

**HOUSE BILL NO. 1144**

Introduced by

Representatives Keiser, Mock, Seibel

Senators Armstrong, Kreun, Oban

1 A BILL for an Act to create and enact section 49-22-08.2 and chapter 49-22.1 ~~and section~~  
2 ~~49-22-08.2~~ of the North Dakota Century Code, relating to gas and liquid energy conversion, gas  
3 and liquid transmission facility siting, and combining application; to amend and reenact sections  
4 11-09.1-04, 17-05-09, and 32-15-21, subsection 18 of section 38-08-02, sections 49-07-01.1,  
5 49-21.1-01.1, 49-22-03, 49-22-04, 49-22-05.1, 49-22-07, and 49-22-07.2, subsection 1 of  
6 section 49-22-08, sections 49-22-08.1, 49-22-09, 49-22-09.1, 49-22-14, 49-22-16, 49-22-17,  
7 49-22-19, 49-22-20, and 49-22-21, subdivision e of subsection 1 of section 49-22-22,  
8 subsection 2 of section 49-22-22, subsection 1 of section 54-17.7-08, and section 61-24.3-03 of  
9 the North Dakota Century Code, relating to energy conversion and transmission facility siting; to  
10 repeal sections 49-22-01, ~~49-22-02~~, and 49-22-16.3 of the North Dakota Century Code, relating  
11 to energy conversion short title, ~~energy conversion statement of policy~~, and route adjustment  
12 before or during construction for gas or liquid transmission line; to provide a continuing  
13 appropriation; and to provide a penalty.

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

15 **SECTION 1. AMENDMENT.** Section 11-09.1-04 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **11-09.1-04. Ratification by majority vote - Supersession of existing charter and**  
18 **conflicting state laws - Filing of copies of new charter.**

19 If a majority of the qualified electors voting on the charter at the election vote in favor of the  
20 home rule charter, it is ratified and becomes the organic law of the county on the first day of  
21 January or July next following the election, and extends to all its county matters. The charter  
22 and the ordinances made pursuant to the charter in county matters must be liberally construed  
23 to supersede within the territorial limits and jurisdiction of the county any conflicting state law  
24 except for any state law as it applies to cities or any power of a city to govern its own affairs,

1 without the consent of the governing body of the city. The charter may not authorize the  
2 enactment of ordinances to diminish the authority of a board of supervisors of a township or to  
3 change the structure of township government in any organized civil township, without the  
4 consent of the board of supervisors of the township. No ordinance of a home rule county shall  
5 supersede ~~sections~~ sections 49-22-16 and 49-22.1-08 49-22.1-12. One copy of the charter as  
6 ratified and approved must be filed with the secretary of state; one with the recorder for the  
7 county, unless the board of county commissioners designates a different official; and one with  
8 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial  
9 notice of the charter.

10 **SECTION 2. AMENDMENT.** Section 17-05-09 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **17-05-09. Public service commission jurisdiction and consultation.**

- 13 1. The authority and the transmission facilities built under this chapter, until sold or  
14 disposed of by the authority, are exempt from the provisions of title 49 except for  
15 ~~chapter~~ chapters 49-22 and 49-22.1. Upon sale or disposal by the authority,  
16 transmission facilities built under this chapter are subject to the provisions of title 49.  
17 2. The authority shall consult with the public service commission with respect to the rates  
18 charged by the authority for use of its transmission facilities and such rates must  
19 thereafter be considered just and reasonable in proceedings before the public service  
20 commission pursuant to section 49-05-06.  
21 3. The authority shall conduct its activities in consultation with transmission providers,  
22 wind interests, the lignite research council, and other persons having relevant  
23 expertise.

24 **SECTION 3. AMENDMENT.** Section 32-15-21 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **32-15-21. Power of court.**

- 27 1. The court shall have power:  
28 a. To regulate and determine the place and manner of making connections and  
29 crossings, or of enjoying the common use mentioned in subsection 6 of section  
30 32-15-04.

1           b. To hear and determine all adverse or conflicting claims to the property sought to  
2           be condemned and to the damages for the property.

3           c. To determine the respective rights of different parties seeking condemnation of  
4           the same property.

5           2. Notwithstanding any other provision of law, if a route permit is required under  
6           ~~chapter~~chapters 49-22 or 49-22.1, the court may order the taking by eminent domain  
7           conditioned on the receipt of the route permit.

8           **SECTION 4. AMENDMENT.** Subsection 18 of section 38-08-02 of the North Dakota  
9           Century Code is amended and reenacted as follows:

10          18. "Underground gathering pipeline" means an underground gas or liquid pipeline with  
11          associated above ground equipment which is designed for or capable of transporting  
12          crude oil, natural gas, carbon dioxide, or water produced in association with oil and  
13          gas which is not subject to chapter ~~49-22~~49-22.1. As used in this subsection,  
14          "associated above ground equipment" means equipment and property located above  
15          ground level, which is incidental to and necessary for or useful for transporting crude  
16          oil, natural gas, carbon dioxide, or water produced in association with oil and gas from  
17          a production facility. As used in this subsection, "equipment and property" includes a  
18          pump, a compressor, storage, leak detection or monitoring equipment, and any other  
19          facility or structure.

20          **SECTION 5. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is  
21          amended and reenacted as follows:

22          **49-07-01.1. Violation of statute, commission order, or commission rule - Assessment**  
23          **of civil penalty.**

24          Any person who violates any statute, commission order, or commission rule which applies  
25          to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25,  
26          and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22, ~~49-22.1~~, and 49-23, ~~shall,~~  
27          in addition to any other penalty provided, ~~be~~is subject to a civil penalty of not to exceed five  
28          thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is  
29          subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall  
30          develop policies for the assessment of penalties under chapter 49-23 which will take into  
31          consideration the severity of damages and the conduct of the offender. The civil penalty may be

1 compromised by the commission. The amount of the penalty when finally determined or agreed  
2 upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

3 **SECTION 6. AMENDMENT.** Section 49-21.1-01.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **49-21.1-01.1. Electricity transmission and distribution lines - Differentiation.**

6 Except for purposes of transmission facility siting under ~~chapter~~ chapters 49-22 and 49-22.1,  
7 and regulatory accounting including the determination of the demarcation between federal and  
8 state jurisdiction over transmission in interstate commerce and local distribution, for purposes of  
9 this title and chapter 57-33.2, lines designed to operate at a voltage of 41.6 kilovolts or more are  
10 transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are  
11 distribution lines.

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

14 **49-22-03. Definitions.**

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

- 16 1. "Certificate" means the certificate of site compatibility or the certificate of corridor  
17 compatibility issued under this chapter.
- 18 2. "Commission" means the North Dakota public service commission.
- 19 3. "Construction" includes any clearing of land, excavation, or other action that would  
20 affect the environment of the site after April 9, 1975, but does not include activities:
- 21 a. Conducted wholly within the geographic location for which a utility has previously  
22 obtained a certificate or permit under this chapter, or on which a facility was  
23 constructed before April 9, 1975, if:
- 24 (1) The activities are for the construction of the same type of facility as the  
25 existing type of facility as identified in a subdivision of subsections 5 or 12 of  
26 this section and the activities are:
- 27 (a) Within the geographic boundaries of a previously issued certificate or  
28 permit;
- 29 (b) For an electric energy conversion facility constructed before April 9,  
30 1975, within the geographic location on which the facility was built; or

