

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

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

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

16 **11-09.1-04. Ratification by majority vote - Supersession of existing charter and**
17 **conflicting state laws - Filing of copies of new charter.**

18 If a majority of the qualified electors voting on the charter at the election vote in favor of the
19 home rule charter, it is ratified and becomes the organic law of the county on the first day of
20 January or July next following the election, and extends to all its county matters. The charter
21 and the ordinances made pursuant to the charter in county matters must be liberally construed
22 to supersede within the territorial limits and jurisdiction of the county any conflicting state law
23 except for any state law as it applies to cities or any power of a city to govern its own affairs,
24 without the consent of the governing body of the city. The charter may not authorize the

1 enactment of ordinances to diminish the authority of a board of supervisors of a township or to
2 change the structure of township government in any organized civil township, without the
3 consent of the board of supervisors of the township. No ordinance of a home rule county shall
4 supersede ~~section~~sections 49-22-16 and 49-22.1-13. One copy of the charter as ratified and
5 approved must be filed with the secretary of state; one with the recorder for the county, unless
6 the board of county commissioners designates a different official; and one with the auditor of the
7 county to remain as a part of its permanent records. Courts shall take judicial notice of the
8 charter.

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

11 **17-05-09. Public service commission jurisdiction and consultation.**

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

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

25 **32-15-21. Power of court.**

- 26 1. The court shall have power:
27 a. To regulate and determine the place and manner of making connections and
28 crossings, or of enjoying the common use mentioned in subsection 6 of section
29 32-15-04.
30 b. To hear and determine all adverse or conflicting claims to the property sought to
31 be condemned and to the damages for the property.

1 c. To determine the respective rights of different parties seeking condemnation of
2 the same property.

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

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

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

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

20 **49-07-01.1. Violation of statute, commission order, or commission rule - Assessment**
21 **of civil penalty.**

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

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

3 **49-22-03. Definitions.**

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

- 5 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
6 compatibility issued under this chapter.
- 7 2. "Commission" means the North Dakota public service commission.
- 8 3. "Construction" includes any clearing of land, excavation, or other action that would
9 affect the environment of the site after April 9, 1975, but does not include activities:
- 10 a. Conducted wholly within the geographic location for which a utility has previously
11 obtained a certificate or permit under this chapter, or on which a facility was
12 constructed before April 9, 1975, if:
- 13 (1) The activities are for the construction of the same type of facility as the
14 existing type of facility as identified in a subdivision of subsections 5 or 12 of
15 this section and the activities are:
- 16 (a) Within the geographic boundaries of a previously issued certificate or
17 permit;
- 18 (b) For an electric energy conversion facility constructed before April 9,
19 1975, within the geographic location on which the facility was built; or
- 20 (c) For ~~aan~~ electric transmission facility constructed before April 9, 1975,
21 within a width of three hundred fifty feet [106.68 meters] on either side
22 of the centerline;
- 23 (2) Except as provided in subdivision b, the activities do not affect any known
24 exclusion or avoidance area;
- 25 (3) The activities are for the construction:
- 26 (a) Of a new electric energy conversion facility;
- 27 (b) Of a new ~~gas, liquid, or~~ electric transmission facility;
- 28 (c) To improve the existing electric energy conversion facility or ~~gas,~~
29 ~~liquid, or~~ electric transmission facility; or
- 30 (d) To increase or decrease the capacity of the existing electric energy
31 conversion facility or ~~gas, liquid, or~~ electric transmission facility; and

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

- 1 (2) Notifies the commission in writing that the activities are expected to impact
2 an avoidance area and provides information on the specific avoidance area
3 expected to be impacted and the reasons why impact cannot be avoided;
4 and
5 (3) Receives the commission's written approval for the impact to the avoidance
6 area, based on a determination that there is no reasonable alternative to the
7 expected impact. If the commission does not approve impacting the
8 avoidance area, the utility must obtain siting authority under this chapter for
9 the affected portion of the site or route. If the commission fails to act on the
10 notification required by this subdivision within thirty days of the utility's filing
11 the notification, the impact to the avoidance area is deemed approved.
- 12 c. Incident to preliminary engineering or environmental studies.
- 13 4. "Corridor" means the area of land in which a designated route may be established for
14 aan electric transmission facility.
- 15 5. "EnergyElectric energy conversion facility" means any plant, addition, or combination
16 of plant and addition, designed for or capable of:
- 17 a. Generation by wind energy conversion exceeding one-half megawatt of
18 electricity; or
- 19 b. Generation by any means other than wind energy conversion exceeding fifty
20 megawatts of electricity;
- 21 ~~e. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic-~~
22 ~~meters] or more of gas per day, regardless of the end use of the gas;~~
- 23 ~~d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or~~
24 ~~more of liquid hydrocarbon products per day; or~~
- 25 e. Enrichment of uranium minerals.
- 26 6. "Electric transmission facility" means an electric transmission line and associated
27 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission
28 facility" does not include:
- 29 a. A temporary electric transmission line loop that is:
- 30 (1) Connected and adjacent to an existing electric transmission facility that was
31 sited under this chapter:

1 (2) Within the corridor of the sited facility and does not cross known exclusion
2 or avoidance areas; and

3 (3) In place for less than one year; or
4 b. An electric transmission line that is less than one mile [1.61 kilometers] long.

