend is returned to the companies, I did hand out one piece of information that was requested of the committee, it is a very quick statics on the number of cases that we have from 2013-2015

and gives you the case numbers that you can see that we have a lot of cases and we do not do the legal work. A chunk of money we do to the standards that North Dakota expect. The commission simply wanted the conference committee to know we are willing to do that if we need to. Our attempt was to not be in a bind and handle them with our own resources.

Senator Laffen: If we leave the law as is doesn't the Public Service Commission have the ability to set the application fee between \$5,000-\$100,000?

Illona Jeffcoat-Sacco: The fees are set in 49-22-22 and says shall pay an amount equal to \$500 for every \$1,000,000 and in some cases where that comes to \$50,000 and we Called the committee to order on outsource some of the work we might not be able to make it for \$5,500.

Senator Laffen: There is a formula, you calculate it out and that becomes the fee.

Illona Jeffcoat-Sacco: Yes, the last 2 are discretionary fees.

Senator Laffen: Raise the minimum to always be able to cover the costs.

Illona Jeffcoat-Sacco: I can't say they are less than \$25,000 but we are concerned that since prices are going up we will not be able to do it. In theory all the fees are supposed to be covered.

Representative Lefor: There is need for reclamation funding so in the discussions that we have had I would like to offer an amendment on page 2 line 4 strike the word 5 and put in the 10

Representative Hunskor: Second

Senator Hogue: If we set this at 5 or 10 or 25 it doesn't affect what the person will pay, its admin to collect upfront and to pay for admin law judge and to remit whatever is the balance in the end.

Illona Jeffcoat-Sacco: That is substantially correct, it affects them a tiny bit but they would eventually get back anything that was unspent.

Senator Hogue: If we raised it to 10 can you estimate how many are not adequate for \$10,000.

Illona Jeffcoat-Sacco: We really didn't have specifics; the staff managing of the position is managing to fit the funds that are available. I think that it is the outsourcing but the decision would change depending on if we had enough money or not. If you do it in house it will take longer, in addition to thinking of dollars and not adding FTEs think about processing time. We process them in a very reasonable timeframe. If we cannot outsource we cannot make it happen.

Senator Hogue: Do you have any significant uncollected fees that have not been paid by the applicant?

Ilona Jeffcoat-Sacco: We do for telephone, in the sighting situation there is no letter going out bit right now just the telephone. We get the fee, draw down special code and have a remaining balance.

There was no further discussion, roll was taken, the motion passed on a 5-0-1 count with Senator Hogue carrying the bill to the floor of the Senate and Representative Froseth carrying it to the floor of the House.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
4/16/2015
26158

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees

Minutes:

1 Attachment

Senator Laffen called the conference committee on SB 2120 to order, roll was taken and all committee members were present.

Senator Laffen: This bill has cleared both chambers, another issue came up and it was bought back. Since it was brought back an amendment was written, see attachment #1.

Brian Kalk: Over the last 48 hours the Commission has spent a lot of time with ourselves, industry and staff trying to walk through the intent of this to make sure that we do it correctly. The intent is, from the industry and the Public Service Commission, if we have a hearing and we establish the pipeline if the company wants to come back to and new pipelines to it that is something that we should do with the intent of the footprint law. The amendment that you are looking at right now we have made some tweaks on that, if we can work with it a little bit more we would have the final product for you in a day or so. The challenge for the language is unless you clarify just correctly you can approve the pipeline corridor under the intent that it is for a pipeline but someone could put a refinery inside of it or a wind turbine far inside of it, if it would happen or not is questionable but that is why we would like the extra time. That is the intent of what we are trying to get to, if there is questions on the intent or guidance in this committee that would be helpful.

Representative Froseth: When you talk about intent and you issue a sighting for a pipeline do you record intent for the use of that corridor? If you talk about using it in a similar way and someone wants to put a wind tower in the corridor would it be outside the intent you have sighted.

Brian Kalk: That is the crux of the problem right now. If we approve a pipeline for 12' to move crude down the line if we approve the corridor, in the previous footprint law, you can do certain things in it so we restricted that in some of our orders. The reprint law from last session gave more flexibility to put things inside the corridor. I think that is the consternation that we are going through right now. Two sessions ago the intent was that

you need to prove that you can put these things inside it. This has come back up because the intent has a lot of grey area right now which is what we are trying to clarify in this. We restrict it down very tightly so you can only do 100,000,000 cubic feet per day.

Senator Triplett: You have mentioned twice tightening things up from the original footprint bill and you suggested that the Public Service Commission maybe did something inappropriate. Can you give us an example of what you think you did that is inappropriate?

Brian Kalk: I do not want to use the term inappropriate. When the footprint law came out we felt it was very broad, the legislative intent was never that if you got approved a corridor for a powerline and all of a sudden you would see pipelines popping up. What we did was in put in our certification document ask the companies not to put other things in the corridor without letting us know. That ended up happening for all types of facilities, my example of the gas plant; they approved a gas plant, signed the certificate, which is contrary to what the intent of the law might have been if they would have wanted to expand that facility. We did it with the right intent but not fully understanding the implications all the way down. That became clear to me just a few days ago. So we were protecting against building non-pipeline infrastructure but in doing so might have restricted some of the gas plants opportunities to expand.