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

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

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- 1 e. ~~Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic~~  
2 ~~meters] or more of gas per day, regardless of the end use of the gas;~~  
3 d. ~~Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or~~  
4 ~~more of liquid hydrocarbon products per day; or~~  
5 e. ~~Enrichment of uranium minerals.~~  
6 6. "Electric transmission facility" means an electric transmission line and associated  
7 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission  
8 facility" does not include:  
9 a. A temporary electric transmission line loop that is:  
10 (1) Connected and adjacent to an existing electric transmission facility that was  
11 sited under this chapter;  
12 (2) Within the corridor of the sited facility and does not cross known exclusion  
13 or avoidance areas; and  
14 (3) In place for less than one year; or  
15 b. An electric transmission line that is less than one mile [1.61 kilometers] long.  
16 7. "Facility" means an electric energy conversion facility, electric transmission facility, or  
17 both.  
18 ~~7-8.~~ "Permit" means the permit for the construction of aan electric transmission facility  
19 within a designated corridor issued under this chapter.  
20 ~~8-9.~~ "Person" includes any individual, firm, association, partnership, cooperative,  
21 corporation, limited liability company, or any department, agency, or instrumentality of  
22 a state or of the federal government, or any subdivision thereof.  
23 ~~9-10.~~ "Power emergency" means an electric transmission line and associated facilities that  
24 have been damaged or destroyed by natural or manmade causes resulting in a loss of  
25 power supply to consumers of the power.  
26 ~~10-11.~~ "Route" means the location of aan electric transmission facility within a designated  
27 corridor.  
28 ~~11-12.~~ "Site" means the location of an electric energy conversion facility.  
29 ~~12.~~ "Transmission facility" means any of the following:  
30 a. ~~An electric transmission line and associated facilities with a design in excess of~~  
31 ~~one hundred fifteen kilovolts. "Transmission facility" does not include:~~

- 1           (1) A temporary transmission line loop that is:
- 2           (a) ~~Connected and adjacent to an existing transmission facility that was~~
- 3                 ~~sited under this chapter;~~
- 4           (b) ~~Within the corridor of the sited facility and does not cross known~~
- 5                 ~~exclusion or avoidance areas; and~~
- 6           (c) ~~In place for less than one year; or~~
- 7           (2) A transmission line that is less than one mile [1.61 kilometers] long.
- 8        b. A gas or liquid transmission line and associated facilities designed for or capable
- 9           of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or
- 10          carbon dioxide. This subdivision does not apply to:
- 11         (1) An oil or gas pipeline gathering system;
- 12         (2) A pipeline with an outside diameter of four and one-half inches [11.43
- 13                 centimeters] or less that will not be trenched and will be plowed in with a
- 14                 power mechanism having a vertical knife or horizontally directionally drilled,
- 15                 and its associated facilities; or
- 16         (3) A pipeline that is less than one mile [1.61 kilometers] long.
- 17         For purposes of this chapter, a gathering system includes the pipelines and
- 18         associated facilities used to collect oil from the lease site to the first pipeline
- 19         storage site where pressure is increased for further transport, or pipelines and
- 20         associated facilities used to collect gas from the well to the gas processing facility
- 21         at which end-use consumer-quality gas is produced, with or without the addition
- 22         of odorant.
- 23        e. A liquid transmission line and associated facilities designed for or capable of
- 24           transporting water from or to an energy conversion facility.
- 25        13. "Utility" means any person engaged in and controlling the generation, manufacture,
- 26           refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid
- 27           hydrocarbon products, including electric power generation or transmission, coal
- 28           gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the
- 29           transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, electric
- 30           generation, the transmission of electric energy, or the transmission of water from or to
- 31           any electric energy conversion facility.



1       **SECTION 8. AMENDMENT.** Section 49-22-04 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **49-22-04. Ten-year plans - Contents.**

4       Each utility that owns or operates, or plans within the next ten years to own, operate, or  
5 start construction on any facility shall develop a ten-year plan as specified in this section and  
6 submit the plan to the commission. Each utility shall file an updated plan on or before July first  
7 of each even-numbered year after the year of its initial submission. The ten-year plan may be  
8 appropriate portions of a single regional plan or may be jointly prepared and submitted by two  
9 or more utilities and must contain the following information:

- 10       1. A description of the general location, size, and type of all facilities to be owned or  
11       operated by the utility during the ensuing ten years, as well as those facilities to be  
12       removed from service during the ten-year period.
- 13       2. An identification of the location of the tentative preferred site for all electric energy  
14       conversion facilities and the tentative location of all electric transmission facilities on  
15       which construction is intended to be commenced within the ensuing five years and  
16       such other information as may be required by the commission. The site and corridor  
17       identification shall be made in compliance with the criteria published by the  
18       commission pursuant to section 49-22-05.1.
- 19       3. A description of the efforts by the utility to coordinate the plan with other utilities so as  
20       to provide a coordinated regional plan for meeting the utility needs of the region.
- 21       4. A description of the efforts to involve environmental protection and land-use planning  
22       agencies in the planning process, as well as other efforts to identify and minimize  
23       environmental problems at the earliest possible stage in the planning process.
- 24       5. A statement of the projected demand for the service rendered by the utility for the  
25       ensuing ten years and the underlying assumptions for the projection, with that  
26       information being as geographically specific as possible, and a description of the  
27       manner and extent to which the utility will meet the projected demands.
- 28       6. Any other relevant information as may be requested by the commission. Upon receipt  
29       of the ten-year plans the commission shall proceed to assess the impact of the  
30       development proposed within the state to ensure that energy conversion facilities and

1 transmission facilities will be sited in an orderly manner compatible with environmental  
2 preservation and efficient use of resources.

3 **SECTION 9. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

6 The commission shall develop criteria to be used in identifying exclusion and avoidance  
7 areas and to guide the site, corridor, and route suitability evaluation and designation process.  
8 Except for electric transmission lines in existence before July 1, 1983, areas within five hundred  
9 feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This  
10 criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area  
11 criteria for an inhabited rural residence may be waived by the owner of the inhabited rural  
12 residence in writing. The criteria may also include an identification of impacts and policies or  
13 practices which may be considered in the evaluation and designation process.

14 **SECTION 10. AMENDMENT.** Section 49-22-07 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **49-22-07. Certificate of site compatibility or route permit required.**

- 17 1. A utility may not begin construction of an electric energy conversion facility or an  
18 electric transmission facility in the state without first having obtained a certificate of site  
19 compatibility or a route permit from the commission pursuant to this chapter. The  
20 facility must be constructed, operated, and maintained in conformity with the certificate  
21 or permit and any terms, conditions, or modifications of the certificate or permit. A  
22 certificate or permit may be transferred, subject to the approval of the commission, to  
23 any person who agrees to comply with its terms, conditions, and modifications.
- 24 2. If a power emergency exists which necessitates the relocation of a portion of an  
25 electric transmission line and associated facilities from the designated route, the  
26 owner of the line shall give telephonic notice to the commission in advance of the  
27 relocation. The line may then be relocated to restore power as soon as practicable.  
28 After the line has been relocated, the owner shall file with the commission a request to  
29 approve the relocated route.

30 **SECTION 11. AMENDMENT.** Section 49-22-07.2 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **49-22-07.2. Waiver of procedures and time schedules.**

2           Any utility which proposes to construct an electric energy conversion facility or an electric  
3 transmission facility within the state may make an application to the commission for a waiver of  
4 any of the procedures or time schedules set forth in this chapter or in the rules adopted  
5 pursuant to this chapter. The commission, after hearing and upon a finding that the proposed  
6 facility is of such length, design, location, or purpose that it will produce minimal adverse effects,  
7 or, after hearing and upon a finding that a demonstrable emergency exists which requires  
8 immediate construction and that adherence to the procedures and time schedules would  
9 jeopardize the utility's system, may issue an order waiving specified procedures and time  
10 schedules required by this chapter or by the rules adopted pursuant to this chapter, including,  
11 but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of  
12 site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as  
13 the commission may require.