5 7. "Facility" means an electric energy conversion facility, electric transmission facility, or
6 both.

7 7.8. "Permit" means the permit for the construction of aan electric transmission facility
8 within a designated corridor issued under this chapter.

9 8.9. "Person" includes any individual, firm, association, partnership, cooperative,
10 corporation, limited liability company, or any department, agency, or instrumentality of
11 a state or of the federal government, or any subdivision thereof.

12 9.10. "Power emergency" means an electric transmission line and associated facilities that
13 have been damaged or destroyed by natural or manmade causes resulting in a loss of
14 power supply to consumers of the power.

15 40.11. "Route" means the location of aan electric transmission facility within a designated
16 corridor.

17 44.12. "Site" means the location of an electric energy conversion facility.

18 12. "~~Transmission facility~~" means ~~any of the following:~~

19 a. ~~An electric transmission line and associated facilities with a design in excess of~~
20 ~~one hundred fifteen kilovolts. "Transmission facility" does not include:~~

21 (1) ~~A temporary transmission line loop that is:~~

22 (a) ~~Connected and adjacent to an existing transmission facility that was~~
23 ~~sited under this chapter;~~

24 (b) ~~Within the corridor of the sited facility and does not cross known~~
25 ~~exclusion or avoidance areas; and~~

26 (c) ~~In place for less than one year; or~~

27 (2) ~~A transmission line that is less than one mile [1.61 kilometers] long.~~

28 b. ~~A gas or liquid transmission line and associated facilities designed for or capable~~
29 ~~of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or~~
30 ~~carbon dioxide. This subdivision does not apply to:~~

31 (1) ~~An oil or gas pipeline gathering system;~~

1 (2) ~~A pipeline with an outside diameter of four and one-half inches [11.43-~~
2 ~~centimeters] or less that will not be trenched and will be plowed in with a~~
3 ~~power mechanism having a vertical knife or horizontally directionally drilled,~~
4 ~~and its associated facilities; or~~

5 (3) ~~A pipeline that is less than one mile [1.61 kilometers] long.~~

6 ~~For purposes of this chapter, a gathering system includes the pipelines and~~
7 ~~associated facilities used to collect oil from the lease site to the first pipeline~~
8 ~~storage site where pressure is increased for further transport, or pipelines and~~
9 ~~associated facilities used to collect gas from the well to the gas processing facility~~
10 ~~at which end-use consumer-quality gas is produced, with or without the addition~~
11 ~~of odorant.~~

12 e. ~~A liquid transmission line and associated facilities designed for or capable of~~
13 ~~transporting water from or to an energy conversion facility.~~

14 13. ~~"Utility" means any person engaged in and controlling the generation, manufacture,~~
15 ~~refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid~~
16 ~~hydrocarbon products, including electric power generation or transmission, coal~~
17 ~~gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the~~
18 ~~transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products,~~
19 ~~electric generation, the transmission of electric energy, or the transmission of water from or to~~
20 ~~any electric energy conversion facility.~~

21 **SECTION 7. AMENDMENT.** Section 49-22-04 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **49-22-04. Ten-year plans - Contents.**

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

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

24 **SECTION 8. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **49-22-05.1. 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 electric transmission lines in existence before July 1, 1983, areas within five hundred
30 feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This
31 criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area

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

4 **SECTION 9. AMENDMENT.** Section 49-22-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **49-22-07. Certificate of site compatibility or route permit required.**

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

20 **SECTION 10. AMENDMENT.** Section 49-22-07.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

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

23 Any utility which proposes to construct an electric energy conversion facility or aan electric
24 transmission facility within the state may make an application to the commission for a waiver of
25 any of the procedures or time schedules set forth in this chapter or in the rules adopted
26 pursuant to this chapter. The commission, after hearing and upon a finding that the proposed
27 facility is of such length, design, location, or purpose that it will produce minimal adverse effects,
28 or, after hearing and upon a finding that a demonstrable emergency exists which requires
29 immediate construction and that adherence to the procedures and time schedules would
30 jeopardize the utility's system, may issue an order waiving specified procedures and time
31 schedules required by this chapter or by the rules adopted pursuant to this chapter, including,

1 but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of
2 site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as
3 the commission may require.