Senator Triplett: What I thought heard you saying were not inappropriate at all. No one thought that it would provide for the 2 mile wide corridor and not just anything that anyone wants to do with their corridor. I am comfortable letting you work an extra day in terms of the like/kind activities but it seems to me that within the like/kind activities that there might be an argument for additional consideration and I am not sure I can think of them immediately but if you are doing a duplicate pipeline in the same route maybe the company decides they want to put the exposed part above the ground in a location that is not the same as the first one and the landowner might have some objections to that. Even within the lifetime facilities there is the potential for needing to consider things, please be as specific as possible and don't restrict yourself so much that you do not have leeway.

Brian Kalk: That is the crux of the discussions we are having right now, if something is built inside the corridor additionally they still have county zoning requirements that they need to follow.

Senator Hogue: As part of the process do you look at things between the company and the landowner. That could be a second source of curtailment of what the applicant can do within the corridor.

Brian Kalk: Easements are not under our jurisdiction but we always ask the question what percentage of easements that they have. IF we are doing a hearing and a company have 99% easements that is pretty good. If we are doing hearing and there are 40% easements then we start getting down a little deeper. It is not a decision factor, the percentage of easements.

Senator Hogue: I was not concerned about the percentage of easements that they have within the corridor but if the commission looked at those and saw that there were

restrictions like what we are talking about in the statute that might increase or decrease your comfort level.

Brian Kalk: I am almost 100% sure that we do not have the authority to do that. We ask the questions because it is a good indicator of support for that project.

There was no further discussion and Senator Laffen closed the conference committee on SB 2120.

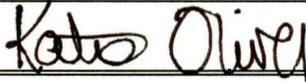
2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
4/17/2015
26201

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees.

Minutes:

3 Attachments

Senator Laffen called the committee to order, roll was taken and all members were present. Senator Laffen then handed out amendments # 15.8079.2006 and 15.8079.02007. See attachments #1 and #2.

Senator Laffen: The industry send out an email that wanted some corrections make and with that I will let Todd get up and talk

Todd Kranda: North Dakota Petroleum Council. We left the conference committee and sat down in the Public Service Commission conference room with staff, one of the commissioner present working through the language. We came up with, after much discussion; we felt the need to incorporate the second version that you have with more redundant language. I know that legislative council has taken some liberties in the revisions.

Senator Laffen: Just to clarify, the 15.8079.2006 version is that legislative council started with?

Tim Dawson: The 15.8079.2006 is the first one I did and changed and the 15.8079.02007 is the one that I put back in 2 of their changes but didn't put in the 3rd, so it isn't exactly what they want.

Todd Kranda: Neither of those is the versions that we have agreed to and we would oppose the bill's changes. We think that we have in mind, the commissioners who are not here have met and agreed to the language which is why I do not want to stray from it. we talked it through with a lot of people up there and I have the changes from the 15.8079.02006 version that I recommended. The problem is that I think that council is correct, there is some redundancy, I appreciate the efforts to try and clean it up but the problem that we have is we need clarification. Clarification means we need some redundancy and some of the terms that we have agreed to mean something to the industry and to the Public Service

Commission as to the overlapping facility types that we have tried to avoid the concerns that have got us to that point. The Public Service Commission's interpretation was very narrow to protect things, we have broadened it up but we do not want to broadened it up too much, we want to define those things.

Senator Laffen: I think that we may be able to get to that I believe version 15.8079.02007 version has everything in it that you wanted with exception of the first one. Can you fill us in on the corrections that you would like to see made and where it goes.

Todd Kranda: Mr. Dawson's 15.8079.02007 version is correct with one addition under 3a1 in front of you, and the Public Service Commission was adamant about this, after the word facility on the second line you insert a comma as defined under subsection 5 or 12 of section 49-22-03. Those are defined in that same section and they have a special meaning of intent to identify specific categories of the facilities. We need to have those categories that can't overlap, that are what this delineation is good for.

Senator Laffen: Todd do you want to walk us through what the amendment does?

Todd Kranda then explained the changes that amendment # 15.8079.2007 made to SB 2120.

Representative Lefor: You are adding the words as defined by subsection 5 and 12 of this section, correct?

Todd Kranda: 5 deals with the energy conversion facilities, there are 5 sub categories there as well and each of those 5 are intended to be a separate type of facility on a permitted location that is why we are referencing sub section 12. Subsection 12 is the gas and liquid transmission lines which are unique to themselves and that are why we are defining it that way.

Illona Jeffcoat-Sacco: Public Service Commission. Mr. Kranda is correct, we met twice, once to work out language and then once with the full commission yesterday afternoon. Commissioner Christman wanted me to point out that the concept that we all thought was happening with the original law was an improvement, and upgrade, or fixing a line. The concept of a whole new facility was something that the commission was asking companies to come back on. This is a middle ground, it allows for new facilities without new siting but not different facilities. The Commissioner Christman pointed out that there could be major changes like additional wind towers, perhaps when the original wind farms sited a certain capacity that might be doubled if there was sufficient geographical are without further siting or a whole new pipeline if it managed to fit in the same corridor. The commission understands that is the industry concept that is agreeable to it and appreciates the opportunity to work with the stakeholders to come to a conclusion that everyone is happy with.