14           **SECTION 12. AMENDMENT.** Subsection 1 of section 49-22-08 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16           1. An application for a certificate ~~shall~~must be in such form as the commission may  
17 prescribe, containing the following information:
- 18           a. A description of the size and type of facility.
  - 19           b. A summary of any studies which have been made of the environmental impact of  
20 the facility.
  - 21           c. A statement explaining the need for the facility.
  - 22           d. An identification of the location of the preferred site for any electric energy  
23 conversion facility.
  - 24           e. An identification of the location of the preferred corridor for any electric  
25 transmission facility.
  - 26           f. A description of the merits and detriments of any location identified and a  
27 comprehensive analysis with supporting data showing the reasons why the  
28 preferred location is best suited for the facility.
  - 29           g. A description of mitigative measures that will be taken to minimize all foreseen  
30 adverse impacts resulting from the location, construction, and operation of the  
31 proposed facility.

- 1 h. An evaluation of the proposed site or corridor with regard to the applicable  
2 considerations set out in section 49-22-09 and the criteria established pursuant to  
3 section 49-22-05.1.
- 4 i. Such other information as the applicant may consider relevant or the commission  
5 may require.

6 **SECTION 13. AMENDMENT.** Section 49-22-08.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a**  
9 **route.**

- 10 1. An application for a route permit for ~~aan electric~~ transmission facility within a  
11 designated corridor ~~shall~~must be filed no later than two years after the issuance of the  
12 certificate and ~~shall~~must be in such form as the commission may prescribe, containing  
13 the following information:
- 14 a. A description of the type, size, and design of the proposed facility.
- 15 b. A description of the location of the proposed facility.
- 16 c. An evaluation of the proposed route with regard to the applicable considerations  
17 set out in section 49-22-09 and the criteria established pursuant to section  
18 49-22-05.1.
- 19 d. A description of mitigative measures that will be taken to minimize all foreseen  
20 adverse impacts resulting from the location, construction, and operation of the  
21 proposed facility.
- 22 e. A description of the right-of-way preparation and construction and reclamation  
23 procedures.
- 24 f. A statement setting forth the manner in which:
- 25 (1) The utility will inform affected landowners of easement acquisition, and  
26 necessary easement conditions and restrictions.
- 27 (2) The utility will compensate landowners for easements, without reference to  
28 the actual consideration to be paid.
- 29 g. Such other information as the utility may consider relevant or the commission  
30 may require.

- 1        2. After determining that the application is complete, the commission shall serve a notice  
2        of filing of the application on such persons and agencies that the commission may  
3        deem appropriate and shall publish a notice of filing of the application in the official  
4        newspaper of each county in which any portion of the designated corridor is located.
- 5        3. A copy of the application shall be furnished to any person or agency, upon request to  
6        the commission within thirty days of either service or publication of the notice of filing.
- 7        4. An application for an amendment of a permit shall be in such form and contain such  
8        information as the commission shall prescribe.
- 9        5. The commission shall designate a route for the construction of aan electric  
10       transmission facility following the study and hearings provided for in this chapter. This  
11       designation shall be made in accordance with the evidence presented at the hearings,  
12       an evaluation of the information provided in the application, the criteria established  
13       pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a  
14       finding with reasons for the designation, and shall be made in a timely manner no later  
15       than six months after the filing of a completed application. The time for designation of  
16       a route may be extended by the commission for just cause. The failure of the  
17       commission to act within the time limit provided in this section shall not operate to  
18       divest the commission of jurisdiction in any permit proceeding. Upon designation of a  
19       route the commission shall issue a permit to the applicant with such terms, conditions,  
20       or modifications deemed necessary.

21        **SECTION 14.** Section 49-22-08.2 of the North Dakota Century Code is created and enacted  
22 as follows:

23        **49-22-08.2. Combining application.**

24        A utility may file a separate application for a certificate or a permit, or combined into one  
25 application.

26        **SECTION 15. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28        **49-22-09. Factors to be considered in evaluating applications and designation of**  
29 **sites, corridors, and routes.**

30        The commission shall be guided by, but is not limited to, the following considerations, where  
31 applicable, to aid the evaluation and designation of sites, corridors, and routes:

- 1        1. Available research and investigations relating to the effects of the location,  
2            construction, and operation of the proposed facility on public health and welfare,  
3            natural resources, and the environment.
- 4        2. The effects of new electric energy conversion and electric transmission technologies  
5            and systems designed to minimize adverse environmental effects.
- 6        3. The potential for beneficial uses of waste energy from a proposed electric energy  
7            conversion facility.
- 8        4. Adverse direct and indirect environmental effects ~~which~~that cannot be avoided should  
9            the proposed site or route be designated.
- 10       5. Alternatives to the proposed site, corridor, or route which are developed during the  
11           hearing process and which minimize adverse effects.
- 12       6. Irreversible and irretrievable commitments of natural resources should the proposed  
13           site, corridor, or route be designated.
- 14       7. The direct and indirect economic impacts of the proposed facility.
- 15       8. Existing plans of the state, local government, and private entities for other  
16           developments at or in the vicinity of the proposed site, corridor, or route.
- 17       9. The effect of the proposed site or route on existing scenic areas, historic sites and  
18           structures, and paleontological or archaeological sites.
- 19       10. The effect of the proposed site or route on areas which are unique because of  
20           biological wealth or because they are habitats for rare and endangered species.
- 21       11. Problems raised by federal agencies, other state agencies, and local entities.

22        **SECTION 16. AMENDMENT.** Section 49-22-09.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24        **49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly**  
25 **required.**

26        After compliance with the applicable requirements of this chapter, any hydroelectric  
27 transmission facility that transmits hydroelectric power produced outside the United States, and  
28 which crosses any portion of this state, must have the approval of the legislative assembly by  
29 concurrent resolution. A person may not begin construction of a hydroelectric transmission  
30 facility in this state ~~that~~which transmits hydroelectric power produced outside the United States,  
31 or exercise the right of eminent domain in connection with such construction, without first having

1 complied with this chapter and obtained the approval of the legislative assembly. This section  
2 ~~shall~~does not apply to any electric transmission facility for which a route permit and certificate of  
3 corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued  
4 after July 1, 1985.

5 **SECTION 17. AMENDMENT.** Section 49-22-14 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **49-22-14. Advisory committees - Appointment - Compensation.**

8 The commission may appoint one or more advisory committees to assist it in carrying out its  
9 duties under this chapter. Committees appointed to evaluate sites or corridors considered for  
10 designation ~~shall~~must be composed of as many persons as may be appointed by the  
11 commission, but ~~shall~~must include a majority of public representatives; at least one  
12 representative from the state department of agriculture, a public or municipally owned utility, a  
13 private investor-owned utility, and a cooperatively owned utility; and one representative from  
14 each county and city in which an electric energy conversion facility or electric transmission  
15 facility is proposed to be located. Members of advisory committees ~~shall~~are entitled to be  
16 reimbursed, within the limits of legislative appropriations, for any necessary expenses in the  
17 amounts provided by law for state officials.

18 **SECTION 18. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or**  
21 **building rules, regulations, or ordinances - State agency rules.**

- 22 1. The issuance of a certificate of site compatibility or a route permit shall, subject to  
23 subsections 2 and 3, be the sole site or route approval required to be obtained by the  
24 utility.
- 25 2. A certificate of site compatibility for an electric energy conversion facility shall not  
26 supersede or pre-empt any local land use, zoning, or building rules, regulations, or  
27 ordinances and no site shall be designated which violates local land use, zoning, or  
28 building rules, regulations, or ordinances. A permit for the construction of ~~aan~~ an electric  
29 transmission facility within a designated corridor may supersede and pre-empt any  
30 local land use, zoning, or building rules, regulations, or ordinances upon a finding by  
31 the commission that such rules, regulations, or ordinances, as applied to the proposed

1 route, are unreasonably restrictive in view of existing technology, factors of cost or  
2 economics, or needs of consumers regardless of their location. Without such a finding  
3 by the commission, no route shall be designated which violates local land use, zoning,  
4 or building rules, regulations, or ordinances.

