

PUBLIC UTILITIES

CHAPTER 393

HOUSE BILL NO. 1314

(Representatives Nelson, Delmore, Klein, Svedjan)
(Senators Bercier, Trenbeath)

RENEWABLE ENERGY CREDIT TRADING AND TRACKING

AN ACT to create and enact three new sections to chapter 49-02 and two new subsections to section 57-38-01.8 of the North Dakota Century Code, relating to a renewable electricity and recycled energy credit trading and tracking system by the public service commission and a tax credit for a wind energy device; and to provide an effective date.

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:

Renewable electricity and recycled energy credit trading and tracking system. Notwithstanding any other provision of law, the commission by rule may establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This section applies to all public utilities, electric cooperatives, and municipal electric utilities.

SECTION 2. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Renewable electricity and recycled energy defined. As used in section 1 of this Act, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
5. Hydrogen, provided that the hydrogen is generated from a source listed in this section.

6. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

SECTION 3. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Qualifying for renewable electricity and recycled energy credits. For purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 2 of this Act.

SECTION 4. Two new subsections to section 57-38-01.8 of the North Dakota Century Code are created and enacted as follows:

If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 394

SENATE BILL NO. 2412

(Senators Stenehjem, O'Connell)

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

ELECTRIC SERVICE AREA AGREEMENTS

AN ACT to create and enact a new section to chapter 49-03 of the North Dakota Century Code, relating to electric service area agreements; to amend and reenact sections 49-02-01.1 and 49-03-01.5 of the North Dakota Century Code, relating to the jurisdiction of the public service commission and definitions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁵ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapter chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. A new section to chapter 49-03 of the North Dakota Century Code is created and enacted as follows:

Service agreements among electric providers.

1. This section authorizing service area agreements is intended to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for all

²⁰⁵ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2216, chapter 399.

consumers and territories within the state, and provide antitrust immunity to electric providers that negotiate service area agreements in accordance with this section.

2. An electric provider may enter into agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The designated service locations may include all or any portion of the service locations within a service area that are being served by the electric providers at the time of the agreement, or that could be economically served by the then existing facilities of the electric providers, or by reasonable and economic extensions of such existing facilities. The service area agreement must provide that it is subject to the continuing jurisdiction of the commission to settle all service location disputes between the contracting electric providers arising under the agreement.
3. Electric providers may enter into written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. Any sale, exchange, transfer, or lease of equipment, plant or facilities made under this subsection is subject to sections 49-04-05 and 10-13-08.1.
4. A service area agreement shall be promptly filed with the commission which must give notice of the filing within thirty days. Upon the commission's order, or if an affected electric consumer or electric provider requests a hearing within twenty days of the notice, the commission shall hold a hearing on the service area agreement.
5. The public service commission shall approve or disapprove a service area agreement. The commission may not revise a service area agreement except by mutual consent of the parties to the agreement.
6. A service area agreement shall be valid and enforceable if the commission after notice as provided in subsection 4, approves the agreement and finds that the agreement complies with this section and is in the public interest.
7. Upon approval of a service area agreement, the commission shall issue its order and any necessary certificates of public convenience and necessity authorizing an electric public utility to extend its plant and system and to provide electric service to service locations within the service areas.
8. The governing board of a city may require approval or disapproval of a service area agreement between electric providers to the extent the agreement encompasses service locations within the city. Nothing in this chapter shall be construed to limit the authority of a governing board of a city to exercise its franchise authority under section 40-05-01.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5. Definitions. As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
- ~~2.~~ 3. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~3.~~ 4. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
5. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
6. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 2 of this Act.
7. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 395

HOUSE BILL NO. 1156

(Political Subdivisions Committee)

(At the request of the Public Service Commission)

TELECOMMUNICATIONS COMPANY REGISTRATION

AN ACT to create and enact a new section to chapter 49-03.1 of the North Dakota Century Code, relating to registration of telecommunications companies that are not incumbent telecommunications companies; to amend and reenact subsection 2 of section 49-03.1-02 of the North Dakota Century Code, relating to the definition of a public utility and certificates of public convenience and necessity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter ~~shall~~ do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.