Senator Triplett: Given that there are subsections in 5 and 12, 03 is the section and 5 and 12 are the subsections but you want to get to the level of the sub divisions so you want one more layer?

Illona Jeffcoat-Sacco: I didn't think about that until now but that bit of clarification would be helpful.

Senator Triplett: That would make me more comfortable and whatever the next levels are called.

Illona Jeffcoat-Sacco: We spent a lot of time yesterday make insure that the language was ok.

Senator Triplett: If you go to subsection 12 there are 3 different subsections. If you just get it down to the level that if you have a route to the pipeline above ground verses below ground and I think that we need to pull it down to that level.

Illona Jeffcoat-Sacco: If that is the way to do it I am all for it.

Todd Kranda: I think that is the intent so if that accommodates the language better than we are all for it.

Senator Laffen: I would like to see one more draft before we act on it.

Senator Triplett: If there are no objections I would like to read something into the record from the bill that was passed in 2011 and I think that it will be clear why when I do that.

Senator Laffen: OK.

Senator Triplett: District 18. See attachment #3.

There was no further discussion and Senator Laffen adjourned the conference committee hearing on SB 2120.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2120
4/20/2015
26270

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting application fees

Minutes:

1 Attachment

Senator Laffen called the meeting to order, roll was taken, all members were present, and amendment # 15.8079.2009. See attachment #1. Todd Kranda from the Petroleum Council and Illona Jeffcoat-Sacco from the Public Service Commission were on hand.

Todd Kranda: North Dakota Petroleum Council. Over the weekend we made a few changes but I think that we are at the final version. It would clarify what the bill was intended to do, it has been misunderstood and I think that we are on the same track now.

Illona Jeffcoat-Sacco: Public Service Commission the version 15.8079.2009 is what we are agreed to.

Senator Laffen: Questions?

Representative Froseth made a motion for the House to recede from the House Amendments and amend further with a second by Senator Hogue, there was no further discussion, roll was taken, the motion passed on a 6-0-0 count with Representative Froseth carrying the bill to the House floor and Senator Triplett carrying the bill to the Senate floor.

There was no further action and Senator Laffen dissolved the Conference Committee on SB 2120.

15.8079.02002
Title.04000

Adopted by the Conference Committee

April 6, 2015

TW
4/6/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

That the House recede from its amendments as printed on page 866 of the Senate Journal and page 1004 of the House Journal and that Engrossed Senate Bill No. 2120 be amended as follows:

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

April 20, 2015

lot 3
JD
4/20/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

That the House recede from its amendments as printed on page 866 of the Senate Journal and page 1004 of the House Journal and that Engrossed Senate Bill No. 2120 be amended as follows:

Page 1, line 1, after "subsection" insert "3 of section 49-22-03 and subsection"

Page 1, line 2, after "to" insert "the definition of construction and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries of 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) AWithin the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; ~~and~~
 - (3) The activities are for the construction:
 - (a) Of a new energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and

- (4) Before conducting any activities, the utility certifies in writing to the commission that the:
- (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and the
 - (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; and
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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."

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2120 as (re) engrossed

Senate "Enter committee name" Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Lefor Seconded by: Representative Hunskor

Senators	4/6		Yes	No	Representatives	4/6		Yes	No
Senator Laffen	X		X		Representative Froseth	X		X	
Senator Hogue	X		X		Representative Lefor	X		X	
Senator Triplett					Representative Hunskor	X		X	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 5 No: 0 Absent: 1

Senate Carrier Senator Hogue House Carrier Representative Froseth

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Page 2, line 4, remove "five" replace with "ten"

**2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2120 as (re) engrossed

Senate Energy and Natural Resources Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Froseth Seconded by: Senator Hogue

Senators	4/2 4/6 4/15 4/16 4/17/420						Yes	No		4/2 4/6 4/15 4/16 4/17 4/20						Yes	No	
Senator Laffen	x	x	x	x	x	x	X			Representative Froseth	x	x	x	x	x	x	X	
Senator Hogue	x	x	x	x	x	x	X			Representative Lefor	x	x	x	x	x	x	X	
Senator Triplett	x	x	x	x	x	x	X			Representative Hunsakor	x	x	x	x	x	x	X	
Total Senate Vote										Total Rep. Vote								

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Senator Triplett House Carrier Representative Froseth

LC Number 15.8079.02009 . _____ of amendment

LC Number _____ . 05000 of engrossment

Emergency clause added or deleted

REPORT OF CONFERENCE COMMITTEE

SB 2120, as engrossed: Your conference committee (Sens. Laffen, Hogue, Triplett and Reps. Froseth, Lefor, Muscha) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 866, adopt amendments as follows, and place SB 2120 on the Seventh order:

That the House recede from its amendments as printed on page 866 of the Senate Journal and page 1004 of the House Journal and that Engrossed Senate Bill No. 2120 be amended as follows:

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

Engrossed SB 2120 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

SB 2120, as reengrossed: Your conference committee (Sens. Laffen, Hogue, Triplett and Reps. Froseth, Lefor, Hunskor) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 866, adopt amendments as follows, and place SB 2120 on the Seventh order:

That the House recede from its amendments as printed on page 866 of the Senate Journal and page 1004 of the House Journal and that Engrossed Senate Bill No. 2120 be amended as follows:

Page 1, line 1, after "subsection" insert "3 of section 49-22-03 and subsection"

Page 1, line 2, after "to" insert "the definition of construction and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries of 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) AWithin the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; ~~and~~
 - (3) The activities are for the construction:
 - (a) Of a new energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that the:

- (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and the
 - (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;
and
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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."