4 **SECTION 11. AMENDMENT.** Subsection 1 of section 49-22-08 of the North Dakota Century
5 Code is amended and reenacted as follows:

- 6 1. An application for a certificate ~~shall~~must be in such form as the commission may
7 prescribe, containing the following information:
- 8 a. A description of the size and type of facility.
 - 9 b. A summary of any studies which have been made of the environmental impact of
10 the facility.
 - 11 c. A statement explaining the need for the facility.
 - 12 d. An identification of the location of the preferred site for any electric energy
13 conversion facility.
 - 14 e. An identification of the location of the preferred corridor for any electric
15 transmission facility.
 - 16 f. A description of the merits and detriments of any location identified and a
17 comprehensive analysis with supporting data showing the reasons why the
18 preferred location is best suited for the facility.
 - 19 g. 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 h. An evaluation of the proposed site or corridor with regard to the applicable
23 considerations set out in section 49-22-09 and the criteria established pursuant to
24 section 49-22-05.1.
 - 25 i. Such other information as the applicant may consider relevant or the commission
26 may require.

27 **SECTION 12. AMENDMENT.** Section 49-22-08.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a**
2 **route.**

- 3 1. An application for a route permit for ~~aan~~ electric transmission facility within a
4 designated corridor ~~shall~~must be filed no later than two years after the issuance of the
5 certificate and ~~shall~~must be in such form as the commission may prescribe, containing
6 the following information:
- 7 a. A description of the type, size, and design of the proposed facility.
 - 8 b. A description of the location of the proposed facility.
 - 9 c. An evaluation of the proposed route with regard to the applicable considerations
10 set out in section 49-22-09 and the criteria established pursuant to section
11 49-22-05.1.
 - 12 d. A description of mitigative measures that will be taken to minimize all foreseen
13 adverse impacts resulting from the location, construction, and operation of the
14 proposed facility.
 - 15 e. A description of the right-of-way preparation and construction and reclamation
16 procedures.
 - 17 f. A statement setting forth the manner in which:
 - 18 (1) The utility will inform affected landowners of easement acquisition, and
19 necessary easement conditions and restrictions.
 - 20 (2) The utility will compensate landowners for easements, without reference to
21 the actual consideration to be paid.
 - 22 g. Such other information as the utility may consider relevant or the commission
23 may require.
- 24 2. After determining that the application is complete, the commission shall serve a notice
25 of filing of the application on such persons and agencies that the commission may
26 deem appropriate and shall publish a notice of filing of the application in the official
27 newspaper of each county in which any portion of the designated corridor is located.
- 28 3. A copy of the application shall be furnished to any person or agency, upon request to
29 the commission within thirty days of either service or publication of the notice of filing.
- 30 4. An application for an amendment of a permit shall be in such form and contain such
31 information as the commission shall prescribe.

1 5. The commission shall designate a route for the construction of aan electric
2 transmission facility following the study and hearings provided for in this chapter. This
3 designation shall be made in accordance with the evidence presented at the hearings,
4 an evaluation of the information provided in the application, the criteria established
5 pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a
6 finding with reasons for the designation, and shall be made in a timely manner no later
7 than six months after the filing of a completed application. The time for designation of
8 a route may be extended by the commission for just cause. The failure of the
9 commission to act within the time limit provided in this section shall not operate to
10 divest the commission of jurisdiction in any permit proceeding. Upon designation of a
11 route the commission shall issue a permit to the applicant with such terms, conditions,
12 or modifications deemed necessary.

13 **SECTION 13.** Section 49-22-08.2 of the North Dakota Century Code is created and enacted
14 as follows:

15 **49-22-08.2. Combining application.**

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

18 **SECTION 14. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **49-22-09. Factors to be considered in evaluating applications and designation of**
21 **sites, corridors, and routes.**

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

- 24 1. Available research and investigations relating to the effects of the location,
25 construction, and operation of the proposed facility on public health and welfare,
26 natural resources, and the environment.
- 27 2. The effects of new electric energy conversion and electric transmission technologies
28 and systems designed to minimize adverse environmental effects.
- 29 3. The potential for beneficial uses of waste energy from a proposed electric energy
30 conversion facility.

- 1 4. Adverse direct and indirect environmental effects ~~which~~that cannot be avoided should
- 2 the proposed site or route be designated.
- 3 5. Alternatives to the proposed site, corridor, or route which are developed during the
- 4 hearing process and which minimize adverse effects.
- 5 6. Irreversible and irretrievable commitments of natural resources should the proposed
- 6 site, corridor, or route be designated.
- 7 7. The direct and indirect economic impacts of the proposed facility.
- 8 8. Existing plans of the state, local government, and private entities for other
- 9 developments at or in the vicinity of the proposed site, corridor, or route.
- 10 9. The effect of the proposed site or route on existing scenic areas, historic sites and
- 11 structures, and paleontological or archaeological sites.
- 12 10. The effect of the proposed site or route on areas which are unique because of
- 13 biological wealth or because they are habitats for rare and endangered species.
- 14 11. Problems raised by federal agencies, other state agencies, and local entities.

