

# PUBLIC UTILITIES

## CHAPTER 385

### SENATE BILL NO. 2122

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact a new section to chapter 49-02 of the North Dakota Century Code, relating to an applicant paying the cost of publishing notice.

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

**SECTION 1.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

#### **Applicant to pay cost of publishing notice.**

When an application is filed under this title for which there is no application fee, the applicant shall pay the cost of publishing any notice issued by the commission for the application.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 386

### SENATE BILL NO. 2100

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-02-27 of the North Dakota Century Code, relating to decommissioning of solar energy conversion facilities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-02-27 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-02-27. Decommissioning of windrenewable energy conversion facilities.**

1. The commission shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules must address:
  - a. The anticipated life of the project;
  - b. The estimated decommissioning costs in current dollars;
  - c. The method and schedule for updating the costs of the decommissioning and restoration;
  - d. The method of ensuring that funds will be available for decommissioning and restoration;
  - e. The anticipated manner in which the project will be decommissioned and the site restored; and
  - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.
3. The commission may adopt rules governing the decommissioning of commercial solar energy conversion facilities.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 387

### HOUSE BILL NO. 1362

(Representatives Monson, Headland, Mitskog)  
(Senators Bekkedahl, Burckhard, Robinson)

AN ACT to create and enact chapter 49-09.1 of the North Dakota Century Code, relating to the right of utilities to cross over or under a railroad right of way; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 49-09.1 of the North Dakota Century Code is created and enacted as follows:

#### **49-09.1-01. Definitions.**

As used in this chapter:

1. "Crossing" means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right of way by a utility. The term includes the construction, operation, repair, or maintenance of a facility that runs adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, after which the facility crosses the railroad lines, terminates, or exits the railroad right of way. The term does not include longitudinal occupancy of a railroad right of way.
2. "Facility" means any item of personal property placed over, across, or under a railroad right of way for use in connection with the storage or conveyance of:
  - a. Water;
  - b. Sewage;
  - c. Electronic, telephone, data, or telegraphic communications;
  - d. Fiber optics;
  - e. Cablevision;
  - f. Electric energy;
  - g. Liquid hydrocarbons;
  - h. Gas;
  - i. Hazardous liquids; or
  - j. Other substances, including pipes, sewers, conduits, cables, valves, lines, wires, manholes, or attachments.

3. "Railroad" means any association or corporation or other entity engaged in operating a common carrier by rail or any other entity responsible for the management of crossings or collection of crossing fees.
4. "Special circumstances" includes the railroad crossing's relationship to other property, location of the crossing in urban or other developed areas, the existence of unique topography or natural resources, or other dangers inherent in the particular crossing.
5. "Utility" means cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, municipality, joint action agency, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier. The term includes contractors and agents.

#### **49-09.1-02. Right of utilities to cross over or under railroad right of way.**

A utility may cross over or under the railroad right of way for the placement of facilities, subject to payment of the crossing fee in section 49-09.1-05 and reasonable regulation and negotiation in good faith as to location, placement, and compensation, when the placement of facilities is outside the public right of way.

#### **49-09.1-03. Notice and application for placement.**

1. A utility that intends to place a facility across a railroad right of way shall provide notice of the placement to the railroad at least thirty days before the placement.
2. The notice must include a completed crossing application, including a drawing showing the location of the proposed crossing and the railroad's property, tracks, and wires the utility will cross.
3. The utility shall submit the crossing application on a form provided or approved by the railroad, if available.
4. The crossing application must be sent to the railroad by registered mail.
5. The application must be accompanied by the crossing fee in section 49-09.1-05, and a certificate of insurance as required in section 49-09.1-06.

#### **49-09.1-04. Commencement of construction across railroad right of way.**

Thirty-five days after the receipt by the railroad of the completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing, unless the railroad notifies the utility in writing that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right of way. In all other instances, the utility is deemed to have authorization to commence construction of the facility.