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

Reengrossed SB 2120 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2120

Senate Bill 2120

Presented by: Illona Jeffcoat-Sacco, General Counsel
Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Donald Schaible, Chairman

Date: January 15, 2015

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Public Service Commission asked me to testify today in support of Senate Bill 2120, introduced at our request.

The Public Service Commission implements Chapter 49-22, the North Dakota Energy Conversion and Transmission Facility Siting Act (Siting Law), to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. The Commission's procedure for siting applications for facility construction most often includes a hearing that is required to be held in the county or counties where the project will take place. Many of the projects are located in the northwestern counties of North Dakota, the Bakken area.

The bill as introduced has three purposes. After discussion with stakeholders, the Commission is proposing some changes to the language to better meet the purposes we intended while not negatively impacting stakeholders. A proposed amendment is attached, and will be discussed below.

The bill removes two references to the Federal Energy Regulatory Commission uniform system of accounts that are irrelevant. We frankly are not sure why these were ever in the law.

The bill also authorizes the Commission to impose a fee, at its discretion, for filings under a provision passed by the 2013 Legislature that governs permissible changes to pipeline routes after receipt of a siting certificate, but before construction is complete (Section 49-22-16.3).

Finally, the bill raises the minimum siting application fee from \$5,000 to \$25,000.

The Siting Law currently requires that an applicant pay an application fee to the commission with the filing of an application. The application fee is used to pay expenses incurred by the Commission in the siting process. The application fee varies based on the investment by a utility in the proposed facility, but includes a minimum fee of \$5,000.

For smaller projects, a minimum fee allows the Commission to pay expenses that will be incurred regardless of project size. These include publication of the notice of hearing twice in each impacted county's official newspaper (\$350 to \$1,000); transportation to the hearing site for 3 Commissioners, a Commission analyst, Commission counsel, and an Administrative Law Judge (\$3,000 to \$3,600); and the cost of services provided by the Administrative Law Judge (\$2,200 to \$3,200), legal counsel for the Commission (\$2,000 to \$3,500), and sound equipment professionals (\$2,500). In addition, the Commission procures the services of engineering/environmental

consultants for inspection services during project construction and post-construction reclamation (\$5,000 to \$7,500). These expenses total \$15,050 to \$21,300 and will likely increase going forward.

The \$5,000 minimum application fee was established by the 1975 Legislative Assembly and, due to increases in costs, the Commission needs an increase in the minimum application fee. This bill increases the minimum application fee to \$25,000.

The Commission is proposing an amendment to the bill to clarify when under section 49-22-16.3 a fee might be imposed, and to remove the minimum fee for projects for which the Commission has discretion in setting the fee. If the Commission has discretion to set the fee, it would be inconsistent to impose a minimum fee. Consequently, the amendment revises the bill so the minimum fee applies only to applications for certificates of site compatibility and corridor compatibility, and waiver applications.

The proposed amendment also corrects a typographical error in the original bill.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

PREPARED BY PUBLIC SERVICE COMMISSION
January 15, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2120

Page 1, line 24, after the first "or" insert "that must obtain siting authority under"

Page 1, line 24, replace "subsections" with "subdivision b of subsection"

Page 1, line 24, after the second "or" insert "subdivision b of subsection"

Page 1, line 24, replace "42-22-16.3" with "49-22-16.3"

Page 2, line 3, after "under" insert "subdivisions a, b, and c of"

Renumber accordingly

**Testimony in Opposition to
SENATE BILL NO. 2120
Senate Energy and Natural Resources Committee
January 15, 2015**

Chairman Schaible, Senate Energy and Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Kelsch Ruff & Kranda Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to oppose SB 2120.

The North Dakota Petroleum Council represents more than 500 companies involved in all aspects of the oil and gas industry in North Dakota and has been representing the industry since 1952.

The North Dakota Petroleum Council is opposed to SB 2120 because it unnecessarily establishes a \$25,000 fee for the submission of a certification under Section 42-22-16.3 (2) and (4) NDCC to the Public Service Commission by a company that wants to make a voluntary route adjustment before or during construction. Copy of Section 49-22-16.3 NDCC attached along with two diagrams as an example of the type of route adjustment involved.

Some of you may recall that Section 42-22-16.3 NDCC was established in the 2013 Session by HB 1147. That law creates a specifically defined and timely process for a company to follow in order to make a route adjustment and deviation before and during the construction process which change in the route would vary

from the approved route and corridor.

These route adjustment situations will typically occur in order to accommodate a landowner's situation and circumstances. The two subsections of Section 49-22-16.3 that are referenced within the SB 2120 are situations in which the route adjustment may affect an avoidance area. See attached copy of Section 69-06-08-02(2) NDAC for a list of the avoidance areas.

