

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1096

Introduced by

Energy and Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact sections 49-22-25, 49-22-26, 49-22.1-23, and 49-22.1-24
2 of the North Dakota Century Code, relating to energy conversion and transmission siting and
3 facilities; to amend and reenact subsection 3 of section 49-22-03, section 49-22-07.2,
4 subsections 1 and 4 of section 49-22-13, subsection 1 of section 49-22-22, subsections 3 and 7
5 of section 49-22.1-01, section 49-22.1-05, subsections 1 and 4 of section 49-22.1-10, and
6 subsection 1 of section 49-22.1-21 of the North Dakota Century Code, relating to energy
7 conversion and transmission siting and facilities; and to repeal section 49-22.1-22 of the North
8 Dakota Century Code, relating to removal of electrical standards requirement from gas and
9 liquid energy transmission facilities.

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

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

- 13 3. "Construction" includes a clearing of land, excavation, or other action affecting the
14 environment of the site after April 9, 1975, but does not include activities:
- 15 a. Conducted wholly within the geographic location for which a utility has previously
16 obtained a certificate or permit under this chapter, or on which a facility was
17 constructed before April 9, 1975, if:
- 18 (1) The activities are for the construction of the same type of facility as the
19 existing type of facility as identified in a subdivision of subsections 5 or ~~426~~
20 of this section and the activities are:
- 21 (a) Within the geographic boundaries of a previously issued certificate or
22 permit;
- 23 (b) For an electric energy conversion facility constructed before April 9,
24 1975, within the geographic location on which the facility was built; or

- 1 (c) For an 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 electric transmission facility;
- 9 (c) To improve the existing electric energy conversion facility or electric
10 transmission facility; or
- 11 (d) To increase or decrease the capacity of the existing electric energy
12 conversion facility 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 a 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 electric transmission facility;
- 19 [3] To improve the existing electric energy conversion or electric
20 transmission facility; or
- 21 [4] To increase or decrease the capacity of the existing electric
22 energy conversion facility or electric transmission facility; and
- 23 (c) The utility will comply with all applicable conditions and protections in
24 siting laws and rules and commission orders previously issued for any
25 part of the facility.
- 26 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
27 are expected to affect a known avoidance area and the utility before conducting
28 any activities:
- 29 (1) Certifies in writing to the commission that:
- 30 (a) The activities will not affect a known exclusion area;
- 31 (b) The activities are for the construction:

- 1 [1] Of a new electric energy conversion facility;
2 [2] Of a new electric transmission facility;
3 [3] To improve the existing electric energy conversion facility or
4 electric transmission facility; or
5 [4] To increase or decrease the capacity of the existing electric
6 energy conversion facility or electric transmission facility; and
7 (c) The utility will comply with all applicable conditions and protections in
8 siting laws and rules and commission orders previously issued for any
9 part of the facility;
- 10 (2) Notifies the commission in writing that the activities are expected to impact
11 an avoidance area and provides information on the specific avoidance area
12 expected to be impacted and the reasons why impact cannot be avoided;
13 and
14 (3) Receives the commission's written approval for the impact to the avoidance
15 area, based on a determination that there is no reasonable alternative to the
16 expected impact. If the commission does not approve impacting the
17 avoidance area, the utility must obtain siting authority under this chapter for
18 the affected portion of the site or route. If the commission fails to act on the
19 notification required by this subdivision within thirty days of the utility's filing
20 the notification, the impact to the avoidance area is deemed approved.
- 21 c. Incident to preliminary engineering or environmental studies.

22 **SECTION 2. AMENDMENT.** Section 49-22-07.2 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **49-22-07.2. Waiver of procedures and time schedules.**

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

1 ~~jeopardize the utility's system~~, may issue an order waiving specified procedures and time
2 schedules required by this chapter or by the rules adopted pursuant to this chapter, including,
3 but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of
4 site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as
5 the commission may require.