15 **SECTION 15. AMENDMENT.** Section 49-22-09.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly**
18 **required.**

19 After compliance with the applicable requirements of this chapter, any hydroelectric
20 transmission facility that transmits hydroelectric power produced outside the United States, and
21 which crosses any portion of this state, must have the approval of the legislative assembly by
22 concurrent resolution. A person may not begin construction of a hydroelectric transmission
23 facility in this state ~~that~~which transmits hydroelectric power produced outside the United States,
24 or exercise the right of eminent domain in connection with such construction, without first having
25 complied with this chapter and obtained the approval of the legislative assembly. This section
26 ~~shall~~does not apply to any electric transmission facility for which a route permit and certificate of
27 corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued
28 after July 1, 1985.

29 **SECTION 16. AMENDMENT.** Section 49-22-14 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **49-22-14. Advisory committees - Appointment - Compensation.**

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

12 **SECTION 17. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is
13 amended and reenacted as follows:

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

- 16 1. The issuance of a certificate of site compatibility or a route permit shall, subject to
17 subsections 2 and 3, be the sole site or route approval required to be obtained by the
18 utility.
- 19 2. A certificate of site compatibility for an electric energy conversion facility shall not
20 supersede or preempt any local land use, zoning, or building rules, regulations, or
21 ordinances and no site shall be designated which violates local land use, zoning, or
22 building rules, regulations, or ordinances. A permit for the construction of ~~aan~~ electric
23 transmission facility within a designated corridor may supersede and preempt any
24 local land use, zoning, or building rules, regulations, or ordinances upon a finding by
25 the commission that such rules, regulations, or ordinances, as applied to the proposed
26 route, are unreasonably restrictive in view of existing technology, factors of cost or
27 economics, or needs of consumers regardless of their location. Without such a finding
28 by the commission, no route shall be designated which violates local land use, zoning,
29 or building rules, regulations, or ordinances.
- 30 3. Utilities subject to this chapter shall obtain state permits that may be required to
31 construct and operate electric energy conversion facilities and electric transmission

1 facilities. A state agency in processing a utility's facility permit application shall be
2 bound to the decisions of the commission with respect to the site designation for the
3 electric energy conversion facility or the corridor or route designation for the electric
4 transmission facility and with respect to other matters for which authority has been
5 granted to the commission by this chapter.

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

14 **SECTION 18. AMENDMENT.** Section 49-22-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **49-22-17. Improvement of sites or locations.**

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

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

27 **49-22-19. Hearing - Judicial review.**

28 Any party aggrieved by the issuance of a certificate of site compatibility or electric
29 transmission facility construction permit from the commission, certification of continuing
30 suitability filed by a utility with the commission, or promulgation of a final order by the
31 commission, may request a rehearing by the commission. The hearing ~~shall~~must be conducted

1 pursuant to chapter 28-32. There ~~shall be~~ a right of appeal to the district court from any
2 adverse ruling by the commission.

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

5 **49-22-20. Revocation or suspension of certificate or permit.**

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

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

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

17 **49-22-21. Penalties.**

- 18 1. Any person required by this chapter to have a certificate or permit who willfully begins
19 construction of an electric energy conversion facility or electric transmission facility
20 without previously securing a certificate or permit as prescribed by this chapter, or who
21 willfully constructs, operates, or maintains an electric energy conversion facility or
22 electric transmission facility other than in compliance with the certificate or permit and
23 any terms, conditions, and modifications contained therein is guilty of a class A
24 misdemeanor.
- 25 2. Any person who willfully violates any regulation issued or approved pursuant to this
26 chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring
27 device or method required to be maintained under this chapter shall be guilty of a
28 class A misdemeanor.
- 29 3. Any person who willfully engages in any of the following conduct ~~shall be~~ subject to a
30 civil penalty of not to exceed ten thousand dollars for each such violation for each day

1 ~~that such~~the violations persist, except that the maximum penalty may not exceed two
2 hundred thousand dollars for any related series of violations:

- 3 a. Begins construction of an electric energy conversion facility or ~~aan~~ electric
4 transmission facility without having been issued a certificate or permit pursuant to
5 this chapter.
- 6 b. Constructs, operates, or maintains an electric energy conversion facility or ~~aan~~
7 electric transmission facility other than in compliance with the certificate or permit
8 and any terms, conditions, or modifications contained therein.
- 9 c. Violates any provision of this chapter or any rule adopted by the commission
10 pursuant to this chapter.
- 11 d. Falsifies, tampers with, or renders inaccurate any monitoring device or method
12 required to be maintained pursuant to a certificate or permit issued pursuant to
13 this chapter.