In response to the filing of the certification with the required supporting documents, the Public Service Commission may either provide written authorization for the route adjustment, fail to act within ten days and then the route adjustment would be deemed to have been approved, or not authorize the impact with the route adjustment at which point the company would need to proceed to obtain siting authority for the proposed route adjustment. Until and unless something more than a review of the certification is completed, the Public Service Commission should not require the filing of a fee with the route adjustment certification material.

Also, the proposed fee of \$25,000 for a route adjustment process is substantially more than should be allowed, if any amount is required. Most likely the company would simply decide to withdraw the certification and not proceed with the additional cost and time delay to the project that it would take to get the voluntary route adjustment formally approved.

The Public Service Commission does not need to impose a \$25,000 fee on the applicant when filing the certification for the voluntary route adjustment. In fact, as explained, the process with the certification envisions a prompt and timely process in which the Public Service Commission affirmatively approves, does not act within ten days resulting in an approval or rejects the proposed route adjustment based on a review of the certification filing that is completed by the company.

In conclusion, SB 2120 is inappropriate and adds an unnecessary expense which could actually create more problems when a company and landowner are simply trying to accommodate and resolve each others concerns with a route adjustment from the approved and permitted route within the parameters, conditions and requirements under the current law for such an adjustment.

Accordingly, I would urge a **DO NOT PASS** recommendation for **SB 2120** and I would be happy to try to answer any questions.

49-22-16.3. Route adjustment before or during construction for gas or liquid transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
 - (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
 - b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion or avoidance areas;
 - (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (3) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.

4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion areas;
 - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
 - (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission may not be required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

69-06-08-02. Transmission facility corridor and route criteria. The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. 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. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
- b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
- c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
- d. Areas critical to the life stages of threatened or endangered animal or plant species.
- e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
- f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
- g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.

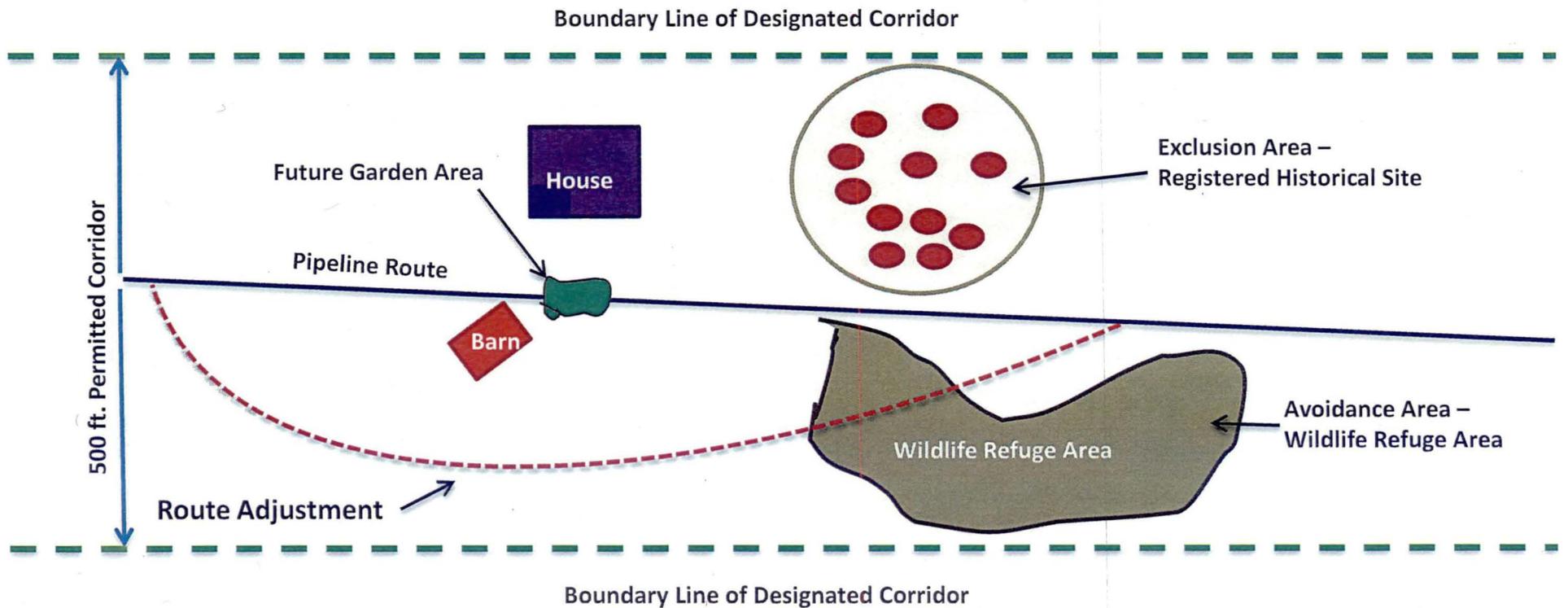
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission 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 routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
- b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
- c. Historical resources which are not specifically designated as exclusion or avoidance areas.
- d. Areas which are geologically unstable.
- e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
- f. Reservoirs and municipal water supplies.
- g. Water sources for organized rural water districts.
- h. Irrigated land. This criterion shall not apply to an underground transmission facility.