SECTION 2. A new section to chapter 49-03.1 of the North Dakota Century Code is created and enacted as follows:

Registration of telecommunications companies that are not incumbent telecommunications companies - Penalty.

1. Before providing service in this state or collecting payment for service in advance of providing the service for which payment was collected, a telecommunications company that is not an incumbent telecommunications company under chapter 49-21 shall register with the commission in a form satisfactory to the commission.
2. Registration must include, at a minimum, the following information, updated within fifteen days after any change:
 - a. The company's name, complete address, and telephone number;
 - b. All names under which the company does business;
 - c. All names under which the company has registered with the secretary of state;
 - d. The company's secretary of state system identification number;

- e. The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries;
 - f. A toll-free telephone number to which consumer inquiries or complaints may be made; and
 - g. Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation.
 3. As part of the registration process, the commission may require by rule the posting of a surety bond in an amount determined by the commission. In addition to any other penalties provided by law, a violation of this subsection or any rule or order under this subsection is a class C felony if the accumulated customer loss resulting from a violation is greater than five thousand dollars.
 4. The commission may revoke a company's registration, after notice and hearing under chapter 28-32, for violation of any law, rule, or order of the commission.
 5. A company's registration is void if the company is voluntarily dissolved, involuntarily dissolved, or forfeits its authority to transact business under state law. The registration of a company that is involuntarily dissolved or that forfeits its authority to transact business is void effective with the effective date of involuntary dissolution under subsection 7 of section 10-19.1-146 or forfeiture under subsection 8 of section 10-19.1-146.
 6. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe has not complied with this section and is requiring that customers pay for service in advance of receiving that service. The cease and desist order must be:
 - a. Directed against the telecommunications company's advance payment requirements, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
 7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

CHAPTER 396

HOUSE BILL NO. 1324

(Representatives Keiser, Kasper, Klein)
(Senators O'Connell, Robinson, Trenbeath)

PUBLIC UTILITY ADVANCE DETERMINATION OF PRUDENCE

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Advance determination of prudence. A public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers may file an application with the commission for an advance determination of prudence regarding the proposal. The commission may order that expenses associated with investigating the application made by the public utility for prudence of a resource addition be paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of an electric resource addition if:
 - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
 - b. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - c. The commission determines that the resource addition is reasonable and prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is reasonable and prudent, shall consider the benefits of having the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.

3. A resource addition approved by the commission is subject to annual reporting requirements until commercial operation of the resource addition.
4. The commission's order determining prudence of the resource adjustment is binding for ratemaking purposes.
5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.
6. There is a rebuttable presumption that an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is located in the state is prudent.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 397**SENATE BILL NO. 2092**

(Political Subdivisions Committee)

(At the request of the Public Service Commission)

AUCTIONEER AND CLERK VIOLATIONS

AN ACT to amend and reenact section 49-07-01.1 of the North Dakota Century Code, relating to violations of statutes, orders, or rules governing auctioneers and auction clerks; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty. Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, ~~and 32-25~~, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 398

SENATE BILL NO. 2405

(Senators O'Connell, Nething, Wardner)
(Representatives Brandenburg, Pollert)

RAILROAD AND WAREHOUSE LEASE INSURANCE

AN ACT to amend and reenact subsection 3 of section 49-16-01.1 of the North Dakota Century Code, relating to insurance requirements in leases between railroads and grain and potato warehouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 49-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:
 - a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including:
 - (1) ~~Damage~~ damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors;
 - (2) ~~An, and an~~ endorsement naming the railroad as an additional insured; ~~and~~
 - (3) ~~An endorsement under the Federal Employers Liability Act [45 U.S.C. et seq.] if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of two hundred fifty loaded railroad cars.~~
 - b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.
 - c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the

acts or omission of the railroad that are willful, wanton, or grossly negligent.

