

**HOUSE BILL NO. 1097**  
**with Senate Amendments**  
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Introduced by

Energy and Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact subsection 15 of section 49-22-03 and section 49-22-16.5,  
2 of the North Dakota Century Code, relating to the definition of utility-scale energy storage and  
3 route adjustments for electric transmission lines; and to amend and reenact subsection 5 of  
4 section 49-22-03, subsection 4 of section 49-22-13, section 49-22-22, subsections 6 and 7 of  
5 section 49-22.1-01, subsection 4 of section 49-22.1-10, and subsection 4 of section 49-22.1-21  
6 of the North Dakota Century Code, relating to the definition of electric energy conversion facility,  
7 the publication of notices of public hearings, payment of an administrative fee, adding hydrogen  
8 to definitions, the publication of a public hearing, and the payment of an administrative fee.

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

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

- 12 5. "Electric energy conversion facility" means a plant, addition, or combination of plant  
13 and addition, designed for or capable of:
- 14 a. Generation by wind energy conversion exceeding one-half megawatt of  
15 electricity; ~~or~~
  - 16 b. Generation by any means other than wind energy conversion exceeding fifty  
17 megawatts of electricity; or
  - 18 c. Utility-scale energy storage.

19 **SECTION 2.** Subsection 15 of section 49-22-03 of the North Dakota Century Code is  
20 created and enacted as follows:

- 21 15. "Utility-scale energy storage" means a plant, addition, or combination of plant and  
22 addition, designed for operation as a grid resource and capable of five megawatts or  
23 more of rated power capacity.

1       **SECTION 3. AMENDMENT.** Subsection 4 of section 49-22-13 of the North Dakota Century  
2 Code is amended and reenacted as follows:

3       4. Notice of a public hearing ~~shall~~must be given by the commission by service on such  
4 persons and agencies that the commission may deem appropriate and twice by  
5 publication, ~~once at least twenty days prior to such hearing and a second time within~~  
6 ~~twenty days prior to such~~ at a reasonable interval before the hearing. Notice of a  
7 public hearing and notice of opportunity for a public hearing on an application for a  
8 certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver  
9 shall be given at the expense of the applicant. ~~In an emergency the commission, in its~~  
10 ~~discretion, may notice a hearing upon less than twenty days.~~

11       **SECTION 4.** Section 49-22-16.5 of the North Dakota Century Code is created and enacted  
12 as follows:

13       **49-22-16.5. Route adjustment before or during construction for an electric**  
14 **transmission line.**

- 15       1. Before or during construction, a utility, without any action by the commission, may  
16 adjust the route of an electric transmission line within the designated corridor if, before  
17 conducting any construction activities associated with the adjustment, the utility files  
18 with the commission certification and supporting documentation that:
- 19       a. The construction activities will be within the designated corridor;
  - 20       b. The construction activities will not affect any known exclusion or avoidance areas  
21 within the designated corridor; and
  - 22       c. The utility will comply with the commission's order, laws, and rules designating  
23 the corridor and designating the route.
- 24       2. Before or during construction, a utility may adjust the route of an electric transmission  
25 line within the designated corridor which may affect an avoidance area if, before  
26 conducting any construction activities associated with the adjustment, the utility:
- 27       a. Files with the commission certification and supporting documentation that:
    - 28           (1) The construction activities are within the designated corridor;
    - 29           (2) The construction activities will not affect any known exclusion areas within  
30 the designated corridor;

- 1           (3) The construction activities are expected to impact an avoidance area with a  
2           specific description of the avoidance area expected to be impacted;
- 3           (4) Each owner of real property on which the adjustment is to be located and  
4           any applicable governmental entity with an interest in the same adjustment  
5           area do not oppose the adjustment, unless the utility previously received  
6           authorization from the commission for the impact to the avoidance area;
- 7           (5) For an impact for which the utility does not already have approval or has not  
8           filed the approval in paragraph 4, the utility has good cause and a specific  
9           reason to impact the avoidance area, and a reasonable alternative does not  
10          exist; and
- 11          (6) The utility will comply with the commission's order, laws, and rules  
12          designating the corridor and designating the route.
- 13          b. Receives the commission's written authorization that the utility may impact the  
14          avoidance area. If the commission does not authorize the impact to the  
15          avoidance area, the utility must obtain siting authority for the affected portion of  
16          the route adjustment. If the commission fails to act within ten working days of  
17          receipt of the utility's filing of the certification and supporting documentation under  
18          subdivision a of subsection 2, the route adjustment is deemed approved.
- 19          3. Before or during construction, a utility, without any action by the commission, may  
20          adjust the route of an electric transmission line outside the designated corridor if,  
21          before conducting any construction activities associated with the adjustment, the  
22          utility:
- 23          a. Files with the commission certification and supporting documentation that:
- 24               (1) The construction activities will not affect any known exclusion or avoidance  
25               areas;
- 26               (2) The route outside the corridor is no longer than one and one-half miles  
27               [2.41 kilometers];
- 28               (3) The utility will comply with the commission's orders, laws, and rules  
29               designating the corridor and designating the route; and

