

ND Utilities Urge Do Not Pass on SB 2325

Chairman Porter and members of the House Energy and Natural Resources Committee, The North Dakota utilities listed below respectfully urge a “Do Not Pass” recommendation on SB 2325.

SB 2325 would impose significant financial and operational burdens on electric transmission development. Before a real property owner grants an easement within a wetland to any person, except the federal government, SB 2325 requires that the grantor of the easement request the department of water resources or appropriate federal agency to determine the ordinary high water mark (OHWM) of the area subject to the easement, including on past projects. This requirement could add months of delay, increasing project costs by an estimated \$10,000 per landowner or parcel. Given that OHWM assessments can be conducted only in warmer months, energization schedules and grid reliability could be adversely impacted.

Transmission line routing is already constrained due to increased development. Utilities often cross less inhabited lands containing small prairie potholes, which would now each require OHWM determinations. The added surveying, documentation, and regulatory approvals would drive up costs and slow modernization efforts.

Following an OHWM determination, SB 2325 would expose easement holders to civil liability caused by the flow of water above the OHWM merely because the easement holder placed facilities subject to easement in wetland, seemingly without a showing that the facility placement caused any such damages. This appears to be a way to offload the liability exposures of landowners and contractors, including excavators, onto easement holders. In the case of the state’s public utilities and rural electric cooperatives, these are costs that would ultimately be borne by their customers.

Water levels fluctuate seasonally, creating potential civil liability for utilities despite minimal ground impact from transmission infrastructure. The bill’s retroactive application further adds legal and administrative uncertainty, placing unnecessary burdens on utilities and landowners.

By increasing costs, delaying projects, and exposing utilities to liability, SB 2325 threatens North Dakota’s ability to expand and modernize its energy infrastructure. North Dakota’s utilities strongly urge a “Do Not Pass” recommendation on SB 2325.

Thank you, Chairman Porter and committee members.