- d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 399

SENATE BILL NO. 2216

(Senators Epegard, Heitkamp)
(Representative Carlson)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact section 49-21-10.3 of the North Dakota Century Code, relating to complaints against telecommunications companies; to amend and reenact sections 49-02-01.1, 49-21-01, 49-21-01.1, 49-21-01.3, 49-21-01.7, 49-21-02.2, and 49-21-10.2 of the North Dakota Century Code, relating to telecommunications regulation; and to repeal sections 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, and 49-21-20 of the North Dakota Century Code, relating to telecommunications regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁶ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, ~~49-21-08~~, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of

²⁰⁶ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2412, chapter 394.

WATS, 800, and message toll telecommunications services and private line transport services.

2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.
4. "Essential telecommunications service" means the following services:
 - a. Switched access;
 - b. ~~The transmission service line for a coin or pay telephone;~~
 - e. Installation of the service connection for other essential services from the end user's premises to the local exchange network; and
 - d. c. Flat Primary flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) Primary directory listing; ~~including nonlisted and nonpublished service.~~
 - (3) Access to directory assistance.
 - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.
5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.

7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. ~~Nonessential telecommunications services include, but are not limited to:~~
 - a. ~~InterLATA and intraLATA message toll service;~~
 - b. ~~Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;~~
 - c. ~~Centrex services and features;~~
 - d. ~~Installation of service connections in addition or supplementary to that described in subdivision e of subsection 4 which also provides transmission service between the end user's premises and the local exchange central office switch;~~
 - e. ~~Mobile telecommunications services using radio spectrum or cellular technology; and~~
 - f. ~~Packet switched services.~~
13. "Price" means any charge set and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

14. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
15. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
16. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
17. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
18. "Switched access" means access to include:
 - a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
 - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides ~~feature group C~~ access service; and
 - f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 3. AMENDMENT. Section 49-21-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.1. Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services ~~which that~~ are not essential, such as "yellow pages" ~~advertising and bold-faced or color listings in "white pages"~~.
9. Private line transport service.
10. Services or facilities provided by a system or institution of higher education to:
 - a. Institution employees or students at institution facilities or housing owned or leased by the institution;
 - b. Affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - c. Other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - d. Casual users using the institution's facilities for conferences, seminars and other similar special events, and broadcasters of athletic events;

- e. Occupants of technology parks, or business incubators receiving secretarial or business startup support in facilities owned or leased by the institution during a business startup phase for a term not to exceed four years or until August 1, 2005, whichever is later; and
- f. Educational, governmental, and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

SECTION 4. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
4. The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
5. The commission may investigate an increased price allowed pursuant to subsection 4 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
6. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

²⁰⁷ **SECTION 5. AMENDMENT.** Section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.7. Powers in general. The commission has the power to:

²⁰⁷ Section 49-21-01.7 was also amended by section 1 of House Bill No. 1105, chapter 400.

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.
7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.

11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Investigate and resolve numbering issues relating to assignment of NII dialing codes.
15. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are greater than obligations imposed under the act.

SECTION 6. AMENDMENT. Section 49-21-02.2 of the North Dakota Century Code is amended and reenacted as follows:

49-21-02.2. Cross-subsidization prohibited. Revenues obtained from regulated telecommunications services, including essential and nonessential telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services, and revenues from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

SECTION 7. AMENDMENT. Section 49-21-10.2 of the North Dakota Century Code is amended and reenacted as follows:

49-21-10.2. Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

SECTION 8. Section 49-21-10.3 of the North Dakota Century Code is created and enacted as follows:

49-21-10.3. Complaints. A person, and the commission on its own motion, may complain concerning any violation of law, rule, or order of the commission. In accordance with chapter 28-32, the commission shall provide notice of the complaint and the time and place of hearing. After hearing under chapter 28-32, if the commission finds that a service of a telecommunications company is inadequate or a company is in violation of a law, rule, or order, the commission may direct the telecommunications company to take reasonable and necessary remedial action to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The remedies of this section are in addition to the penalties under chapter 49-07.