5 3. Utilities subject to this chapter shall obtain state permits that may be required to  
6 construct and operate electric energy conversion facilities and electric transmission  
7 facilities. A state agency in processing a utility's facility permit application shall be  
8 bound to the decisions of the commission with respect to the site designation for the  
9 electric energy conversion facility or the corridor or route designation for the electric  
10 transmission facility and with respect to other matters for which authority has been  
11 granted to the commission by this chapter.

12 4. No site or route shall be designated which violates the rules of any state agency. A  
13 state agency with jurisdiction over any aspect of a proposed facility shall present the  
14 position of the agency at the public hearing on an application for a certificate, a permit,  
15 or a waiver, which position shall clearly state whether the site, corridor, or route being  
16 considered for designation will be in compliance with such agency's rules. For  
17 purposes of this chapter it shall be presumed that a proposed facility will be in  
18 compliance with a state agency's rules if such agency fails to present its position on  
19 the proposed site, corridor, or route at the appropriate public hearing.

20 **SECTION 19. AMENDMENT.** Section 49-22-17 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **49-22-17. Improvement of sites or locations.**

23 Utilities ~~which~~that have acquired an electric energy conversion facility site or electric  
24 transmission line route in accordance with the provisions of this chapter may proceed to  
25 construct or improve such site or route for the intended purposes at any time, subject to  
26 subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement  
27 commences more than four years after a certificate or permit for the site or route has been  
28 issued, then the utility must certify to the commission that such site or route continues to meet  
29 the conditions upon which the certificate of site compatibility or electric transmission facility  
30 construction permit was issued.



1       **SECTION 20. AMENDMENT.** Section 49-22-19 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **49-22-19. Hearing - Judicial review.**

4       Any party aggrieved by the issuance of a certificate of site compatibility or electric  
5 transmission facility construction permit from the commission, certification of continuing  
6 suitability filed by a utility with the commission, or promulgation of a final order by the  
7 commission, may request a rehearing by the commission. The hearing ~~shall~~must be conducted  
8 pursuant to chapter 28-32. There ~~shall be~~is a right of appeal to the district court from any  
9 adverse ruling by the commission.

10       **SECTION 21. AMENDMENT.** Section 49-22-20 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **49-22-20. Revocation or suspension of certificate or permit.**

13       A certificate of site compatibility or permit for the construction of ~~a~~an electric transmission  
14 facility may be revoked or suspended for:

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

22       **SECTION 22. AMENDMENT.** Section 49-22-21 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       **49-22-21. Penalties.**

- 25       1. Any person required by this chapter to have a certificate or permit who willfully begins  
26       construction of an electric energy conversion facility or electric transmission facility  
27       without previously securing a certificate or permit as prescribed by this chapter, or who  
28       willfully constructs, operates, or maintains an electric energy conversion facility or  
29       electric transmission facility other than in compliance with the certificate or permit and  
30       any terms, conditions, and modifications contained therein is guilty of a class A  
31       misdemeanor.

- 1           2. Any person who willfully violates any regulation issued or approved pursuant to this  
2           chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring  
3           device or method required to be maintained under this chapter shall be guilty of a  
4           class A misdemeanor.
- 5           3. Any person who willfully engages in any of the following conduct ~~shall be~~ is subject to a  
6           civil penalty of not to exceed ten thousand dollars for each such violation for each day  
7           ~~that such~~ the violations persist, except that the maximum penalty may not exceed two  
8           hundred thousand dollars for any related series of violations:
- 9           a. Begins construction of an electric energy conversion facility or ~~a~~ an electric  
10           transmission facility without having been issued a certificate or permit pursuant to  
11           this chapter.
- 12           b. Constructs, operates, or maintains an electric energy conversion facility or ~~a~~ an  
13           electric transmission facility other than in compliance with the certificate or permit  
14           and any terms, conditions, or modifications contained therein.
- 15           c. Violates any provision of this chapter or any rule adopted by the commission  
16           pursuant to this chapter.
- 17           d. Falsifies, tampers with, or renders inaccurate any monitoring device or method  
18           required to be maintained pursuant to a certificate or permit issued pursuant to  
19           this chapter.

20           The civil penalty provided for in this subsection may be compromised by the  
21           commission. The amount of the penalty when finally determined or agreed upon in  
22           compromise ~~shall~~ must be deposited in the general fund and, if not paid, may be  
23           recovered in a civil action in the courts of the state.

- 24           4. Notwithstanding any other provision of this chapter, the commission ~~may~~, by injunctive  
25           procedures, without bond or other undertaking, may proceed against any person who  
26           willfully engages in any conduct described in subsection 3. No liability shall accrue to  
27           the commission or its authorized representative in proceeding against any person  
28           pursuant to this section.

29           **SECTION 23. AMENDMENT.** Subdivision e of subsection 1 of section 49-22-22 of the North  
30           Dakota Century Code is amended and reenacted as follows:

- 1 e. An applicant certifying to the commission under subsection 3 of section 49-22-03  
2 ~~or obtaining siting authority under subdivision b of subsection 2 or subdivision c~~  
3 ~~of subsection 4 of section 49-22-16.3~~, shall pay an amount to be determined by  
4 the commission to cover anticipated expenses of processing the application.

5 **SECTION 24. AMENDMENT.** Subsection 2 of section 49-22-22 of the North Dakota  
6 Century Code is amended and reenacted as follows:

- 7 2. At the request of the commission and with the approval of the emergency commission,  
8 the applicant shall pay such additional fees as are reasonably necessary for  
9 completion of the electric energy conversion facility site, electric transmission facility  
10 corridor, or electric transmission facility route evaluation and designation process by  
11 the commission. ~~In no event shall the~~The application fee under subsection 1 and any  
12 additional fees required of the applicant under this subsection may not exceed an  
13 amount equal to one thousand dollars for each one million dollars of investment in a  
14 proposed energy conversion facility or ten thousand dollars for each one million dollars  
15 of investment in a proposed electric transmission facility.

16 **SECTION 25.** Chapter 49-22.1 of the North Dakota Century Code is created and enacted  
17 as follows:

18 **49-22.1-01. Definitions.**

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

- 20 1. "Certificate" means the certificate of site compatibility or the certificate of corridor  
21 compatibility issued under this chapter.  
22 2. "Commission" means the North Dakota public service commission.  
23 3. "Construction" includes any clearing of land, excavation, or other action that would  
24 affect the environment of the site after April 9, 1975, but does not include activities:  
25 a. Conducted wholly within the geographic location for which a utility has previously  
26 obtained a certificate or permit under this chapter, or on which a facility was  
27 constructed before April 9, 1975, if:  
28 (1) The activities are for the construction of the same type of facility as the  
29 existing type of facility as identified in subsection 5 or 12 and the activities  
30 are:

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

1           b. Otherwise qualifying for exclusion under subdivision a, except that the activities  
2           are expected to affect a known avoidance area and the utility before conducting  
3           any activities:

4           (1) Certifies in writing to the commission:

5                 (a) The activities will not affect any known exclusion area:

6                 (b) The activities are for the construction:

7                     [1] Of a new gas or liquid energy conversion facility;

8                     [2] Of a new gas or liquid transmission facility;

9                     [3] To improve the existing gas or liquid energy conversion facility or  
10                     gas or liquid facility; or

11                    [4] To increase or decrease the capacity of the existing gas or liquid  
12                     energy conversion facility or gas or liquid transmission facility;

13                     and

14                 (c) The utility will comply with all applicable conditions and protections in  
15                     siting laws and rules and commission orders previously issued for any  
16                     part of the facility:

17           (2) Notifies the commission in writing that the activities are expected to impact  
18           an avoidance area and provides information on the specific avoidance area  
19           expected to be impacted and the reasons why impact cannot be avoided;

20           and

21           (3) Receives the commission's written approval for the impact to the avoidance  
22           area, based on a determination that there is no reasonable alternative to the  
23           expected impact. If the commission does not approve impacting the  
24           avoidance area, the utility must obtain siting authority under this chapter for  
25           the affected portion of the site or route. If the commission fails to act on the  
26           notification required by this subdivision within thirty days of the utility's filing  
27           the notification, the impact to the avoidance area is deemed approved.