Section 2, Subsection 2

Route Adjustment within Designated Corridor

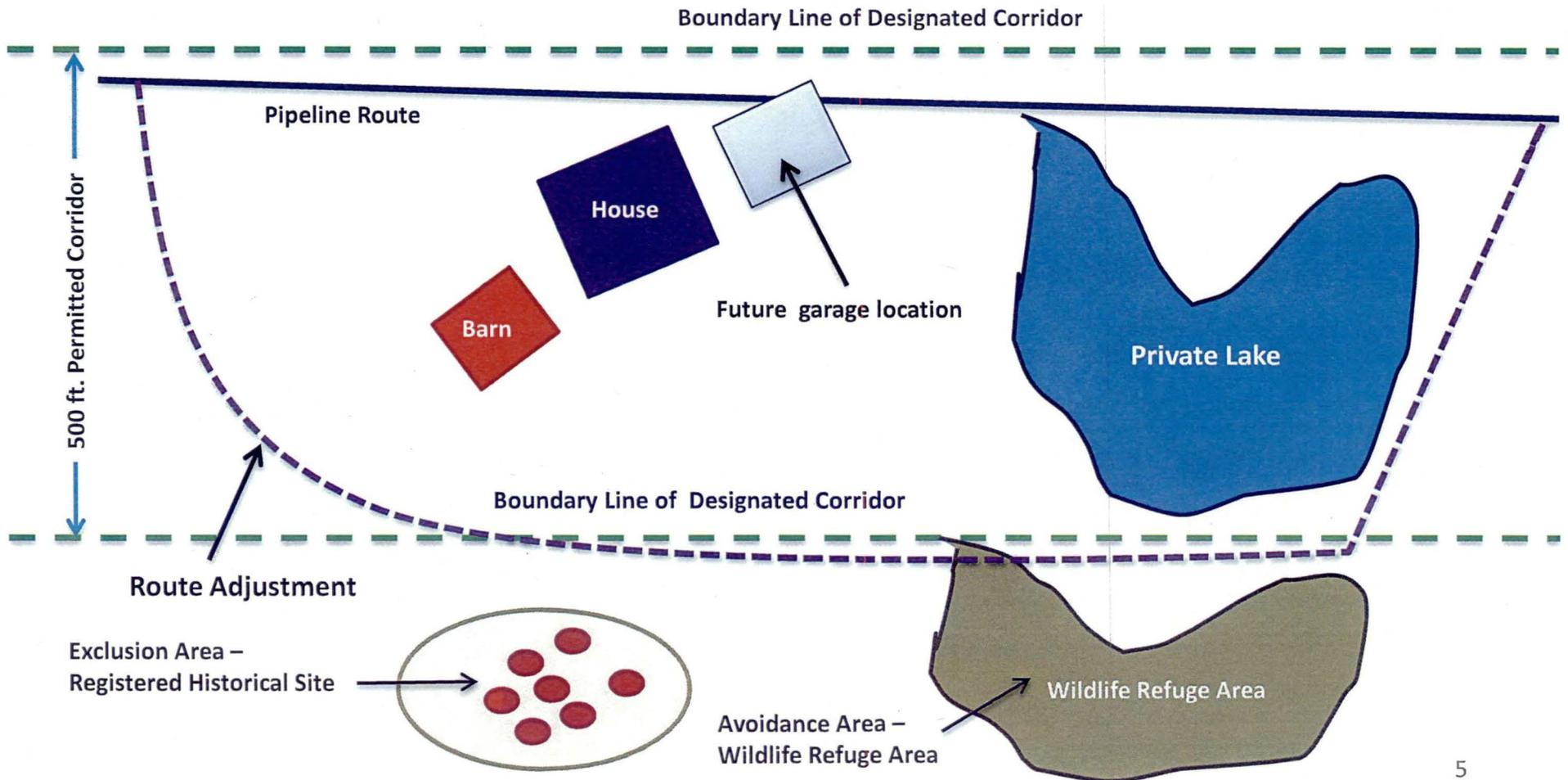
May Affect Avoidance Area



Section 2, Subsection 4

Route Adjustment outside Designated Corridor

May Affect Known Avoidance Area



1

Senate Bill 2120

Presented by: Illona Jeffcoat-Sacco, General Counsel
Public Service Commission

Before: House Energy and Natural Resources Committee
The Honorable Todd Porter, Chairman

Date: March 5, 2015

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Public Service Commission asked me to testify today in support of Senate Bill 2120, introduced at our request.

The Public Service Commission implements Chapter 49-22, the North Dakota Energy Conversion and Transmission Facility Siting Act (Siting Law), to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. The Commission's procedure for siting applications for facility construction most often includes a hearing that is required to be held in the county or counties where the project will take place. Many of the projects are located in the northwestern counties of North Dakota, the Bakken area.

The bill as introduced has three purposes. The bill removes two references to the Federal Energy Regulatory Commission uniform system of accounts that are irrelevant. We frankly are not sure why these were ever in the law.

