

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1147

Introduced by

Representatives Keiser, Porter

Senator Lyson

1 A BILL for an Act to create and enact a new subsection to section 49-22-03 and a section to
2 chapter 49-22 of the North Dakota Century Code, relating to definitions and route variances for
3 gas and liquid transmission lines; to amend and reenact subsections 4 and 10 of section
4 49-22-03 and sections 49-22-07.1 and 49-22-13 of the North Dakota Century Code, relating to
5 definitions and the procedure for siting a gas or liquid transmission line; and to declare an
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Subsections 4 and 10 of section 49-22-03 of the North Dakota
9 Century Code are amended and reenacted as follows:

10 4. "Corridor" means the general location of strip of land proposed and surveyed, as
11 applicable, by an applicant in which a designated route may be established for a
12 transmission facility.

13 10. "Route" means the specific location of a transmission facility within a designated-
14 corridor.

15 **SECTION 2.** A new subsection to section 49-22-03 of the North Dakota Century Code is
16 created and enacted as follows:

17 "Intervenor" means a person, other than the applicant to a pending proceeding, who
18 becomes a party under rules adopted by the commission. The commission's act of
19 permitting a party to join a pending proceeding as an intervenor shall not be construed
20 as an acknowledgment or finding by the commission that the intervenor has, is, or may
21 suffer damages by the issuance of any order in the proceeding.

22 **SECTION 3. AMENDMENT.** Section 49-22-07.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **49-22-07.1. Letter of intent prior to construction.**

2 Every utility which plans to construct any energy conversion or transmission facility within
3 this state shall submit a letter of intent to the commission in the form and manner prescribed by
4 the commission. A utility seeking to construct an energy conversion or transmission facility must
5 submit its letter of intent thirty days before filing an application for a certificate of corridor
6 compatibility or a route permit.

7 **SECTION 4. AMENDMENT.** Section 49-22-13 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **49-22-13. Public hearings - Notice.**

- 10 1. The commission shall hold a public hearing in each county in which any portion of a
11 site, corridor, or route is proposed to be located in an application for a certificate or a
12 permit. At the public hearing, any person may present ~~testimony or evidence~~ oral or
13 written comments relating to the information provided in the application, the criteria
14 developed ~~pursuant to~~ under section 49-22-05.1, and the factors to be considered
15 ~~pursuant to~~ under section 49-22-09. The applicant or an intervenor may present
16 testimony or evidence, or both, and only this evidence is part of the official record used
17 by the commission to make a decision. ~~When~~ If more than one county is involved, the
18 commission may hold a consolidated hearing in one or more of the affected counties.
19 A hearing for any county ~~shall~~ may not be consolidated if five or more affected
20 landowners in ~~such a~~ a county file a petition with the commission within ten days of the
21 publication of the notice of hearing.
- 22 2. The commission ~~shall~~ may not be required to hold a public hearing on an application
23 for the transfer of a certificate or a permit, or an application for a waiver of procedures
24 and time schedules, but shall publish a notice of opportunity for a public hearing in the
25 official newspaper of each county in which any portion of the facility or the proposed
26 site, corridor, or route is located. If requested by ~~any interested person~~ an intervenor
27 and good cause has been shown ~~therefor~~ for a hearing, the commission shall hold a
28 public hearing. ~~When~~ If more than one county is involved, the commission may hold a
29 consolidated hearing in one or more of the affected counties.
- 30 3. ~~One~~ The commission shall hold one or more public hearings ~~shall be held~~ at a location
31 or locations determined by the commission concerning the following matters:

- a. A substantial or material change in the criteria established pursuant to under section 49-22-05.1.
- b. A substantial or material change in the rules adopted pursuant to under section 49-22-18.
- c. The revocation or suspension of a certificate or permit.
- d. In this subsection, a "substantial or material change" means any alteration of a project which has a significant impact on any finding of fact, conclusion of law, or term or condition of the project's permit and which affects one or more of the criteria used by the commission to guide and govern the preparation of the inventory of exclusion and avoidance areas or the corridor and route suitability evaluation process.