28           c. Incident to preliminary engineering or environmental studies.

29           4. "Corridor" means the area of land in which a designated route may be established for  
30           a gas or liquid transmission facility.

- 1        5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission  
2        facility, or both.
- 3        6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of  
4        plant and addition, designed for or capable of:
- 5        a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic  
6        meters] or more of gas per day, regardless of the end use of the gas;
- 7        b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or  
8        more of liquid hydrocarbon products per day; or
- 9        c. Enrichment of uranium minerals.
- 10       7. "Gas or liquid transmission facility" means any of the following:
- 11       a. A gas or liquid transmission line and associated facilities designed for or capable  
12       of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or  
13       carbon dioxide. This subdivision does not apply to:
- 14       (1) An oil or gas pipeline gathering system;
- 15       (2) A pipeline with an outside diameter of four and one-half inches  
16       [11.43 centimeters] or less which will not be trenched and will be plowed in  
17       with a power mechanism having a vertical knife or horizontally directionally  
18       drilled, and its associated facilities; or
- 19       (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of  
20       this chapter, a gathering system includes the pipelines and associated  
21       facilities used to collect oil from the lease site to the first pipeline storage  
22       site where pressure is increased for further transport, or pipelines and  
23       associated facilities used to collect gas from the well to the gas processing  
24       facility at which end-use consumer-quality gas is produced, with or without  
25       the addition of odorant.
- 26       b. A liquid transmission line and associated facilities designed for or capable of  
27       transporting water from or to an energy conversion facility.
- 28       8. "Permit" means the permit for the construction of a gas or liquid transmission facility  
29       within a designated corridor issued under this chapter.

1       9. "Person" includes any individual, firm, association, partnership, cooperative,  
2       corporation, limited liability company, or any department, agency, or instrumentality of  
3       a state or of the federal government, or any subdivision thereof.

4       10. "Route" means the location of a gas or liquid transmission facility within a designated  
5       corridor.

6       11. "Site" means the location of a gas or liquid energy conversion facility.

7       12. "Utility" means any person engaged in and controlling the generation, manufacture,  
8       refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon  
9       products, including coal gasification, coal liquefaction, petroleum refinement, uranium  
10      enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid  
11      hydrocarbon products, or the transmission of water from or to any gas or liquid energy  
12      conversion facility.

13      **49-22.1-01.1. Public service commission duties.**

14      The public service commission shall:

15      1. Ensure the location, construction, and operation of energy conversion and  
16      transmission facilities will produce minimal adverse effects on the environment and the  
17      welfare of the citizens of this state.

18      2. Provide an energy conversion facility or transmission facility may not be located,  
19      constructed, and operated within this state without a certificate of site compatibility or a  
20      route permit acquired pursuant to this chapter.

21      3. Site energy conversion facilities and route transmission facilities in an orderly manner  
22      compatible with environmental preservation and the efficient use of resources.

23      4. Ensure chosen sites and routes will minimize adverse human and environmental  
24      impact while maintaining system reliability and integrity.

25      5. Ensure energy needs are met and fulfilled in an orderly and timely fashion.

26      **49-22.1-02. Exclusion and avoidance areas - Criteria.**

27      The commission shall develop criteria to be used in identifying exclusion and avoidance  
28      areas and to guide the site, corridor, and route suitability evaluation and designation process.  
29      Except for oil and gas transmission lines in existence before July 1, 1983, areas within five  
30      hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance  
31      areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter]

1 avoidance area criteria for an inhabited rural residence may be waived by the owner of the  
2 inhabited rural residence in writing. The criteria also may include an identification of impacts and  
3 policies or practices which may be considered in the evaluation and designation process.

4 **49-22.1-03. Certificate of site compatibility or route permit required.**

5 A utility may not begin construction of a gas or liquid energy conversion facility or gas or  
6 liquid transmission facility in the state without first having obtained a certificate of site  
7 compatibility or a route permit from the commission pursuant to this chapter. The facility must be  
8 constructed, operated, and maintained in conformity with the certificate or permit and any terms,  
9 conditions, or modifications of the certificate or permit. A certificate or permit may be  
10 transferred, subject to the approval of the commission, to any person who agrees to comply  
11 with its terms, conditions, and modifications.

12 **49-22.1-04. Waiver of procedures and time schedules.**

13 Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or  
14 liquid transmission facility within the state may make an application to the commission for a  
15 waiver of any of the procedures or time schedules set forth in this chapter or in the rules  
16 adopted pursuant to this chapter. The commission, after hearing and upon a finding that the  
17 proposed facility is of a length, design, location, or purpose that it will produce minimal adverse  
18 effects, or, after hearing and upon a finding that a demonstrable emergency exists which  
19 requires immediate construction and that adherence to the procedures and time schedules  
20 would jeopardize the utility's system, may issue an order waiving specified procedures and time  
21 schedules required by this chapter or by the rules adopted pursuant to this chapter, including  
22 applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a  
23 certificate of corridor compatibility, or a route permit, with such conditions as the commission  
24 may require.

25 **49-22.1-05. Application for a certificate - Notice of filing - Amendment - Designation of**  
26 **a site or corridor.**

- 27 1. An application for a certificate must be in the form prescribed by the commission  
28 containing the following information:
- 29 a. A description of the size and type of facility.
  - 30 b. A summary of any studies that have been made of the environmental impact of  
31 the facility.



- 1           c. A statement explaining the need for the facility.
- 2           d. An identification of the location of the preferred site for any gas or liquid energy
- 3                 conversion facility.
- 4           e. An identification of the location of the preferred corridor for any gas or liquid
- 5                 transmission facility.
- 6           f. A description of the merits and detriments of any location identified and a
- 7                 comprehensive analysis with supporting data showing the reasons why the
- 8                 preferred location is best suited for the facility.
- 9           g. A description of mitigative measures that will be taken to minimize all foreseen
- 10                adverse impacts resulting from the location, construction, and operation of the
- 11                proposed facility.
- 12           h. An evaluation of the proposed site or corridor with regard to the applicable
- 13                considerations set out in section 49-22.1-08 and the criteria established pursuant
- 14                to section 49-22.1-02.
- 15           i. Any other information as the applicant considers relevant or the commission may
- 16                require.
- 17        2. After determining the application is complete, the commission shall serve a notice of
- 18           filing of the application on those persons and agencies the commission deems
- 19           appropriate and shall publish a notice of filing of the application in the official
- 20           newspaper of each county in which any portion of the site or corridor is proposed to be
- 21           located.
- 22        3. A copy of the application must be furnished to any person or agency, upon request to
- 23           the commission within thirty days of either service or publication of the notice of filing.
- 24        4. An application for an amendment of a certificate must be in the form and contain the
- 25           information as the commission prescribes.
- 26        5. The commission may designate a site or corridor for a proposed facility following the
- 27           study and hearings provided for in this chapter. Any designation must be made in
- 28           accordance with the evidence presented at the hearings, an evaluation of the
- 29           information provided in the application, the criteria established pursuant to section
- 30           49-22.1-02, and the considerations set out in section 49-22.1-08 in a finding with
- 31           reasons for the designation, and must be made in a timely manner no later than six

1 months after the filing of a completed application for a certificate of site compatibility or  
2 no later than three months after the filing of a completed application for a certificate of  
3 corridor compatibility. The time for designation of a site or corridor may be extended by  
4 the commission for just cause. The failure of the commission to act within the time  
5 limits provided in this section does not operate to divest the commission of jurisdiction  
6 in any certification proceeding. The commission shall indicate the reasons for any  
7 refusal of designation. Upon designation of a site or corridor, the commission shall  
8 issue a certificate of site compatibility or a certificate of corridor compatibility with the  
9 terms, conditions, or modifications deemed necessary.