Secondly, existing statutory language allows the Commission to impose a fee for certain types of filings that may or may not incur expenses. For these types of cases (represented by subsections d and e of the application fee section covering transfer applications and "footprint" filings), the Commission has authority to assess a fee after the Commission has determined that processing costs will be incurred. The bill before you adds to this authority, allowing the Commission to impose a fee for filings under a provision passed by the 2013 Legislature that governs permissible changes to pipeline routes after receipt of a siting certificate, but before construction is complete (Section 49-22-16.3).

Finally, the bill raises the minimum siting application fee from \$5,000 to \$25,000, but only for fees set by statute. Under this bill, there is no statutory minimum for fees that are discretionary with the Commission.

The Siting Law currently requires that an applicant pay an application fee to the commission with the filing of an application. The application fee is used to pay expenses incurred by the Commission in the siting process. The application fee varies based on the investment by a utility in the proposed facility and includes a minimum fee of \$5,000 and a maximum fee of \$100,000. It is important to note, however, that for any siting fee, whether statutory or designated by the Commission, the amount not spent on processing the case is refunded to the applicant.

The bill increases the minimum fee to allow the Commission to cover expenses that will be incurred regardless of project size. These include:

- publication of the notice of hearing twice in each impacted county's official newspaper (\$350 to \$1,000);
- travel costs for 3 Commissioners, a Commission analyst, Commission counsel, and an Administrative Law Judge (up to \$3,600);
- the cost of services provided by:
 - the Administrative Law Judge (\$2,200 to \$3,200),
 - legal counsel for the Commission (\$2,000 to \$3,500), and
 - sound equipment professionals (\$2,500).
 - engineering/environmental consultants for inspection services during project construction and post-construction reclamation (\$5,000 to \$7,500).

These expenses can reach \$15,050 to \$21,300 and will likely increase going forward.

The \$5,000 minimum application fee was established by the 1975 Legislative Assembly and, due to increases in costs, the Commission needs an increase in the minimum application fee. The minimum application fee in siting cases that are certain to result in processing costs should at least be high enough to cover the cost of a small siting project in northwest North Dakota for which the proposed route may involve two counties. This bill increases the minimum nondiscretionary application fee to \$25,000.

In siting cases that were decided since January 1, 2012, and that required processing costs, the processing costs have ranged from \$14,000 to \$93,000. One application processed by the Commission in 2008 cost approximately

\$110,000. We are unable to provide an average processing cost for applications in recent history because many of the applications filed in the past year or so continue to incur costs for construction inspection services.

The larger number provided in the testimony for each cost represents an estimate of the Commission's cost to process an application for a small siting project in northwest North Dakota for which the proposed route involves two counties. The smaller number for each cost represents an estimate of the Commission's cost to process an application for a small siting project in northwest North Dakota for which the proposed route involves one county.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.



Public Service Commission State of North Dakota

COMMISSIONERS

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Brian P. Kalk

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6 April 2015

The Honorable Lonnie J. Laffen, Chairman
SB 2120 Conference Committee
North Dakota Legislature
600 East Boulevard Avenue
Bismarck, ND 58505

Attachment 1

Re: Minimum Siting Fee

Dear Chairman Laffen:

In response to a request from the Conference Committee, enclosed is information on the number and type of siting cases handled in 2013, 2014, and 2015.

If you need additional information please let me know.

Best regards,

Illona A. Jeffcoat-Sacco
General Counsel

c w/encl: Senator David Hogue
Senator Connie Triplett
Representative Glen Froseth
Representative Mike Lefor
Representative Bob Hunskor

Siting Cases 2013-2015 (as of 4/2/15)

	<i>Pipeline</i>	<i>Electric Transmissio</i>	<i>Gas Plant</i>	<i>Wind Farm</i>	<i>Energy Facility</i>	<i>Totals by year</i>					
2013	13-848	5	13-840	2	13-835	1	13-127	3	0	11	
	13-825		13-103				13-088				
	13-799						13-064				
	13-136										
	13-022										
2014	14-842	10	14-813	3	14-853	3	14-679	2	14-852	2	20
	14-840		14-121		14-764		14-105		14-829		
	14-823		14-678		14-218						
	14-769										
	14-730										
	14-689										
	14-625										
	14-254										
	12-223										
14-135											
2015	15-114	5		0		0	15-124	2		0	7
	15-097						15-111				
	15-035										
	15-031										
	15-032										
Total by type	20	5		4		7		2		<u>38</u>	

April 15, 2015

4-16-15
Senator Laffen
Attachment 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

That the House recede from its amendments as printed on page 866 of the Senate Journal and page 1004 of the House Journal and that Engrossed Senate Bill No. 2120 be amended as follows:

Page 1, line 1, after "subsection" insert "3 of section 49-22-03 and subsection"

Page 1, line 2, after "to" insert "the definition of construction and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries of:
 - (a) A previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, the geographic location on which the facility was built; or
 - (c) For a transmission facility constructed before April 9, 1975, 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 of an energy conversion facility or a new gas or liquid transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that ~~the~~ :
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction of an energy conversion facility or a new gas or liquid transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and the

21-01-14
noted instead
to be removed

- (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 of an energy conversion facility or a new gas or liquid transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing 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."