SECTION 9. REPEAL. Sections 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, and 49-21-20 of the North Dakota Century Code are repealed.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 400

HOUSE BILL NO. 1105

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

UNAUTHORIZED TELECOMMUNICATIONS SERVICES

AN ACT to amend and reenact subsection 14 of section 49-21-01.7 and section 49-21-25 of the North Dakota Century Code, relating to numbering resource authority and unauthorized telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁸ **SECTION 1. AMENDMENT.** Subsection 14 of section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

14. Investigate and resolve numbering issues relating to assignment of NII dialing codes and resolve numbering resource conservation administration and area code assignment issues in accordance with the federal communication commission's numbering resource orders. The commission's jurisdiction with regard to numbering resource conservation administration is limited to those prefixes that are unassigned on January 1, 2005.

SECTION 2. AMENDMENT. Section 49-21-25 of the North Dakota Century Code is amended and reenacted as follows:

49-21-25. Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross-subsidization, section 49-21-02.2; unauthorized telecommunications service, section 49-21-02.4; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

Approved April 8, 2005
Filed April 12, 2005

²⁰⁸ Section 49-21-01.7 was also amended by section 5 of Senate Bill No. 2216, chapter 399.

CHAPTER 401**SENATE BILL NO. 2091**

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

ESSENTIAL SERVICES PRICE SCHEDULE FILING

AN ACT to amend and reenact subsection 1 of section 49-21-04 of the North Dakota Century Code, relating to filing essential services price schedules by telecommunications companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Schedules showing all prices for essential services, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered by such telecommunications company within this state;

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 402

HOUSE BILL NO. 1106

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

PSC PERFORMANCE ASSURANCE FUND BALANCE

AN ACT to amend and reenact section 49-21-31 of the North Dakota Century Code, relating to the maximum balance of the public service commission performance assurance fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-31 of the North Dakota Century Code is amended and reenacted as follows:

49-21-31. ~~(Effective through June 30, 2005)~~ Performance assurance fund - Continuing appropriation - Report to budget section. The performance assurance fund is a special fund in the state treasury. The commission shall deposit payments received by the commission under the performance assurance plan in the performance assurance fund until ~~deposits during a biennium equal the balance of the fund equals~~ one hundred thousand dollars. ~~All~~ Up to one hundred thousand dollars per biennium of moneys ~~deposited~~ in the fund are appropriated on a continuing basis to the commission to monitor the operation and effect of the performance assurance plan. All the payments received by the commission in excess of the one hundred thousand dollars ~~deposited~~ balance in the performance assurance fund must be deposited in the general fund. The commission shall report annually to the budget section of the legislative council with respect to the payments received under the plan and the expenditures from the performance assurance fund.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 403**HOUSE BILL NO. 1283**

(Representatives Brandenburg, Headland, S. Kelsh, Kretschmar, Monson)
(Senator Erbele)

ENERGY CONVERSION FACILITY SITING

AN ACT to amend and reenact subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to siting of energy conversion facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation of ~~five~~ one hundred thousand kilowatts or more of electricity;
 - b. 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;
 - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - d. Enrichment of uranium minerals.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 404

SENATE BILL NO. 2133

(Appropriations Committee)

(At the request of the Public Service Commission)

ENERGY FACILITY SITING EXPENSE RECOVERY

AN ACT to amend and reenact section 49-22-22 of the North Dakota Century Code, relating to energy conversion and transmission facility siting process expense recovery and to creation of a special fund; to provide an appropriation; to provide a continuing appropriation; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-22-22. Application fees - Additional fees - Deposit in general fund Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant for a certificate of site compatibility shall pay to the commission an application fee in an amount equal to five hundred dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a certificate of corridor compatibility shall pay to the commission an application fee in an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a waiver shall pay to the commission an application fee in the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred fifty thousand dollars. ~~The commission shall specify the time and manner of payment of the application fee.~~
2. ~~The~~ At the request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the commission. ~~The commission shall specify the time and method of payment of any additional fees and shall refund the portion of such additional fees received from the applicant for completion of the site, corridor, or route evaluation and designation process which exceeds the expenses incurred for the evaluation and designation process.~~ In no event shall the application fee under subsection 1 and any additional fees required

of the applicant under this subsection exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed transmission facility.