10 **49-22.1-06. Application for a permit - Notice of filing - Amendment - Designation of a**  
11 **route.**

- 12 1. An application for a route permit for a gas or liquid transmission facility within a  
13 designated corridor must be filed no later than two years after the issuance of the  
14 certificate and must be in the form the commission prescribes, containing the following  
15 information:
- 16 a. A description of the type, size, and design of the proposed facility.
  - 17 b. A description of the location of the proposed facility.
  - 18 c. An evaluation of the proposed route with regard to the applicable considerations  
19 set out in section 49-22.1-08 and the criteria established pursuant to section  
20 49-22.1-02.
  - 21 d. A description of mitigative measures that will be taken to minimize all foreseen  
22 adverse impacts resulting from the location, construction, and operation of the  
23 proposed facility.
  - 24 e. A description of the right-of-way preparation and construction and reclamation  
25 procedures.
  - 26 f. A statement setting forth the manner in which:
    - 27 (1) The utility will inform affected landowners of easement acquisition, and  
28 necessary easement conditions and restrictions.
    - 29 (2) The utility will compensate landowners for easements, without reference to  
30 the actual consideration to be paid.
  - 31 g. Any other information the utility considers relevant or the commission requires.

- 1       2. After determining the application is complete, the commission shall serve a notice of  
2       filing of the application on those persons and agencies the commission deems  
3       appropriate and shall publish a notice of filing of the application in the official  
4       newspaper of each county in which any portion of the designated corridor is located.
- 5       3. A copy of the application must be furnished to any person or agency, upon request to  
6       the commission within thirty days of either service or publication of the notice of filing.
- 7       4. An application for an amendment of a permit must be in the form and contain the  
8       information the commission prescribes.
- 9       5. The commission shall designate a route for the construction of a gas or liquid  
10      transmission facility following the study and hearings provided for in this chapter. This  
11      designation must be made in accordance with the evidence presented at the hearings,  
12      an evaluation of the information provided in the application, the criteria established  
13      pursuant to section 49-22.1-02, and the considerations set out in section 49-22.1-05 in  
14      a finding with reasons for the designation, and must be made in a timely manner no  
15      later than six months after the filing of a completed application. The time for  
16      designation of a route may be extended by the commission for just cause. The failure  
17      of the commission to act within the time limit provided in this section does not operate  
18      to divest the commission of jurisdiction in any permit proceeding. Upon designation of  
19      a route the commission shall issue a permit to the applicant with the terms, conditions,  
20      or modifications deemed necessary.

21      **49-22.1-07. Combining application.**

22      A utility may file a separate application for a certificate or a permit, or combined into one  
23      application.

24      **49-22.1-08. Factors to be considered in evaluating applications and designation of**  
25      **sites, corridors, and routes.**

26      The commission is guided by, but is not limited to, the following considerations, when  
27      applicable, to aid the evaluation and designation of sites, corridors, and routes:

- 28      1. Available research and investigations relating to the effects of the location,  
29      construction, and operation of the proposed facility on public health and welfare,  
30      natural resources, and the environment.

- 1        2. The effects of new gas or liquid energy conversion and gas or liquid transmission
- 2            technologies and systems designed to minimize adverse environmental effects.
- 3        3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy
- 4            conversion facility.
- 5        4. Adverse direct and indirect environmental effects that cannot be avoided should the
- 6            proposed site or route be designated.
- 7        5. Alternatives to the proposed site, corridor, or route that are developed during the
- 8            hearing process and which minimize adverse effects.
- 9        6. Irreversible and irretrievable commitments of natural resources should the proposed
- 10           site, corridor, or route be designated.
- 11       7. The direct and indirect economic impacts of the proposed facility.
- 12       8. Existing plans of the state, local government, and private entities for other
- 13           developments at or in the vicinity of the proposed site, corridor, or route.
- 14       9. The effect of the proposed site or route on existing scenic areas, historic sites and
- 15           structures, and paleontological or archaeological sites.
- 16       10. The effect of the proposed site or route on areas that are unique because of biological
- 17           wealth or because the site or route is a habitat for rare and endangered species.
- 18       11. Problems raised by federal agencies, other state agencies, and local entities.

19        **49-22.1-09. Public hearings - Notice.**

- 20       1. The commission shall hold a public hearing in each county in which any portion of a
- 21           site, corridor, or route is proposed to be located in an application for a certificate or a
- 22           permit. At the public hearing, any person may present testimony or evidence relating
- 23           to the information provided in the application, the criteria developed pursuant to
- 24           section 49-22.1-02, and the factors to be considered pursuant to section 49-22.1-08.
- 25           When more than one county is involved, the commission may hold a consolidated
- 26           hearing in one or more of the affected counties. A hearing for any county may not be
- 27           consolidated if five or more affected landowners in that county file a petition with the
- 28           commission within ten days of the publication of the notice of hearing.
- 29       2. The commission is not required to hold a public hearing on an application for the
- 30           transfer of a certificate or a permit, or an application for a waiver of procedures and
- 31           time schedules, but shall publish a notice of opportunity for a public hearing in the

1 official newspaper of each county in which any portion of the facility or the proposed  
2 site, corridor, or route is located. If requested by any interested person and good  
3 cause has been shown therefor, the commission shall hold a public hearing. If more  
4 than one county is involved, the commission may hold a consolidated hearing in one  
5 or more of the affected counties.

6 3. One or more public hearings must be held at a location or locations determined by the  
7 commission concerning the following matters:

8 a. A substantial or material change in the criteria established pursuant to section  
9 49-22.1-02.

10 b. A substantial or material change in the rules adopted pursuant to section  
11 49-22.1-16.

12 c. The revocation or suspension of a certificate or permit.

13 4. Notice of a public hearing must be given by the commission by service on those  
14 persons the commission deems appropriate and twice by publication, once at least  
15 twenty days before the hearing and a second time within twenty days before the  
16 hearing. Notice of a public hearing and notice of opportunity for a public hearing on an  
17 application for a certificate, a permit, a transfer, or a waiver must be given at the  
18 expense of the applicant. In an emergency the commission may notice a hearing upon  
19 less than twenty days.

20 **49-22.1-10. Advisory committees - Appointment - Compensation.**

21 The commission may appoint one or more advisory committees to assist it in carrying out its  
22 duties under this chapter. Committees appointed to evaluate sites or corridors considered for  
23 designation must be composed of as many persons as may be appointed by the commission,  
24 but must include a majority of public representatives; at least one representative from the state  
25 department of agriculture, a public or municipally owned utility, a private investor-owned utility,  
26 and a cooperatively owned utility; and one representative from each county and city in which a  
27 gas or liquid energy conversion facility or gas or liquid transmission facility is proposed to be  
28 located. Members of advisory committees are entitled to be reimbursed, within the limits of  
29 legislative appropriations, for any necessary expenses in the amounts provided by law for state  
30 officials.

1        **49-22.1-11. Cooperation with state and federal agencies.**

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

6        **49-22.1-12. Effect of issuance of certificate or permit - Local land use, zoning, or**  
7 **building rules, regulations, or ordinances - State agency rules.**

8        1. The issuance of a certificate of site compatibility or a route permit is, subject to  
9 subsections 2 and 3, the sole site or route approval required to be obtained by the  
10 utility.

11        2. A certificate of site compatibility for an energy conversion facility does not supersede  
12 or pre-empt any local land use; zoning; or building rules, regulations, or ordinances,  
13 and a site may not be designated which violates local land use; zoning; or building  
14 rules, regulations, or ordinances. A permit for the construction of a gas or liquid  
15 transmission facility within a designated corridor may supersede and pre-empt any  
16 local land use; zoning; or building rules, regulations, or ordinances, upon a finding by  
17 the commission that the rules, regulations, or ordinances, as applied to the proposed  
18 route, are unreasonably restrictive in view of existing technology, factors of cost or  
19 economics, or needs of consumers regardless of their location. Without that finding by  
20 the commission, a route may not be designated which violates local land use; zoning;  
21 or building rules, regulations, or ordinances.