Page 2, line 4, replace "twenty-five" with "ten"

Re-number accordingly

April 16, 2015

4-17-15
Attachment 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

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3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries for the construction of the same type of facility as the existing facility and the activities are:
 - (a) Within the geographic boundaries previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; ~~and~~
 - (3) The activities are for the construction of a new facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that ~~the~~:
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction of a new facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and the

- (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; ~~and~~
 - (b) The activities are for the construction of a new facility, to improve the existing facility, or to increase or decrease the capacity of the existing 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."

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

April 17, 2015

4-17-15
Attachment 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2120

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 - 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 within the boundaries of for the construction of the same type of facility as the existing facility and the activities are:
 - (a) AWithin the geographic boundaries previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; ~~and~~
 - (3) The activities are for the construction of a new energy conversion facility, for a new gas, liquid, or electric transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that ~~the~~ ;
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction of a new energy conversion facility, for a new gas, liquid, or electric

transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing facility; and the

- (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; and
 - (b) The activities are for the construction of a new energy conversion facility, for a new gas, liquid, or electric transmission facility, to improve the existing facility, or to increase or decrease the capacity of the existing 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
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- c. Incident to preliminary engineering or environmental studies."

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly

House Bill 1032

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: House Natural Resources Committee
Honorable Todd K. Porter, Chairman

Date: 9 January 2009

4-17-15
Attachment 3
Sen Triplett
SB 2120

TESTIMONY

Mr. Chairman and committee members, I am Illona A. Jeffcoat-Sacco, General Counsel for the Public Service Commission. The Commission asked me to appear today to share some of our thoughts about House Bill 1032.

The Commission's goals are aligned with what we believe are the two general purposes of the bill: to improve efficiency in constructing needed energy infrastructure upgrades and improvements, and to clearly distinguish jurisdictional and nonjurisdictional pipelines. However, we are concerned that the bill does not accomplish these purposes.

The Commission recognizes that the language proposed in Section 1 could substantially reduce the cost and time associated with expanding or upgrading energy infrastructure in North Dakota. The Commission supports this objective. However, the Commission hopes that in furthering the objective we do not threaten the state's environmental integrity or orderly energy infrastructure development.

The language on page one, lines nine and 10, is less problematic than the language on page one, lines 11 and 12, but both scenarios require some

additional statutory protections. New construction within the same footprint as that previously authorized under the Siting Act should still comply with all siting conditions imposed by law, rule or commission order. We believe the statute should require any operator intending to construct under this provision to certify ongoing compliance with our siting laws, rules and applicable orders.

Projects constructed before April 9, 1975 are currently exempt from the Siting Act, and the language on page one, lines 11 and 12 would make new construction on such a grandfathered site also exempt. The Commission finds this an unacceptable extension of the grandfathering provisions of the original law and a substantial threat to the state's environment and the integrity of our energy development. Under this proposal, an operator of a coal or gas fired power plant built before April 9, 1975 could build a nuclear power plant on that same location ***without any siting oversight!***

The Commission also recognizes the benefits of drafting a clear and easy to apply definition for jurisdictional pipelines. Due to the increased energy development activity in North Dakota, the Commission has recently faced jurisdictional questions under the Siting Act and we expect more. It may be time for revisions to the act, including a clearer, and if necessary, more precise definition of jurisdictional facilities. However, the language on page two of the bill does not accomplish this objective and causes us concern for several reasons.

The diameter and length of a pipeline have no relationship to the relevance of the Siting Act's protections. Also, if pipelines that are one mile or

less in length are exempt, the law will treat pipelines of that length differently than transmission lines of the same length, without a rational basis for doing so.

The bill's further attempt to define exempt gathering lines by referencing federal rules, laws and agency decisions does not clarify the definition of an exempt gathering line or simplify a jurisdictional determination on the matter. Rather, the proposed language may make the issue more confusing and make jurisdictional determinations more lengthy and costly.

It is usually not the best practice to use the rules or laws of other jurisdictions to define terms in North Dakota law, even though it is sometimes unavoidable. It is especially problematic for a statute to refer to other rules without referencing the specific rule that should apply. Without such a reference the definition is vague and subject to varying interpretations and applications. Likewise, referencing these specific federal laws does not help clarify the definition or simplify analysis, because the laws referenced are subject to substantial interpretation through ongoing rulemaking and case decisions. Finally, referencing decisions of a federal agency to define gathering lines further complicates and confuses the definition, because that agency is continually refining its definition of gathering lines based on the facts of each case.

The bill's language will simply not accomplish the purposes for which it was proposed, and the certainty and efficiency that both we and the operators hope to effect will not result. While the Commission and other stakeholders are working toward the same goal, more time is needed to come up with workable language. This may take a longer time than the legislative session allows. We

request an opportunity to work with interested parties toward an improved bill, and if that cannot be accomplished in the time allowed during the session, we recommend that the Siting Act be the subject of an interim study.

This concludes my testimony. I will be happy to answer any questions you may have.

April 20, 2015

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"SECTION 1. AMENDMENT. Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries 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 energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; and
 - (3) The activities are for the construction:
 - (a) Of a new energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and

- (4) Before conducting any activities, the utility certifies in writing to the commission that the:
- (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and the
 - (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; and
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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."

Page 2, line 4, replace "twenty-five" with "ten"

Renumber accordingly