#### **49-09.1-05. Crossing fee - Flagging expense.**

1. Unless otherwise agreed by the parties, a utility that crosses a railroad right of way, other than a crossing within the public right of way, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing.

2. The crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges to reimburse the railroad for the direct expenses or diminution of land value incurred by the railroad as a result of the crossing.
3. No other fee may be assessed by the railroad or by any railroad agent, contractor, or assignee to the utility or to any agent or contractor of the utility.
4. A crossing fee is not required if the crossing is located within a public right of way.
5. In addition to the standard crossing fee and based on the railroad traffic at the crossing, a utility shall reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing.
6. If the railroad alleges a crossing will cause a diminution in land value in an amount greater than the crossing fee provided in subsection 1, the railroad shall notify the utility and provide a certified appraisal demonstrating the diminution in value of the entire parcel of railroad property caused by the crossing before the date for commencement of construction provided in section 49-09.1-04.
7. If the parties are unable to resolve the issue of compensation under subsection 6, the dispute must be resolved in accordance with section 49-09.1-08.
8. The placement of a single conduit and its content is a single facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

#### **49-09.1-06. Certificate of insurance or coverage.**

1. The certificate of insurance or coverage submitted by a municipality must include commercial general liability insurance or equivalent form with a limit of not less than one million dollars for each occurrence and an aggregate of not less than two million dollars.
2. The certificate of insurance or coverage submitted by any other utility other than a gas and hazardous materials pipeline utility must include commercial general liability insurance or an equivalent form with a limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars.
3. The certificate of insurance submitted by a gas or hazardous materials pipeline utility must include commercial general liability insurance with a combined single limit of a minimum of five million dollars for each occurrence and an aggregate limit of at least ten million dollars.
4. The railroad may require protective liability insurance with a combined single limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing.
5. The coverage is required only during the period of construction, repair, or replacement of the facility.

6. The insurance obligations required under this section may be satisfied by the utility using any combination of primary, excess, or self insurance.

#### **49-09.1-07. Notice of objection by railroad - Appeal.**

1. If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right of way, the railroad shall provide notice of the objection and the specific basis of the objection to the utility by registered mail.
2. If the parties are unable to resolve the objection, either party may petition the commission for resolution of the disputed crossing application within thirty days from receipt of the objection.
3. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection.
4. If a petition is filed, the commission shall issue a notice of hearing or notice of opportunity for hearing within fifteen days of filing of the petition, and shall issue an order within thirty days after the hearing or, if a hearing is not held, after expiration of the period during which a hearing could be requested, during which time the crossing must be stayed. The order may be appealed in accordance with chapter 28-32. The commission shall assess its costs associated with a petition equitably against the parties. The parties shall pay the costs within thirty days after receipt of a bill for payment from the commission. Amounts collected by the commission under this subsection must be deposited in a special account within the commission.

#### **49-09.1-08. Additional requirements imposed by railroad - Objection and petition to commission.**

1. If, in writing by registered mail, a railroad asserts special circumstances exist, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current use of the railroad right of way, or imposes additional requirements on a utility for crossing its lines, the utility may object to one or more of the requirements.
2. If a utility objects under subsection 1, the utility shall provide notice of the objection and the specific basis of the objection to the railroad by registered mail.
3. If the parties are unable to resolve the objection, either party may petition the commission for resolution of the objection within thirty days from receipt of the objection.
4. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection.
5. If a petition is filed, the commission shall issue a notice of hearing or notice of opportunity for hearing within fifteen days after the filing of the petition, and shall determine, within thirty days after the hearing or, if a hearing is not held, after expiration of the period during which a hearing could be requested, whether special circumstances exist which necessitate additional requirements for the placement of the crossing. The order may be appealed in accordance with chapter 28-32. The commission shall assess its costs associated with a petition equitably against the parties. The parties shall pay

the costs within thirty days after receipt of a bill for payment from the commission. Amounts collected by the commission under this subsection must be deposited in a special account within the commission.