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

29        4. A site or route may not be designated which violates the rules of any state agency. A  
30 state agency with jurisdiction over any aspect of a proposed facility shall present the  
31 position of the agency at the public hearing on an application for a certificate, a permit,

1 or a waiver, which position must clearly state whether the site, corridor, or route being  
2 considered for designation will be in compliance with the agency's rules. For purposes  
3 of this chapter it is presumed a proposed facility will be in compliance with a state  
4 agency's rules if that agency fails to present its position on the proposed site, corridor,  
5 or route at the appropriate public hearing.

6 **49-22.1-13. Unfair tactics in acquiring land or easements for a facility - Court action -**  
7 **Cancellation of easement - Penalty.**

- 8 1. Any person employed by a public utility to acquire easements for a facility subject to  
9 this chapter may not use any harassment, threat, intimidation, misrepresentation,  
10 deception, fraud, or other unfair tactics to induce the owner of the land to be affected  
11 by the facility to grant or agree to any easements.
- 12 2. If at least five landowners aggrieved by the conduct of a person or persons, acting on  
13 behalf of the same utility, acquiring easements for a site or route of a facility allege use  
14 of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair  
15 tactics by the person or persons acquiring or attempting to acquire the easement, an  
16 action may be brought in the appropriate district court.
- 17 3. Upon a determination by the court that a person employed by the utility used  
18 harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair  
19 tactics in acquiring or attempting to acquire an easement from at least five separate  
20 landowners, the court, by order, shall declare the easements void and may order any  
21 compensation paid therefor returned to the offending utility, or allow the landowner to  
22 retain the compensation, or award to the landowner up to three times the amount of  
23 the compensation involved as damages, punitive or compensatory. The court shall  
24 award costs and reasonable attorney's fees to the plaintiff if the court rules in favor of  
25 the plaintiff.
- 26 4. Upon a determination by the court that the utility involved did knowingly allow,  
27 encourage, or operate in active consort or participation with a person utilizing an unfair  
28 tactic, the court shall cause a copy of its memorandum opinion or order to be filed with  
29 the commission.
- 30 5. Upon receiving a copy of a memorandum opinion or order issued by a district court  
31 pursuant to this section, the commission may revoke or suspend the permit issued

1           with respect to the route affecting the aggrieved landowners. If a permit has not been  
2           issued with respect to a site or route affecting the aggrieved landowners, the  
3           commission may refuse to issue a permit for such portion of the route.

4           **49-22.1-14. Route adjustment before or during construction for gas or liquid**  
5           **transmission line.**

6           1. Before or during construction, a utility, without any action by the commission, may  
7           adjust the route of a gas or liquid transmission line within the designated corridor if,  
8           before conducting any construction activities associated with the adjustment, the utility  
9           files with the commission certification and supporting documentation that:

- 10           a. The construction activities will be within the designated corridor;  
11           b. The construction activities will not affect any known exclusion or avoidance areas  
12           within the designated corridor; and  
13           c. The utility will comply with the commission's order, laws, and rules designating  
14           the corridor and designating the route.

15           2. Before or during construction, a utility may adjust the route of a gas or liquid  
16           transmission line within the designated corridor that may affect an avoidance area if,  
17           before conducting any construction activities associated with the adjustment, the  
18           utility:

- 19           a. Files with the commission certification and supporting documentation that:  
20           (1) The construction activities are within the designated corridor;  
21           (2) The construction activities will not affect any known exclusion areas within  
22           the designated corridor;  
23           (3) The construction activities are expected to impact an avoidance area with a  
24           specific description of the avoidance area expected to be impacted;  
25           (4) Each owner of real property on which the adjustment is to be located and  
26           any applicable governmental entity with an interest in the same adjustment  
27           area do not oppose the adjustment, unless the utility previously received  
28           authorization from the commission for the impact to the avoidance area;  
29           (5) For an impact for which the utility does not already have approval or has not  
30           filed the approval in paragraph 4, the utility has good cause and a specific



- 1                   reason to impact the avoidance area, and a reasonable alternative does not  
2                   exist; and
- 3                   (6) The utility will comply with the commission's order, laws, and rules  
4                   designating the corridor and designating the route.
- 5                   b. Receives the commission's written authorization that the utility may impact the  
6                   avoidance area. If the commission does not authorize the impact to the  
7                   avoidance area, the utility must obtain siting authority for the affected portion of  
8                   the route adjustment. If the commission fails to act within ten working days of  
9                   receipt of the utility's filing of the certification and supporting documentation under  
10                   subdivision a of subsection 2, the route adjustment is deemed approved.
- 11                  3. Before or during construction, a utility, without any action by the commission, may  
12                  adjust the route of a gas or liquid transmission line outside the designated corridor if,  
13                  before conducting any construction activities associated with the adjustment, the  
14                  utility:
- 15                  a. Files with the commission certification and supporting documentation that:
- 16                   (1) The construction activities will not affect any known exclusion or avoidance  
17                   areas;
- 18                   (2) The route outside the corridor is no longer than one and one-half miles  
19                   [2.41 kilometers];
- 20                   (3) The utility will comply with the commission's order, laws, and rules  
21                   designating the corridor and designating the route; and
- 22                   (4) Each owner of real property on which the adjustment is to be located and  
23                   any applicable governmental entity with an interest in the same adjustment  
24                   area do not oppose the adjustment.
- 25                  b. Files detailed field studies indicating exclusion and avoidance areas for an area  
26                   encompassing the route outside the designated corridor equal to the length of the  
27                   adjustment of the proposed corridor.
- 28                  4. Before or during construction, a utility may adjust the route of a gas or liquid  
29                  transmission line outside the designated corridor that may affect an avoidance area if,  
30                  before conducting any construction activities associated with the adjustment, the  
31                  utility:

- 1           a. Files with the commission certification and supporting documentation that:  
2           (1) The construction activities will not affect any known exclusion areas;  
3           (2) The construction activities are expected to impact an avoidance area with a  
4           specific description of the avoidance area expected to be impacted;  
5           (3) The utility has good cause and a specific reason to impact the avoidance  
6           area, and a reasonable alternative does not exist;  
7           (4) The route outside the corridor is no longer than one and one-half miles  
8           [2.41 kilometers];  
9           (5) The utility will comply with the commission's order, laws, and rules  
10           designating the corridor and designating the route; and  
11           (6) Each owner of real property on which the adjustment is to be located and  
12           any applicable governmental entity with an interest in the same adjustment  
13           area do not oppose the adjustment.  
14           b. Files detailed field studies indicating exclusion and avoidance areas for an area  
15           encompassing the route outside the designated corridor equal to the length of the  
16           adjustment of the proposed corridor.  
17           c. Receives the commission's written authorization that the utility may impact the  
18           avoidance area. If the commission does not authorize the impact to the  
19           avoidance area, the utility must obtain siting authority for the affected portion of  
20           the route adjustment. If the commission fails to act within ten working days of  
21           receipt of the utility's filing of the certification and supporting documentation under  
22           subdivisions a and b of subsection 4, the route adjustment is deemed approved.  
23           5. The commission is not required to hold a public hearing or publish a notice of  
24           opportunity for a public hearing for any route adjustment under this section.

25           **49-22.1-15. Improvement of sites or locations.**

26           Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid  
27           transmission line route in accordance with this chapter may proceed to construct or improve  
28           such site or route for the intended purposes at any time, subject to subsections 2 and 3 of  
29           section 49-22.1-12; provided, that if the construction and improvement commences more than  
30           four years after a certificate or permit for the site or route has been issued, the utility must  
31           certify to the commission that the site or route continues to meet the conditions upon which the

1 certificate of site compatibility or gas or liquid transmission facility construction permit was  
2 issued.