4. ~~Notice~~The commission shall give notice of a public hearing shall be given by the commission by service on such persons and agencies a person or agency that the commission may deem appropriate and The commission shall give notice twice by publication, once at least twenty days ~~prior to such~~before a hearing and a second time within twenty days ~~prior to such~~before a hearing. ~~Notice~~The applicant shall pay for the cost of notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver ~~shall be given at the expense of the applicant~~. In an emergency the commission, ~~in its discretion~~, may notice a hearing upon less than twenty days.

5. To be an intervenor at a hearing for a gas or liquid transmission line, a person shall file a petition to intervene in compliance with rules adopted by the commission. The petition for intervenor status shall affirm that the petitioner:
- a. Has a vested interest in real property within the proposed corridor;
 - b. Received notice by service from the commission;
 - c. Is a governmental entity with jurisdiction over property within the proposed corridor; or
 - d. Any other individual or governmental entity that files notice with the commission and receives permission from the commission to provide certain testimony or evidence as to a particular factor under section 49-22-09 or a criteria developed

1 under section 49-22-05.1 because of a particular and substantial interest of that
2 individual or governmental entity.

3 **SECTION 5.** A new section to chapter 49-22 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Route variance for gas or liquid transmission line.**

6 1. Without any action by the commission, a utility may adjust the location of a gas or
7 liquid transmission line within the approved corridor width, as specified in a route
8 permit and a certificate of corridor compatibility if:

9 a. The activities will not affect a known exclusion or avoidance area;

10 b. Directly affected landowners do not oppose the variance;

11 c. The utility will comply with all applicable conditions and protections in siting laws
12 and rules and commission orders previously issued for any part of the
13 transmission facility; and

14 d. Upon completion of the project, the utility reports any route changes authorized
15 under this subsection in its final "as built" drawings of the transmission line.

16 2. For a good and just cause, a utility may apply for a route variance to relocate its gas or
17 transmission line outside the permitted corridor width specified in the route permit and
18 certificate of corridor compatibility. If the applicant has filed an application for route
19 variance and certifies in writing the information enumerated in this subsection, the
20 secretary of the commission shall approve the variance within fifteen days of such
21 filing. The applicant shall certify the following:

22 a. The activities will not affect a known exclusion or avoidance area unless the
23 activities affect an avoidance area for which the utility has appropriate written
24 approval to use and the written approval is filed with the application;

25 b. The route variance located is within the study area used to determine the
26 approved corridor width and there are no known additional adverse factors under
27 section 40-22-09 other than those considered by the commission for the initial
28 designated route;

29 c. There is a special condition that demonstrates the existence of good cause;

30 d. Directly affected landowners do not oppose the variance;

- 1 e. All environmental clearances have been obtained and the clearances are filed
2 with the application;
- 3 f. A map, showing the location of the gas or liquid transmission line within the
4 approved and permitted corridor width and the proposed route adjustment, is filed
5 with the application; and
- 6 g. The utility will comply with all applicable conditions and protections in siting laws
7 and rules and commission orders previously issued for any part of the
8 transmission facility.
- 9 3. If the secretary of the commission does not take action with respect to the applicant's
10 application for route variance within fifteen days of the applicant's filing, the route
11 variance is deemed approved by the secretary unless:
- 12 a. The applicant requests an extension of time to meet a condition in subsection 2;
13 or
- 14 b. The secretary of the commission requests an extension of time to request
15 additional information. The secretary shall grant additional time as deemed
16 necessary for the applicant to provide the requested information or to meet one
17 of the conditions as identified by the secretary.
- 18 4. If the applicant is unable to resolve any of the conditions raised by the secretary, then
19 the secretary may schedule an informal hearing. The notice of an informal hearing
20 shall be given by the commission by service on the applicant and other parties of
21 record, and any other person that the commission deems appropriate. The informal
22 hearing shall be scheduled twenty days after the notice is served, and shall be limited
23 to the condition necessary for approval and to testimony and evidence from the
24 applicant or an intervenor who has a substantial interest in the particular condition, or
25 both.

26 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.