

**HOUSE BILL NO. 1455**

Introduced by

Representatives Nehring, Toman

Senator Bell

1 A BILL for an Act to create and enact two new sections to chapter 49-22 of the North Dakota  
2 Century Code, relating to the retirement of an electric energy conversion facility and site  
3 reclamation and bonding; and to amend and reenact section 49-22-03 of the North Dakota  
4 Century Code, relating to the definition of electric energy conversion facility retirement.

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

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

8 **49-22-03. Definitions.**

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

- 10 1. "Certificate" means the certificate of site compatibility or the certificate of corridor  
11 compatibility issued under this chapter.
- 12 2. "Commission" means the North Dakota public service commission.
- 13 3. "Construction" includes a clearing of land, excavation, or other action affecting the  
14 environment of the site after April 9, 1975, but does not include activities:
- 15 a. Conducted wholly within the geographic location for which a utility has previously  
16 obtained a certificate or permit under this chapter, or on which a facility was  
17 constructed before April 9, 1975, if:
- 18 (1) The activities are for the construction of the same type of facility as the  
19 existing type of facility as identified in a subdivision of subsections 5 or 12 of  
20 this section and the activities are:
- 21 (a) Within the geographic boundaries of a previously issued certificate or  
22 permit;
- 23 (b) For an electric energy conversion facility constructed before April 9,  
24 1975, within the geographic location on which the facility was built; or

- 1 (c) For an electric transmission facility constructed before April 9, 1975,  
2 within a width of three hundred fifty feet [106.68 meters] on either side  
3 of the centerline;
- 4 (2) Except as provided in subdivision b, the activities do not affect any known  
5 exclusion or avoidance area;
- 6 (3) The activities are for the construction:
- 7 (a) Of a new electric energy conversion facility;
- 8 (b) Of a new electric transmission facility;
- 9 (c) To improve the existing electric energy conversion facility or electric  
10 transmission facility; or
- 11 (d) To increase or decrease the capacity of the existing electric energy  
12 conversion facility or electric transmission facility; and
- 13 (4) Before conducting any activities, the utility certifies in writing to the  
14 commission that:
- 15 (a) The activities will not affect a known exclusion or avoidance area;
- 16 (b) The activities are for the construction:
- 17 [1] Of a new electric energy conversion facility;
- 18 [2] Of a new electric transmission facility;
- 19 [3] To improve the existing electric energy conversion or electric  
20 transmission facility; or
- 21 [4] To increase or decrease the capacity of the existing electric  
22 energy conversion facility or electric transmission facility; and
- 23 (c) The utility will comply with all applicable conditions and protections in  
24 siting laws and rules and commission orders previously issued for any  
25 part of the facility.
- 26 b. Otherwise qualifying for exclusion under subdivision a, except that the activities  
27 are expected to affect a known avoidance area and the utility before conducting  
28 any activities:
- 29 (1) Certifies in writing to the commission that:
- 30 (a) The activities will not affect a known exclusion area;
- 31 (b) The activities are for the construction:

- 1 [1] Of a new electric energy conversion facility;
- 2 [2] Of a new electric transmission facility;
- 3 [3] To improve the existing electric energy conversion facility or  
4 electric transmission facility; or
- 5 [4] To increase or decrease the capacity of the existing electric  
6 energy conversion facility or electric transmission facility; and
- 7 (c) The utility will comply with all applicable conditions and protections in  
8 siting laws and rules and commission orders previously issued for any  
9 part of the facility;
- 10 (2) Notifies the commission in writing that the activities are expected to impact  
11 an avoidance area and provides information on the specific avoidance area  
12 expected to be impacted and the reasons why impact cannot be avoided;  
13 and
- 14 (3) Receives the commission's written approval for the impact to the avoidance  
15 area, based on a determination that there is no reasonable alternative to the  
16 expected impact. If the commission does not approve impacting the  
17 avoidance area, the utility must obtain siting authority under this chapter for  
18 the affected portion of the site or route. If the commission fails to act on the  
19 notification required by this subdivision within thirty days of the utility's filing  
20 the notification, the impact to the avoidance area is deemed approved.
- 21 c. Incident to preliminary engineering or environmental studies.
- 22 4. "Corridor" means the area of land where a designated route may be established for an  
23 electric transmission facility.
- 24 5. "Electric energy conversion facility" means a plant, addition, or combination of plant  
25 and addition, designed for or capable of:
- 26 a. Generation by wind energy conversion exceeding one-half megawatt of  
27 electricity; or
- 28 b. Generation by any means other than wind energy conversion exceeding fifty  
29 megawatts of electricity.