3 **49-22.1-16. Rules and regulations.**

4 The commission shall adopt rules in conformity with this chapter and prescribe methods  
5 and procedures required therewith.

6 **49-22.1-17. Hearing - Judicial review.**

7 Any party aggrieved by the issuance of a certificate of site compatibility or gas or liquid  
8 transmission facility construction permit from the commission, certification of continuing  
9 suitability filed by a utility with the commission, or promulgation of a final order by the  
10 commission, may request a rehearing by the commission. The hearing must be conducted  
11 pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling  
12 by the commission.

13 **49-22.1-18. Revocation or suspension of certificate or permit.**

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

- 16 1. Any material false statement in the application or in accompanying statements or  
17 studies required of the applicant.
- 18 2. Failure to comply with the certificate or permit or any terms, conditions, or  
19 modifications contained in the certificate or permit.
- 20 3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
- 21 4. A determination by a district court pursuant to section 49-22.1-13.

22 **49-22.1-19. Penalties.**

- 23 1. Any person required by this chapter to have a certificate or permit who willfully begins  
24 construction of a gas or liquid energy conversion facility or gas or liquid transmission  
25 facility without previously securing a certificate or permit as prescribed by this chapter,  
26 or who willfully constructs, operates, or maintains a gas or liquid energy conversion  
27 facility or gas or liquid transmission facility other than in compliance with the certificate  
28 or permit and any terms, conditions, and modifications contained in the certificate or  
29 permit is guilty of a class A misdemeanor.
- 30 2. Any person who willfully violates any regulation issued or approved pursuant to this  
31 chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring

- 1            device or method required to be maintained under this chapter is guilty of a class A  
2            misdemeanor.
- 3            3. Any person who willfully engages in any of the following conduct is subject to a civil  
4            penalty of not to exceed ten thousand dollars for each violation for each day the  
5            violations persist, except the maximum penalty may not exceed two hundred thousand  
6            dollars for any related series of violations:
- 7            a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid  
8            transmission facility without having been issued a certificate or permit pursuant to  
9            this chapter.
- 10           b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a  
11           gas or liquid transmission facility other than in compliance with the certificate or  
12           permit and any terms, conditions, or modifications contained therein.
- 13           c. Violates any provision of this chapter or any rule adopted by the commission  
14           pursuant to this chapter.
- 15           d. Falsifies, tampers with, or renders inaccurate any monitoring device or method  
16           required to be maintained pursuant to a certificate or permit issued pursuant to  
17           this chapter.
- 18           4. The civil penalty provided for in subsection 3 may be compromised by the  
19           commission. The amount of the penalty when finally determined or agreed upon in  
20           compromise must be deposited in the general fund and, if not paid, may be recovered  
21           in a civil action in the courts of the state.
- 22           5. Notwithstanding any other provision of this chapter, the commission may, by injunctive  
23           procedures, without bond or other undertaking, proceed against any person that  
24           willfully engages in any conduct described in subsection 3. No liability may accrue to  
25           the commission or its authorized representative in proceeding against any person  
26           pursuant to this section.
- 27           **49-22.1-20. Siting process expense recovery - Deposit in special fund - Continuing**  
28           **appropriation.**
- 29           1. Every applicant under this chapter shall pay to the commission an application fee:
- 30           a. An applicant for a certificate of site compatibility shall pay an amount equal to five  
31           hundred dollars for each one million dollars of investment in the facility.

- 1           b. An applicant for a certificate of corridor compatibility shall pay an amount equal to  
2           five thousand dollars for each one million dollars of investment in the facility.
- 3           c. An applicant for a waiver shall pay the amount that would be required for an  
4           application for a certificate of site or corridor compatibility for the proposed facility.  
5           If a waiver is not granted for a proposed facility, the application fee paid must be  
6           allowed as a credit against fees payable under this section in connection with an  
7           application under this chapter for a certificate or permit for the proposed facility.
- 8           d. An applicant for a transfer of a certificate or permit shall pay an amount to be  
9           determined by the commission to cover anticipated expenses of processing the  
10           application.
- 11           e. An applicant certifying to the commission under subsection 3 of section  
12           49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or  
13           subdivision c of subsection 4 of section 49-22.1-14, shall pay an amount to be  
14           determined by the commission to cover anticipated expenses of processing the  
15           application.
- 16           f. The application fee under subdivision a, b, or c may not be less than ten  
17           thousand dollars nor more than one hundred thousand dollars.
- 18           2. At the request of the commission and with the approval of the emergency commission,  
19           the applicant shall pay any additional fees as are reasonably necessary for completion  
20           of the gas or liquid energy conversion facility site, gas or liquid transmission facility  
21           corridor, or gas or liquid transmission facility route evaluation and designation process  
22           by the commission. The application fee under subsection 1 and any additional fees  
23           required of the applicant under this subsection may not exceed an amount equal to  
24           one thousand dollars for each one million dollars of investment in a proposed energy  
25           conversion facility or ten thousand dollars for each one million dollars of investment in  
26           a proposed gas or liquid transmission facility.
- 27           3. A siting process expense recovery fund is established in the state treasury. The  
28           commission shall deposit payments received under subsections 1 and 2 in the siting  
29           process expense recovery fund. All moneys deposited in the fund are appropriated on  
30           a continuing basis to the commission to pay expenses incurred in the siting process.  
31           The commission shall specify the time and method of payment of any fees and shall

1           refund the portion of fees collected under subsections 1 and 2 which exceeds the  
2           expenses incurred for the evaluation and designation process.

3           **49-22.1-21. Safety.**

4           Every utility that owns or operates electric generation of any size for the primary purpose of  
5           resale shall comply with the standards of the national electrical safety code in effect at the time  
6           of construction of the generation.

7           **SECTION 26. AMENDMENT.** Subsection 1 of section 54-17.7-08 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9           1.    Until sold or disposed of by the authority, the authority and the pipeline facilities built  
10           under this chapter are exempt from the provisions of title 49 except for  
11           ~~chapter~~chapters 49-22 and 49-22.1 and sections 49-02-01.2 and 49-07-05.1. Upon  
12           sale or disposal by the authority, pipeline facilities built under this chapter are subject  
13           to the provisions of title 49.

14           **SECTION 27. AMENDMENT.** Section 61-24.3-03 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **61-24.3-03. Authorization of southwest pipeline project.**

17           The preliminary designs for a water supply facility for supplementation of the water  
18 resources of a portion of the area of North Dakota south and west of the Missouri River for  
19 multiple uses, as set forth in the engineering preliminary design final report for the southwest  
20 pipeline project, state water commission project no. 1736, dated September 1982, are hereby  
21 confirmed and approved, under the designation of the southwest pipeline project, and the  
22 construction of the southwest pipeline project shall be initiated and completed by the state water  
23 commission substantially in accordance with plan B of the engineering preliminary design final  
24 report, state water commission project no. 1736, dated September 1982, except as otherwise  
25 specifically provided in this chapter. The commission shall have the authority to eliminate the  
26 construction of any primary or secondary transmission mains which are part of plan B of the  
27 engineering preliminary design final report if the water user entities to be served by the primary  
28 or secondary transmission mains do not execute water service contracts for the purchase of a  
29 sufficient quantity of water, as determined by the commission, to justify the construction of the  
30 primary or secondary transmission mains. ~~Chapter~~Chapters 49-22 and 49-22.1 shall not apply  
31 to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct,

1 and maintain such works over and through any of the lands which are or may be the property of  
2 the state.

3 | **SECTION 28. REPEAL.** Sections 49-22-01, ~~49-22-02~~, and 49-22-16.3 of the North Dakota  
4 Century Code are repealed.