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

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

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

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

29 **SECTION 23. AMENDMENT.** Subsection 2 of section 49-22-22 of the North Dakota
30 Century Code is amended and reenacted as follows:

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

10 **SECTION 24.** Chapter 49-22.1 of the North Dakota Century Code is created and enacted
11 as follows:

12 **49-22.1-01. Definitions.**

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

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

- 1 (c) For a gas or liquid transmission facility constructed before April 9,
2 1975, within a width of three hundred fifty feet [106.68 meters] on
3 either side 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 gas or liquid energy conversion facility;
8 (b) Of a new gas or liquid transmission facility;
9 (c) To improve the existing gas or liquid energy conversion facility, or gas
10 or liquid, transmission facility; or
11 (d) To increase or decrease the capacity of the existing gas or liquid
12 energy conversion facility or gas or liquid 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 gas or liquid energy conversion facility;
18 [2] Of a new gas or liquid transmission facility;
19 [3] To improve the existing gas or liquid energy conversion or gas or
20 liquid transmission facility; or
21 [4] To increase or decrease the capacity of the existing gas or liquid
22 energy conversion facility or gas or liquid transmission facility;
23 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:
- 31 (a) The activities will not affect any known exclusion area;

- 1 (b) The activities are for the construction:
- 2 [1] Of a new gas or liquid energy conversion facility;
- 3 [2] Of a new gas or liquid transmission facility;
- 4 [3] To improve the existing gas or liquid energy conversion facility or
- 5 gas or liquid facility; or
- 6 [4] To increase or decrease the capacity of the existing gas or liquid
- 7 energy conversion facility or gas or liquid transmission facility;
- 8 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 a gas or liquid transmission facility.
- 26 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission
- 27 facility, or both.
- 28 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of
- 29 plant and addition, designed for or capable of:
- 30 a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic
- 31 meters] or more of gas per day, regardless of the end use of the gas;

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

1 products, including coal gasification, coal liquefaction, petroleum refinement, uranium
2 enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid
3 hydrocarbon products, or the transmission of water from or to any gas or liquid energy
4 conversion facility.

5 **49-22.1-02. Statement of policy.**

6 The legislative assembly finds the construction of energy conversion facilities and
7 transmission facilities affects the environment and the welfare of the citizens of this state. It is
8 necessary to ensure the location, construction, and operation of energy conversion facilities and
9 transmission facilities will produce minimal adverse effects on the environment and the welfare
10 of the citizens of this state by prohibiting energy conversion facilities and transmission facilities
11 from being located, constructed, or operated within this state without a certificate of site
12 compatibility or a route permit acquired under this chapter. The policy of this state is to site
13 energy conversion facilities and to route transmission facilities in an orderly manner compatible
14 with environmental preservation and the efficient use of resources. Sites and routes must be
15 selected to minimize adverse human and environmental impact while ensuring continuing
16 system reliability and integrity and fulfilling energy needs in an orderly and timely fashion.

17 **49-22.1-03. Exclusion and avoidance areas - Criteria.**

18 The commission shall develop criteria to be used in identifying exclusion and avoidance
19 areas and to guide the site, corridor, and route suitability evaluation and designation process.
20 Except for oil and gas transmission lines in existence before July 1, 1983, areas within five
21 hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance
22 areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter]
23 avoidance area criteria for an inhabited rural residence may be waived by the owner of the
24 inhabited rural residence in writing. The criteria also may include an identification of impacts and
25 policies or practices which may be considered in the evaluation and designation process.

26 **49-22.1-04. Certificate of site compatibility or route permit required.**

27 A utility may not begin construction of a gas or liquid energy conversion facility or gas or
28 liquid transmission facility in the state without first having obtained a certificate of site
29 compatibility or a route permit from the commission pursuant to this chapter. The facility must be
30 constructed, operated, and maintained in conformity with the certificate or permit and any terms,
31 conditions, or modifications of the certificate or permit. A certificate or permit may be

1 transferred, subject to the approval of the commission, to any person who agrees to comply
2 with its terms, conditions, and modifications.

3 **49-22.1-05. Waiver of procedures and time schedules.**

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

16 **49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of**
17 **a site or corridor.**

- 18 1. An application for a certificate must be in the form prescribed by the commission
19 containing the following information:
- 20 a. A description of the size and type of facility.
 - 21 b. A summary of any studies that have been made of the environmental impact of
22 the facility.
 - 23 c. A statement explaining the need for the facility.
 - 24 d. An identification of the location of the preferred site for any gas or liquid energy
25 conversion facility.
 - 26 e. An identification of the location of the preferred corridor for any gas or liquid
27 transmission facility.
 - 28 f. A description of the merits and detriments of any location identified and a
29 comprehensive analysis with supporting data showing the reasons why the
30 preferred location is best suited for the facility.

