2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2122

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2122
1/15/2015
22005

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to penalties for violations of the Energy Conversion and Transmission Facility Siting Act under chapter 49-22.

Minutes:

2 Attachments

Chairman Schaible opened the hearing.
Illona A. Jeffcoat-Sacco from the Public Service Commission was present to testify on the bill. See attachment #1.

Senator Triplett: Can you give us give us examples of what a violation might look like?
Illona A. Jeffcoat-Sacco: There are many because there are a lot of standards in the sighting act, in the commission's rules and then in the commission's orders that are implementing those rule. Technically speaking not doing anyone of those things it could be a violation.

Senator Triplett: Do you have any sense what the policy reason might be to exclude this?

Illona A. Jeffcoat-Sacco: I can't say for sure but not in the Public Service Commission. I can tell you that it has been in there since its inception in the mid-1970s. It might be logical that it might be the same concept.

Brian Kaulk: Public Service Commission The commission has been working hard on pipeline safety that they are installed correctly and that they are properly maintained. This is our first look at what we can enforce. We do have the ability to enforce what we have under the law.

Chairman Schaible: Did you consider defining 'willful"

Brian Kaulk: From my viewpoint it is not our job to define 'willful'.

Todd Kranda: Attachment #2

Senator Triplett: Do you have any concern that 'willful' is not defined.

Todd Kranda: I do not have any concern about that.

Shane Goettle: Montana Dakota Utilities We think that there needs to be some standard in the civil provisions. We need some standard of conduct here.

Senator Triplett: What does 'booking a liability' mean?

Shane Goettle: If there were a paperwork mistake the willful standards that are there right now is something that can internally turn itself into a liability.

There was no further discussion and the hearing was closed.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2122
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22038

☐ 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:

A motion for a Do Not Pass was made by Senator Armstrong with a second by Vice Chair Unruh. There was no other discussion, roll was taken and the motion passed 6-0-1 with Senator Laffen absent. The vote was left open and Senator Laffen voted once he returned to the room. The final vote was 7-0 with Senator Armstrong caring the bill to the floor.

Date: 1-15-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2122

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Armstrong Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 7 No 0

Absent

Floor Assignment Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2122: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2122 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2122

Attachment 1
Page 1

Senate Bill 2122

Presented by: **Illona A. 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 2122, introduced at our request.

The Public Service Commission implements the state's Energy Conversion and Transmission Facility Siting Act (Siting Act), North Dakota Century Code Chapter 49-22. Chapter 49-22 includes civil penalties of up to $10,000 per violation, per day, for willful violations. Chapter 49-22 does not allow the Commission any discretion to enforce violations for culpability that is other than willful, and willful is not defined in Chapter 49-22.

The Public Service Commission's general penalty authority, applicable to most of the Commission's jurisdiction, is found in North Dakota Century Code Chapter 49-07. Chapter 49-07 allows wide enforcement discretion to the Commission for varying degrees of culpability, and includes a substantially smaller maximum civil penalty. However, Chapter 49-07 currently is not applicable to siting law violations, and consequently, the only siting law violations for which a penalty can be imposed are willful violations.

The Commission recognizes that some stakeholders are opposed to the bill because they do not want the Commission to have the more general enforcement authority afforded by Chapter 49-07. The Commission believes the general enforcement authority afforded by Chapter 49-07 will provide an additional useful tool to assist the Commission in implementing the purpose of the Siting Act, as stated in Section 49-22-02, "to ensure that the location, construction and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and the citizens of this state" . . . .

Upon further review and discussion, the Commission has concluded that this bill is not essential in order for the Commission to enforce the Siting Act and penalize violators when such penalties are merited. However, passing this bill would provide more discretion to so, and clearer direction by policy makers about culpability thresholds for these violations.

The Commission will continue to carry out its responsibilities under that act with whatever resources the Commission has available to it. However, if policy makers want to ensure that the Commission has full discretion to implement and enforce the state's siting policy, we recommend passing this bill, so the enforcement tools in Chapter 49-07 are available to the Commission when a Siting Act enforcement issue arises.

The Commission recommends that this siting exception to the Commission's general enforcement authority be removed from law, to permit the Commission more discretion in enforcing the Siting Act. This would include more

discretion regarding whether or not to bring an enforcement action, and regarding what penalty to impose if a violation is found.

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

Attachment 2
Page 1

Testimony in Opposition to

SENATE BILL NO. 2122

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 2122.

As you may know, the North Dakota Petroleum Council represents more than 500 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota and has been representing the industry since 1952.

The North Dakota Petroleum Council is opposed to SB 2122 because it unnecessarily establishes a second civil penalty provision for a specific Chapter within Title 49 (Public Utilities), namely Chapter 49-22 NDCC (Energy Conversion and Transmission Facility Siting Act), by making a cross reference to that Siting Act within Section 49-07.01.1 NDCC (See Page 1 line 11).

There already exists a specific penalty statute, which includes a civil penalty provision, within Chapter 49-22 NDCC regarding the Energy Conversion and Transmission Facility Siting Act, namely Section 49-22-21 NDCC, see copy

attached.

Section 49-22-21 sets forth specific penalties and includes within subsection (3) a civil penalty of up to ten thousand dollars ($10K) for each violation with an aggregate not to exceed two hundred thousand ($200K) for any related series of violations.

SB 2122 also creates a concern that the cross referenced second civil penalty provision for a Chapter 49-22 Siting Act violation does not have a specific standard of conduct that would be necessary before a violation is subject to a civil fine. SB 2122 would set up a "strict liability' standard for imposing the second civil penalty. The current civil penalty within Chapter 49-22 does have a requirement that the person wilfully engage in the conduct before a violation is subject to the imposition of a civil penalty which is fair and appropriate approach.

In conclusion, SB 2122 is simply not needed and could actually create more confusion because there is a second civil penalty provision with a different standard of conduct. Accordingly, I would urge a **DO NOT PASS** recommendation for **SB 2122** and I would be happy to try to answer any questions.

CHAPTER 49-22
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT

49-22-01. Short title.

This chapter may be cited as the "North Dakota Energy Conversion and Transmission Facility Siting Act".

49-22-20. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of a transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22-16.1.

49-22-21. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an energy conversion facility or transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an energy conversion facility or transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
   a. Begins construction of an energy conversion facility or a transmission facility without having been issued a certificate or permit pursuant to this chapter.
   b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
   c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
   d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

   The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise shall be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.
4. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.