- 1           6. "Electric transmission facility" means an electric transmission line and associated  
2 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission  
3 facility" does not include:
- 4           a. A temporary electric transmission line loop that is:
- 5                 (1) Connected and adjacent to an existing electric transmission facility that was  
6                         sited under this chapter;
- 7                 (2) Within the corridor of the sited facility and does not cross known exclusion  
8                         or avoidance areas; and
- 9                 (3) In place for less than one year; or
- 10           b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 11           7. "Facility" means an electric energy conversion facility, electric transmission facility, or  
12 both.
- 13           8. "Permit" means the permit for the construction of an electric transmission facility within  
14 a designated corridor issued under this chapter.
- 15           9. "Person" includes an individual, firm, association, partnership, cooperative,  
16 corporation, limited liability company, or any department, agency, or instrumentality of  
17 a state or of the federal government, or any subdivision thereof.
- 18           10. "Power emergency" means an electric transmission line and associated facilities that  
19 have been damaged or destroyed by natural or manmade causes resulting in a loss of  
20 power supply to consumers of the power.
- 21           11. "Retire" means the complete and permanent closure of an electric energy conversion  
22 facility. Retirement occurs on the date the electric energy conversion facility ceases to  
23 generate electricity.
- 24           12. "Route" means the location of an electric transmission facility within a designated  
25 corridor.
- 26 ~~12-13.~~ "Site" means the location of an electric energy conversion facility.
- 27 ~~13-14.~~ "Utility" means a person engaged in and controlling the electric generation, the  
28 transmission of electric energy, or the transmission of water from or to any electric  
29 energy conversion facility.

30           **SECTION 2.** A new section to chapter 49-22 of the North Dakota Century Code is created  
31 and enacted as follows:

1        **Facility retirement - Notice and public hearing - Requirements.**

2        1. Upon written notice of retirement from the owner or operator of an electric energy  
3        conversion facility, the commission may:

4        a. Hold two public hearings in accordance with this section to receive information  
5        concerning the planned retirement relating to:

6        (1) The economical impact of the retirement on the community, county, and  
7        state;

8        (2) The feasibility of the retirement and facility replacement;

9        (3) The cost and impact on electric rates from the retirement of the facility;

10       (4) The value of any reliability benefits associated with the operation of the  
11       facility;

12       (5) An analysis of alternative installations for emissions reduction, including  
13       carbon capture, utilization, and storage; and

14       (6) Any other factors the commission deems appropriate.

15       b. Request a reliability study conclusion from a regional transmission organization  
16       on the impact of the facility's retirement.

17       2. The two public hearings must be held in the county in which the electric energy  
18       conversion facility is located unless the commission deems the hearings unnecessary.

19       a. The public hearings must be scheduled no less than six months apart.

20       b. The commission shall have a comment period of at least thirty days during which  
21       information concerning the planned retirement may be received and made part of  
22       the record. The thirty-day comment period must be held between the two public  
23       hearings.

24       c. At the public hearing, any person may present testimony or evidence relating to  
25       the planned retirement.

26       d. Notice of a public hearing must be given by the commission by service on the  
27       persons and agencies the commission deems appropriate.

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

1        **Site reclamation and bonding.**

2        The commission shall adopt rules governing site reclamation and bonding of an electric  
3 energy conversion facility. The rules must address:

4        1. The method and schedule for updating the costs of the site reclamation and  
5 restoration or site conversion to an alternate industrial use;

6        2. The method of ensuring funds will be available for reclamation and restoration; and

7        3. Any other factors the commission deems appropriate.