- 1 g. A description of mitigative measures that will be taken to minimize all foreseen
2 adverse impacts resulting from the location, construction, and operation of the
3 proposed facility.
- 4 h. An evaluation of the proposed site or corridor with regard to the applicable
5 considerations set out in section 49-22.1-09 and the criteria established pursuant
6 to section 49-22.1-03.
- 7 i. Any other information as the applicant considers relevant or the commission may
8 require.
- 9 2. After determining the application is complete, the commission shall serve a notice of
10 filing of the application on those persons and agencies the commission deems
11 appropriate and shall publish a notice of filing of the application in the official
12 newspaper of each county in which any portion of the site or corridor is proposed to be
13 located.
- 14 3. A copy of the application must be furnished to any person or agency, upon request to
15 the commission within thirty days of either service or publication of the notice of filing.
- 16 4. An application for an amendment of a certificate must be in the form and contain the
17 information as the commission prescribes.
- 18 5. The commission may designate a site or corridor for a proposed facility following the
19 study and hearings provided for in this chapter. Any designation must be made in
20 accordance with the evidence presented at the hearings, an evaluation of the
21 information provided in the application, the criteria established pursuant to section
22 49-22.1-03, and the considerations set out in section 49-22.1-09 in a finding with
23 reasons for the designation, and must be made in a timely manner no later than six
24 months after the filing of a completed application for a certificate of site compatibility or
25 no later than three months after the filing of a completed application for a certificate of
26 corridor compatibility. The time for designation of a site or corridor may be extended by
27 the commission for just cause. The failure of the commission to act within the time
28 limits provided in this section does not operate to divest the commission of jurisdiction
29 in any certification proceeding. The commission shall indicate the reasons for any
30 refusal of designation. Upon designation of a site or corridor, the commission shall

1 issue a certificate of site compatibility or a certificate of corridor compatibility with the
2 terms, conditions, or modifications deemed necessary.

3 **49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a**
4 **route.**

5 1. An application for a route permit for a gas or liquid transmission facility within a
6 designated corridor must be filed no later than two years after the issuance of the
7 certificate and must be in the form the commission prescribes, containing the following
8 information:

9 a. A description of the type, size, and design of the proposed facility.

10 b. A description of the location of the proposed facility.

11 c. An evaluation of the proposed route with regard to the applicable considerations
12 set out in section 49-22.1-09 and the criteria established pursuant to section
13 49-22.1-03.

14 d. A description of mitigative measures that will be taken to minimize all foreseen
15 adverse impacts resulting from the location, construction, and operation of the
16 proposed facility.

17 e. A description of the right-of-way preparation and construction and reclamation
18 procedures.

19 f. A statement setting forth the manner in which:

20 (1) The utility will inform affected landowners of easement acquisition, and
21 necessary easement conditions and restrictions.

22 (2) The utility will compensate landowners for easements, without reference to
23 the actual consideration to be paid.

24 g. Any other information the utility considers relevant or the commission requires.

25 2. After determining the application is complete, the commission shall serve a notice of
26 filing of the application on those persons and agencies the commission deems
27 appropriate and shall publish a notice of filing of the application in the official
28 newspaper of each county in which any portion of the designated corridor is located.

29 3. A copy of the application must be furnished to any person or agency, upon request to
30 the commission within thirty days of either service or publication of the notice of filing.

- 1 4. An application for an amendment of a permit must be in the form and contain the
2 information the commission prescribes.
- 3 5. The commission shall designate a route for the construction of a gas or liquid
4 transmission facility following the study and hearings provided for in this chapter. This
5 designation must be made in accordance with the evidence presented at the hearings,
6 an evaluation of the information provided in the application, the criteria established
7 pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-06 in
8 a finding with reasons for the designation, and must be made in a timely manner no
9 later than six months after the filing of a completed application. The time for
10 designation of a route may be extended by the commission for just cause. The failure
11 of the commission to act within the time limit provided in this section does not operate
12 to divest the commission of jurisdiction in any permit proceeding. Upon designation of
13 a route the commission shall issue a permit to the applicant with the terms, conditions,
14 or modifications deemed necessary.

15 **49-22.1-08. Combining application.**

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

18 **49-22.1-09. Factors to be considered in evaluating applications and designation of**
19 **sites, corridors, and routes.**

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

- 22 1. Available research and investigations relating to the effects of the location,
23 construction, and operation of the proposed facility on public health and welfare,
24 natural resources, and the environment.
- 25 2. The effects of new gas or liquid energy conversion and gas or liquid transmission
26 technologies and systems designed to minimize adverse environmental effects.
- 27 3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy
28 conversion facility.
- 29 4. Adverse direct and indirect environmental effects that cannot be avoided should the
30 proposed site or route be designated.