#### **49-09.1-09. Operational relocation.**

1. A railroad may require a utility to relocate a facility if the railroad determines relocation is essential to accommodate railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a utility may require a railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A utility shall perform the relocation within a reasonable period of time following the agreement.
2. The relocation must be to a location mutually agreed upon by the railroad and utility, within the railroad right of way.
3. Relocation is at the expense of the utility. The crossing fee under section 49-09.1-05 may not be imposed for relocation.

#### **49-09.1-10. Removal of equipment.**

Upon completion of any facility, the utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction of the facility and, if railroad property was moved or disturbed, restore that property to the condition of the property before being moved or disturbed.

#### **49-09.1-11. Assignment.**

1. A utility may assign or otherwise transfer any rights to cross a railroad right of way to any financially responsible entity controlled by, controlling, or under common control of the utility or to any entity into or with which the utility is merged or consolidated or which acquires ownership or control of all or substantially all of the transmission assets of the utility.
2. Notice of the assignment or transfer must be given to the railroad within thirty days. Any other transfer or assignment may not take place without the written permission of the railroad, which permission may not be unreasonably withheld.

#### **49-09.1-12. Prohibition against mechanic's liens.**

1. A utility may not create, permit, or cause a mechanic's lien or other lien to be created or enforced against the railroad's property for any work performed by the utility in connection with the utility's facilities located in the railroad's right of way.
2. A railroad may not create, permit, or suffer a mechanic's lien or other lien of any kind or any nature to be created or enforced against a utility's property located in the railroad's right of way for any work performed by the railroad in connection with the railroad's facilities.

#### **49-09.1-13. Taxes.**

A utility promptly shall pay or discharge all taxes and charges levied upon the utility's facilities located in the railroad's right of way. If any taxes or charges can not

be separately made or assessed to the utility, but are included in the taxes or charges assessed to the railroad, the utility shall pay to the railroad an equitable portion of the taxes, determined by the value of the utility's facilities located on the railroad right of way as compared with the entire value of the railroad property.

**49-09.1-14. Existing agreements - Eminent domain.**

1. This chapter does not prevent a railroad and a utility from continuing under an existing agreement or otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.
2. This chapter does not impair the authority of a utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

**SECTION 2. APPLICATION.** This Act applies to any:

1. Crossing existing before August 1, 2019, if an agreement concerning the crossing has expired or is terminated. In such instance, if the collective amount of seven hundred fifty dollars has been paid to the railroad during the existence of the crossing, no additional fees are required; and
2. Crossing commenced after July 31, 2019.

Approved April 10, 2019

Filed April 11, 2019



## CHAPTER 388

### HOUSE BILL NO. 1255

(Representatives Roers Jones, Beadle, Boschee, Heinert)  
(Senators Elkin, Myrdal, Robinson)

AN ACT to amend and reenact section 49-10.1-05 of the North Dakota Century Code, relating to the powers of railroad police.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-10.1-05. Railroad police.**

Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while ~~engaged in their~~within the scope of employment with the railroad, have the authority of a "law enforcement officer" as defined under section 12.1-01-04 for the purpose of ~~arresting any person~~:

1. Arresting an individual committing a felony on railroad property or associated with railroad equipment, ~~or to arrest a person~~;
2. Arresting an individual committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, ~~and may remove~~;
3. Issuing a citation to an individual committing an infraction or noncriminal offense on or relating to railroad property, or to individuals or property being transported by the railroad, or awaiting transportation by the railroad; and
4. Removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 389

### SENATE BILL NO. 2038

(Legislative Management)  
(Natural Resources Committee)

AN ACT to amend and reenact sections 49-22-03, 49-22-14.1, 49-22-16, 49-22.1-01, 49-22.1-12, and subsection 2 of section 49-22.1-13 of the North Dakota Century Code, relating to energy conversion and transmission facility siting, gas and liquid energy conversion, and gas and liquid transmission facility siting.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

##### **49-22-03. Definitions.**

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes ~~any~~ clearing of land, excavation, or other action ~~that would affect~~ affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:

- (a) Of a new electric energy conversion facility;
  - (b) Of a new electric transmission facility;
  - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
  - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion or avoidance area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;

- (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which ~~where~~ a designated route may be established for an electric transmission facility.
  5. "Electric energy conversion facility" means ~~any~~ a plant, addition, or combination of plant and addition, designed for or capable of:
    - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
    - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
  6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
    - a. A temporary electric transmission line loop that is:
      - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
      - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
      - (3) In place for less than one year; or
    - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
  7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.
  8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
  9. "Person" includes ~~any~~ an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.