3. All fees collected under the provisions of this chapter shall be deposited in the general fund. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$60,000, or so much of the sum as may be necessary, to the public service commission for the purpose of refunding any application fee paid after August 1, 2004, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to fees paid after August 1, 2004.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 405

SENATE BILL NO. 2209

(Senators Krebsbach, Cook, Freborg, Urlacher)
(Representatives Kretschmar, Maragos)

ONE-CALL SYSTEM OPERATOR DEFINITION

AN ACT to amend and reenact subsection 14 of section 49-23-01 of the North Dakota Century Code, relating to the definition of one-call system operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is ~~not~~ considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 406

HOUSE BILL NO. 1169

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

TRANSMISSION AUTHORITY

AN ACT to provide for the North Dakota transmission authority, provide for the planning, constructing, owning, financing, maintaining, operating, and disposing of electric transmission facilities and related infrastructure, and to authorize issuance of revenue bonds; to amend and reenact subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an Administrative Agencies Practice Act exemption for the transmission authority; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of findings and public purpose. The legislative assembly finds and declares that:

1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal reserves, enough to last eight hundred years at today's thirty million tons of annual production.
2. The lignite industry presently generates electricity for more than two million people in the northern great plains region and there is increased regional demand for development of North Dakota's lignite resources.
3. North Dakota has enormous wind resources, providing additional economic opportunity to broaden and diversify the state's economy and diversify the region's energy supply, and that timely development of these resources will stabilize and increase revenues to the state.
4. Transmission constraints impede the development of the state's lignite and wind resources.
5. An essential governmental function and public purpose is to assist with the removal of electric transmission export constraints and to assist with upgrading and expansion of the region's electrical transmission grid to facilitate the development of the state's abundant natural resources.
6. Developing and exporting our natural resources will promote the public interest by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.
7. State ownership of electrical transmission facilities may not exceed the extent and duration necessary or useful to promote the public interest.

SECTION 2. North Dakota transmission authority. There is created the North Dakota transmission authority, which shall be governed by the industrial commission.

SECTION 3. Definitions. As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota transmission authority.
2. "Commission" means the industrial commission.
3. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct transmission facilities contemplated by the authority or to provide services fulfilling the need for such transmission facilities.
4. "Project area" means the geographic area in which construction of a transmission facility contemplated by the authority is likely to occur.
5. "Transmission facilities" means electric transmission lines and substations, and related structures, equipment, rights of way, and works of public improvement, located within and outside this state, excluding electric generating facilities.

SECTION 4. Purposes. The purpose for which the authority is created is to diversify and expand the North Dakota economy by facilitating development of transmission facilities to support the production, transportation, and utilization of North Dakota electric energy.

SECTION 5. Powers. The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;

7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;
9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; and
16. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

SECTION 6. Authority may act.

1. The authority shall coordinate its plans for transmission facilities with regional organizations having transmission planning responsibilities for the project area.
2. Before exercising its powers to construct transmission facilities granted to it in this chapter, the authority shall publish in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for transmission facilities contemplated by the authority. Persons willing to construct the transmission facilities or furnish services to satisfy the needs described in the notice have a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct transmission facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding the authority shall consider factors including economic impact to the state, economic feasibility, technical performance, reliability, past performance and the likelihood of successful completion and ongoing operation.
3. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the transmission facilities or

commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

SECTION 7. Authority may participate upon request. The authority may participate in a transmission facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

SECTION 8. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under this chapter.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.
4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.

furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:

- a. Pay the expenses of operating and maintaining the transmission facilities;
- b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
- c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

SECTION 9. Public service commission jurisdiction and consultation.

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

SECTION 10. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

SECTION 11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.

3. For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 12. Exemption from property taxes. Transmission facilities built under sections 1 through 11 of this Act are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

SECTION 13. Biennial report to legislative council. The authority shall deliver a written report on its activities to the legislative council each biennium.

²⁰⁹ **SECTION 14. AMENDMENT.** Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- I. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency, and the North Dakota transmission authority.

Approved April 22, 2005

Filed April 25, 2005

²⁰⁹ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 13 of House Bill No. 1088, chapter 195, section 6 of Senate Bill No. 2027, chapter 538, and section 29 of Senate Bill No. 2074, chapter 89.