- 1 5. Alternatives to the proposed site, corridor, or route that are developed during the
- 2 hearing process and which minimize adverse effects.
- 3 6. Irreversible and ir retrievable commitments of natural resources should the proposed
- 4 site, corridor, or route be designated.
- 5 7. The direct and indirect economic impacts of the proposed facility.
- 6 8. Existing plans of the state, local government, and private entities for other
- 7 developments at or in the vicinity of the proposed site, corridor, or route.
- 8 9. The effect of the proposed site or route on existing scenic areas, historic sites and
- 9 structures, and paleontological or archaeological sites.
- 10 10. The effect of the proposed site or route on areas that are unique because of biological
- 11 wealth or because the site or route is a habitat for rare and endangered species.
- 12 11. Problems raised by federal agencies, other state agencies, and local entities.

13 **49-22.1-10. Public hearings - Notice.**

- 14 1. The commission shall hold a public hearing in each county in which any portion of a
- 15 site, corridor, or route is proposed to be located in an application for a certificate or a
- 16 permit. At the public hearing, any person may present testimony or evidence relating
- 17 to the information provided in the application, the criteria developed pursuant to
- 18 section 49-22.1-03, and the factors to be considered pursuant to section 49-22.1-09.
- 19 When more than one county is involved, the commission may hold a consolidated
- 20 hearing in one or more of the affected counties. A hearing for any county may not be
- 21 consolidated if five or more affected landowners in that county file a petition with the
- 22 commission within ten days of the publication of the notice of hearing.
- 23 2. The commission is not required to hold a public hearing on an application for the
- 24 transfer of a certificate or a permit, or an application for a waiver of procedures and
- 25 time schedules, but shall publish a notice of opportunity for a public hearing in the
- 26 official newspaper of each county in which any portion of the facility or the proposed
- 27 site, corridor, or route is located. If requested by any interested person and good
- 28 cause has been shown therefor, the commission shall hold a public hearing. If more
- 29 than one county is involved, the commission may hold a consolidated hearing in one
- 30 or more of the affected counties.

- 1 3. One or more public hearings must be held at a location or locations determined by the
2 commission concerning the following matters:
3 a. A substantial or material change in the criteria established pursuant to section
4 49-22.1-03.
5 b. A substantial or material change in the rules adopted pursuant to section
6 49-22.1-17.
7 c. The revocation or suspension of a certificate or permit.
8 4. Notice of a public hearing must be given by the commission by service on those
9 persons the commission deems appropriate and twice by publication, once at least
10 twenty days before the hearing and a second time within twenty days before the
11 hearing. Notice of a public hearing and notice of opportunity for a public hearing on an
12 application for a certificate, a permit, a transfer, or a waiver must be given at the
13 expense of the applicant. In an emergency the commission may notice a hearing upon
14 less than twenty days.

15 **49-22.1-11. Advisory committees - Appointment - Compensation.**

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

26 **49-22.1-12. Cooperation with state and federal agencies.**

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

1 **49-22.1-13. Effect of issuance of certificate or permit - Local land use, zoning, or**
2 **building rules, regulations, or ordinances - State agency rules.**

- 3 1. The issuance of a certificate of site compatibility or a route permit is, subject to
4 subsections 2 and 3, the sole site or route approval required to be obtained by the
5 utility.
- 6 2. A certificate of site compatibility for an energy conversion facility does not supersede
7 or preempt any local land use; zoning; or building rules, regulations, or ordinances,
8 and a site may not be designated which violates local land use; zoning; or building
9 rules, regulations, or ordinances. A permit for the construction of a gas or liquid
10 transmission facility within a designated corridor may supersede and preempt any
11 local land use; zoning; or building rules, regulations, or ordinances, upon a finding by
12 the commission that the rules, regulations, or ordinances, as applied to the proposed
13 route, are unreasonably restrictive in view of existing technology, factors of cost or
14 economics, or needs of consumers regardless of their location. Without that finding by
15 the commission, a route may not be designated which violates local land use; zoning;
16 or building rules, regulations, or ordinances.
- 17 3. Utilities subject to this chapter shall obtain state permits that may be required to
18 construct and operate gas or liquid energy conversion facilities and gas or liquid
19 transmission facilities. A state agency in processing a utility's facility permit application
20 is bound to the decisions of the commission with respect to the site designation for the
21 gas or liquid energy conversion facility or the corridor or route designation for the gas
22 or liquid transmission facility and with respect to other matters for which authority has
23 been granted to the commission by this chapter.
- 24 4. A site or route may not be designated which violates the rules of any state agency. A
25 state agency with jurisdiction over any aspect of a proposed facility shall present the
26 position of the agency at the public hearing on an application for a certificate, a permit,
27 or a waiver, which position must clearly state whether the site, corridor, or route being
28 considered for designation will be in compliance with the agency's rules. For purposes
29 of this chapter it is presumed a proposed facility will be in compliance with a state
30 agency's rules if that agency fails to present its position on the proposed site, corridor,
31 or route at the appropriate public hearing.