10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. ~~"Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.~~
12. "Route" means the location of an electric transmission facility within a designated corridor.
- ~~13-12.~~ "Site" means the location of an electric energy conversion facility.
- 14-13. "Utility" means ~~any~~ a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

**SECTION 2. AMENDMENT.** Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-14.1. Cooperation with state and federal agencies and ~~political subdivisions.~~**

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. ~~The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.~~

<sup>149</sup> **SECTION 3. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. a. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and ~~no~~ a site may not be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
  - b. ~~Except as provided in this section, a~~ permit for the construction of a gas or liquid or an electric transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations, or building rule, regulation, or ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as applied to the proposed route, is

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<sup>149</sup> Section 49-22-16 was also amended by section 6 of House Bill No. 1383, chapter 56.

~~unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location. Without such a finding by the commission, a route may not be designated which violates a local land use, zoning, or building rule, regulation, or ordinance.~~

- ~~e. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.~~
- ~~d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.~~
- ~~e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.~~
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. ~~No~~A site or route ~~shall~~may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position ~~shall~~must clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it ~~shall~~be presumed that a proposed facility will be in compliance with a state agency's rules if ~~such~~the agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

**SECTION 4. AMENDMENT.** Section 49-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes ~~any~~ any clearing of land, excavation, or other action ~~that would affect~~ affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 5 or 12 and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:
      - (a) Of a new gas or liquid energy conversion facility;
      - (b) Of a new gas or liquid transmission facility;
      - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
      - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (4) Before conducting any activities, the utility certifies in writing to the commission that:
      - (a) The activities will not affect ~~any~~ any known exclusion or avoidance area;
      - (b) The activities are for the construction:
        - [1] Of a new gas or liquid energy conversion facility;
        - [2] Of a new gas or liquid transmission facility;

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- [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
  - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission:
    - (a) The activities will not affect any known exclusion area;
    - (b) The activities are for the construction:
      - [1] Of a new gas or liquid energy conversion facility;
      - [2] Of a new gas or liquid transmission facility;
      - [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
      - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
  - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which ~~where~~ a designated route may be established for a gas or liquid transmission facility.



5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.
6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:
  - a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
    - (1) An oil or gas pipeline gathering system;
    - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
    - (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
  - b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
9. "Person" includes any an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
- 11.12. "Site" means the location of a gas or liquid energy conversion facility.

~~42-13.~~ "Utility" means ~~any~~ a person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

**SECTION 5. AMENDMENT.** Section 49-22.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22.1-13.

**SECTION 6. AMENDMENT.** Subsection 2 of section 49-22.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A certificate of site compatibility for ana gas or liquid energy conversion facility does may not supersede or preempt any local land use; zoning; or building rules, regulations, or ordinances, and a site may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances. A
- b. Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersedesupersedes and preemptpreempts any local land use; or zoning; or building rules, regulations, or ordinances, upon a finding by the commission that the rules, regulations, or ordinances, as applied to the proposed route,
- c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without that finding by the commission, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances, or are in direct conflict with state or federal laws or rules.
- d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The

requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.

- e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 390

### SENATE BILL NO. 2261

(Senators Unruh, Cook, Wardner)  
(Representatives Keiser, Lefor, Schmidt)

AN ACT to amend and reenact subsection 5 of section 49-22-08 of the North Dakota Century Code, relating to conditions imposed on the designation of sites, corridors, and routes.

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

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

5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

Approved April 23, 2019

Filed April 24, 2019