6 **SECTION 3. AMENDMENT.** Subsections 1 and 4 of section 49-22-13 of the North Dakota
7 Century Code are amended and reenacted as follows:

- 8 1. The commission shall hold a public hearing in each county in which any portion of a
9 site, corridor, or route is proposed to be located in an application for a certificate or a
10 permit. If the commission determines there is an emergency that would prevent an
11 in-person hearing in the county in which any portion of a site, corridor, or route is
12 proposed, a remote public hearing may be held. At the public hearing, any person may
13 present testimony or evidence relating to the information provided in the application,
14 the criteria developed pursuant to section 49-22-05.1, and the factors to be considered
15 pursuant to section 49-22-09. If the commission determines there are no adequate
16 facilities to conduct a public hearing within the county in which any portion of a site,
17 corridor, or route is proposed to be located in, the public hearing must be held in the
18 nearest adequate location. When more than one county is involved, the commission
19 may hold a consolidated hearing in one or more of the affected counties. A hearing for
20 any county shall not be consolidated if five or more affected landowners in such
21 county file a petition with the commission within ten days of the publication of the
22 notice of hearing.
- 23 4. Notice of a public hearing shall be given by the commission by service on such
24 persons and agencies that the commission may deem appropriate and twice by
25 publication, once at least twenty days prior to such hearing and a second time within
26 twenty days prior to such hearing. Notice of a public hearing and notice of opportunity
27 for a public hearing on an application for a certificate, a permit, a transfer or
28 amendment of a certificate or permit, or a waiver shall be given at the expense of the
29 applicant. In an emergency the commission, in its discretion, may notice a hearing
30 upon less than twenty days.

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

- 3 1. Every applicant under this chapter shall pay to the commission an application fee:
- 4 a. An applicant for a certificate of site compatibility shall pay an amount equal to five
5 hundred dollars for each one million dollars of investment in the facility.
- 6 b. An applicant for a certificate of corridor compatibility shall pay an amount equal to
7 five thousand dollars for each one million dollars of investment in the facility.
- 8 c. An applicant for a waiver shall pay the amount which would be required for an
9 application for a certificate of site or corridor compatibility for the proposed facility.
10 If a waiver is not granted for a proposed facility, such application fee paid shall be
11 allowed as a credit against fees payable under this section in connection with an
12 application under this chapter for a certificate or permit for the proposed facility.
- 13 d. An applicant requesting an amendment to a certificate or permit or for a transfer
14 of a certificate or permit shall pay an amount to be determined by the commission
15 to cover anticipated expenses of processing the application.
- 16 e. An applicant certifying to the commission under subsection 3 of section 49-22-03
17 shall pay an amount to be determined by the commission to cover anticipated
18 expenses of processing the application.
- 19 f. The application fee under subdivision a, b, or c may not be less than ten
20 thousand dollars nor more than one hundred thousand dollars.
- 21 g. If an application fee is less than twenty-five thousand dollars, an applicant may
22 agree to pay additional fees that are reasonably necessary for completion of the
23 site, corridor, or route evaluation and designation process.

24 **SECTION 5.** Section 49-22-25 of the North Dakota Century Code is created and enacted as
25 follows:

26 **49-22-25. Approval for temporary operation or variance.**

- 27 1. The commission may approve temporary operation of facilities or a temporary
28 variance from approved construction, operation, or maintenance of facilities upon a
29 showing of good cause and receipt of a utility certification that the activities will have
30 no adverse impacts upon the welfare of the citizens of this state or the environment.

- 1 2. The commission may issue a temporary approval or variance without the necessity of
2 notice, publication, or public hearing with any additional terms, conditions, or
3 modifications deemed necessary to minimize impacts.

4 **SECTION 6.** Section 49-22-26 of the North Dakota Century Code is created and enacted as
5 follows:

6 **49-22-26. Protection of cultural or historic site data.**

7 The commission may limit access to, and release of, information that contains data that
8 specifically identifies the location of cultural, archaeological, historical, or paleontological sites.