1 **49-22.1-14. Unfair tactics in acquiring land or easements for a facility - Court action -**

2 **Cancellation of easement - Penalty.**

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

1 **49-22.1-15. Route adjustment before or during construction for gas or liquid**
2 **transmission line.**

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

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

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

- 16 a. Files with the commission certification and supporting documentation that:
17 (1) The construction activities are within the designated corridor;
18 (2) The construction activities will not affect any known exclusion areas within
19 the designated corridor;
20 (3) The construction activities are expected to impact an avoidance area with a
21 specific description of the avoidance area expected to be impacted;
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, unless the utility previously received
25 authorization from the commission for the impact to the avoidance area;
26 (5) For an impact for which the utility does not already have approval or has not
27 filed the approval in paragraph 4, the utility has good cause and a specific
28 reason to impact the avoidance area, and a reasonable alternative does not
29 exist; and
30 (6) The utility will comply with the commission's order, laws, and rules
31 designating the corridor and designating the route.

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

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

21 **49-22.1-16. Improvement of sites or locations.**

22 Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid
23 transmission line route in accordance with this chapter may proceed to construct or improve
24 such site or route for the intended purposes at any time, subject to subsections 2 and 3 of
25 section 49-22.1-13; provided, that if the construction and improvement commences more than
26 four years after a certificate or permit for the site or route has been issued, the utility must
27 certify to the commission that the site or route continues to meet the conditions upon which the
28 certificate of site compatibility or gas or liquid transmission facility construction permit was
29 issued.

1 **49-22.1-17. Rules and regulations.**

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

4 **49-22.1-18. Hearing - Judicial review.**

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

11 **49-22.1-19. Revocation or suspension of certificate or permit.**

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

- 14 1. Any material false statement in the application or in accompanying statements or
15 studies required of the applicant.
- 16 2. Failure to comply with the certificate or permit or any terms, conditions, or
17 modifications contained in the certificate or permit.
- 18 3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
- 19 4. A determination by a district court pursuant to section 49-22.1-14.

20 **49-22.1-20. Penalties.**

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

- 1 3. Any person who willfully engages in any of the following conduct is subject to a civil
2 penalty of not to exceed ten thousand dollars for each violation for each day the
3 violations persist, except the maximum penalty may not exceed two hundred thousand
4 dollars for any related series of violations:
- 5 a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid
6 transmission facility without having been issued a certificate or permit pursuant to
7 this chapter.
- 8 b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a
9 gas or liquid transmission facility other than in compliance with the certificate or
10 permit and any terms, conditions, or modifications contained therein.
- 11 c. Violates any provision of this chapter or any rule adopted by the commission
12 pursuant to this chapter.
- 13 d. Falsifies, tampers with, or renders inaccurate any monitoring device or method
14 required to be maintained pursuant to a certificate or permit issued pursuant to
15 this chapter.
- 16 4. The civil penalty provided for in subsection 3 may be compromised by the
17 commission. The amount of the penalty when finally determined or agreed upon in
18 compromise must be deposited in the general fund and, if not paid, may be recovered
19 in a civil action in the courts of the state.
- 20 5. Notwithstanding any other provision of this chapter, the commission may, by injunctive
21 procedures, without bond or other undertaking, proceed against any person that
22 willfully engages in any conduct described in subsection 3. No liability may accrue to
23 the commission or its authorized representative in proceeding against any person
24 pursuant to this section.

25 **49-22.1-21. Siting process expense recovery - Deposit in special fund - Continuing**
26 **appropriation.**

- 27 1. Every applicant under this chapter shall pay to the commission an application fee:
- 28 a. An applicant for a certificate of site compatibility shall pay an amount equal to five
29 hundred dollars for each one million dollars of investment in the facility.
- 30 b. An applicant for a certificate of corridor compatibility shall pay an amount equal to
31 five thousand dollars for each one million dollars of investment in the facility.

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

1 **49-22.1-22. Safety.**

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

5 **SECTION 25. AMENDMENT.** Subsection 1 of section 54-17.7-08 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

12 **SECTION 26. AMENDMENT.** Section 61-24.3-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-24.3-03. Authorization of southwest pipeline project.**

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

- 1 **SECTION 27. REPEAL.** Sections 49-22-01 and 49-22-16.3 of the North Dakota Century
- 2 Code are repealed.