9 **SECTION 7. AMENDMENT.** Subsections 3 and 7 of section 49-22.1-01 of the North Dakota
10 Century Code are amended and reenacted as follows:

- 11 3. "Construction" includes a clearing of land, excavation, or other action affecting the
12 environment of the site after April 9, 1975, but does not include activities:
- 13 a. Conducted wholly within the geographic location for which a utility has previously
14 obtained a certificate or permit under this chapter, or on which a facility was
15 constructed before April 9, 1975, if:
- 16 (1) The activities are for the construction of the same type of facility as the
17 existing type of facility as identified in subsection 56 or 127 and the activities
18 are:
- 19 (a) Within the geographic boundaries of a previously issued certificate or
20 permit;
- 21 (b) For a gas or liquid energy conversion facility constructed before
22 April 9, 1975, within the geographic location on which the facility was
23 built; or
- 24 (c) For a gas or liquid transmission facility constructed before April 9,
25 1975, within a width of three hundred fifty feet [106.68 meters] on
26 either side of the centerline;
- 27 (2) Except as provided in subdivision b, the activities do not affect any known
28 exclusion or avoidance area;
- 29 (3) The activities are for the construction:
- 30 (a) Of a new gas or liquid energy conversion facility;
- 31 (b) Of a new gas or liquid transmission facility;

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

- 1 (c) The utility will comply with all applicable conditions and protections in
2 siting laws and rules and commission orders previously issued for any
3 part of the facility;
- 4 (2) Notifies the commission in writing that the activities are expected to impact
5 an avoidance area and provides information on the specific avoidance area
6 expected to be impacted and the reasons why impact cannot be avoided;
7 and
- 8 (3) Receives the commission's written approval for the impact to the avoidance
9 area, based on a determination that there is no reasonable alternative to the
10 expected impact. If the commission does not approve impacting the
11 avoidance area, the utility must obtain siting authority under this chapter for
12 the affected portion of the site or route. If the commission fails to act on the
13 notification required by this subdivision within thirty days of the utility's filing
14 the notification, the impact to the avoidance area is deemed approved.
- 15 c. Incident to preliminary engineering or environmental studies.
- 16 7. "Gas or liquid transmission facility" means any of the following:
- 17 a. A gas or liquid transmission line and associated facilities designed for or capable
18 of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or
19 carbon dioxide. This subdivision does not apply to:
- 20 (1) An oil or gas pipeline gathering system;
- 21 (2) A natural gas distribution system;
- 22 (3) Carbon dioxide storage facility underground equipment, including a flow
23 line, subject to chapter 38-22;
- 24 (4) A pipeline with an outside diameter of four and one-half inches
25 [11.43 centimeters] or less which will not be trenched and will be plowed in
26 with a power mechanism having a vertical knife or horizontally directionally
27 drilled, and its associated facilities; or
- 28 ~~(3)~~(5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of
29 this chapter, a gathering system includes the pipelines and associated
30 facilities used to collect oil from the lease site to the first pipeline storage
31 site where pressure is increased for further transport, or pipelines and

1 associated facilities used to collect gas from the well to the gas processing
2 facility at which end-use consumer-quality gas is produced, with or without
3 the addition of odorant.

4 b. A liquid transmission line and associated facilities designed for or capable of
5 transporting water from or to an energy conversion facility.

6 **SECTION 8. AMENDMENT.** Section 49-22.1-05 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-22.1-05. Waiver of procedures and time schedules.**

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

21 **SECTION 9. AMENDMENT.** Subsections 1 and 4 of section 49-22.1-10 of the North Dakota
22 Century Code are amended and reenacted as follows:

23 1. The commission shall hold a public hearing in each county in which any portion of a
24 site, corridor, or route is proposed to be located in an application for a certificate or a
25 permit. If the commission determines there is an emergency that would prevent an
26 in-person hearing in the county in which any portion of a site, corridor, or route is
27 proposed, a remote public hearing may be held. At the public hearing, any person may
28 present testimony or evidence relating to the information provided in the application,
29 the criteria developed pursuant to section 49-22.1-03, and the factors to be considered
30 pursuant to section 49-22.1-09. If the commission determines there are no adequate
31 facilities to conduct a public hearing within the county in which any portion of a site,

1 corridor, or route is proposed to be located in, the public hearing must be held in the
2 nearest adequate location. When more than one county is involved, the commission
3 may hold a consolidated hearing in one or more of the affected counties. A hearing for
4 any county may not be consolidated if five or more affected landowners in that county
5 file a petition with the commission within ten days of the publication of the notice of
6 hearing.

- 7 4. Notice of a public hearing must be given by the commission by service on those
8 persons the commission deems appropriate and twice by publication, once at least
9 twenty days before the hearing and a second time within twenty days before the
10 hearing. Notice of a public hearing and notice of opportunity for a public hearing on an
11 application for a certificate, a permit, a transfer or amendment of a certificate or permit,
12 or a waiver must be given at the expense of the applicant. In an emergency the
13 commission may notice a hearing upon less than twenty days.

14 **SECTION 10. AMENDMENT.** Subsection 1 of section 49-22.1-21 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. Every applicant under this chapter shall pay to the commission an application fee:
17 a. An applicant for a certificate of site compatibility shall pay an amount equal to five
18 hundred dollars for each one million dollars of investment in the facility.
19 b. An applicant for a certificate of corridor compatibility shall pay an amount equal to
20 five thousand dollars for each one million dollars of investment in the facility.
21 c. An applicant for a waiver shall pay the amount that would be required for an
22 application for a certificate of site or corridor compatibility for the proposed facility.
23 If a waiver is not granted for a proposed facility, the application fee paid must be
24 allowed as a credit against fees payable under this section in connection with an
25 application under this chapter for a certificate or permit for the proposed facility.
26 d. An applicant for a transfer of a certificate or permit shall pay an amount to be
27 determined by the commission to cover anticipated expenses of processing the
28 application.
29 e. An applicant requesting an amendment to a certificate or permit, or certifying to
30 the commission under subsection 3 of section 49-22.1-01 or obtaining siting
31 authority under subdivision b of subsection 2 or subdivision c of subsection 4 of

1 section 49-22.1-15, shall pay an amount to be determined by the commission to
2 cover anticipated expenses of processing the application.

3 f. The application fee under subdivision a, b, or c may not be less than ten
4 thousand dollars nor more than one hundred thousand dollars.

5 g. If an application fee is less than twenty-five thousand dollars, an applicant may
6 agree to pay additional fees that are reasonably necessary for completion of the
7 site, corridor, or route evaluation and designation process.

8 **SECTION 11.** Section 49-22.1-23 of the North Dakota Century Code is created and enacted
9 as follows:

10 **49-22.1-23. Approval for temporary operation or variance.**

11 1. The commission may approve temporary operation of facilities or a temporary
12 variance from approved construction, operation, or maintenance of facilities upon a
13 showing of good cause and receipt of a utility certification that the activities will have
14 no adverse impacts upon the welfare of the citizens of this state or the environment.

15 2. The commission may issue a temporary approval or variance without the necessity of
16 notice, publication, or public hearing with any additional terms, conditions, or
17 modifications deemed necessary to minimize impacts.

18 **SECTION 12.** Section 49-22.1-24 of the North Dakota Century Code is created and enacted
19 as follows:

20 **49-22.1-24. Protection of cultural or historic site data.**

21 The commission may limit access to, and release of, information that contains data that
22 specifically identifies the location of cultural, archaeological, historical, or paleontological sites.

23 **SECTION 13. REPEAL.** Section 49-22.1-22 of the North Dakota Century Code is repealed.