- 1           (4) Each owner of real property on which the adjustment is to be located and  
2                     any applicable governmental entity with an interest in the same adjustment  
3                     area do not oppose the adjustment.
- 4           b. Files detailed field studies indicating exclusion and avoidance areas for an area  
5                     encompassing the route outside the designated corridor equal to the length of the  
6                     adjustment of the proposed corridor.
- 7           4. Before or during construction, a utility may adjust the electric transmission line outside  
8                     the designated corridor that may affect an avoidance area if, before conducting any  
9                     construction activities associated with the adjustment, the utility:
- 10           a. Files with the commission certification and supporting documentation that:
- 11                     (1) The construction activities will not affect any known exclusion areas;  
12                     (2) The construction activities are expected to impact an avoidance area with a  
13                     specific description of the avoidance area expected to be impacted;  
14                     (3) The utility has good cause and a specific reason to impact the avoidance  
15                     area, and a reasonable alternative does not exist;  
16                     (4) The route outside the corridor is no longer than one and one-half miles  
17                     [2.41 kilometers];  
18                     (5) The utility will comply with the commission's orders, laws, and rules  
19                     designating the corridor and designating the route; and  
20                     (6) Each owner of real property on which the adjustment is to be located and  
21                     any applicable governmental entity with an interest in the same adjustment  
22                     area do not oppose the adjustment.
- 23           b. Files detailed field studies indicating exclusion and avoidance areas for an area  
24                     encompassing the route outside the designated corridor equal to the length of the  
25                     adjustment of the proposed corridor.
- 26           c. Receives the commission's written authorization that the utility may impact the  
27                     avoidance area. If the commission does not authorize the impact to the  
28                     avoidance area, the utility must obtain siting authority for the affected portion of  
29                     the route adjustment. If the commission fails to act within ten working days of  
30                     receipt of the utility's filing of the certification and supporting documentation under  
31                     subdivisions a and b of subsection 4, the route adjustment is deemed approved.

1        5. The commission is not required to hold a public hearing or publish a notice of  
2                    opportunity for a public hearing for any route adjustment under this section.

3        **SECTION 5. AMENDMENT.** Section 49-22-22 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5        **49-22-22. Siting process expense recovery - Deposit in special fund - Continuing**  
6 **appropriation.**

- 7        1. Every applicant under this chapter shall pay to the commission an application fee:
- 8            a. An applicant for a certificate of site compatibility shall pay an amount equal to five  
9                    hundred dollars for each one million dollars of investment in the facility.
- 10           b. An applicant for a certificate of corridor compatibility shall pay an amount equal to  
11                    five thousand dollars for each one million dollars of investment in the facility.
- 12           c. An applicant for a waiver shall pay the amount which would be required for an  
13                    application for a certificate of site or corridor compatibility for the proposed facility.  
14                    If a waiver is not granted for a proposed facility, such application fee paid shall be  
15                    allowed as a credit against fees payable under this section in connection with an  
16                    application under this chapter for a certificate or permit for the proposed facility.
- 17           d. An applicant requesting an amendment to a certificate or permit or for a transfer  
18                    of a certificate or permit shall pay an amount to be determined by the commission  
19                    to cover anticipated expenses of processing the application.
- 20           e. An applicant certifying to the commission under subsection 3 of section 49-22-03  
21                    shall pay an amount to be determined by the commission to cover anticipated  
22                    expenses of processing the application.
- 23           f. The application fee under subdivision a, b, or c may not be less than ten  
24                    thousand dollars nor more than one hundred thousand dollars.
- 25           g. ~~If an application fee is less than twenty-five thousand dollars, an~~An applicant may  
26                    agree to pay additional fees that are reasonably necessary for completion of the  
27                    site, corridor, or route evaluation and designation process.
- 28        2. ~~At the request of the commission and~~If an applicant does not agree to pay additional  
29                    fees reasonably necessary for completion of the site, corridor, or route evaluation and  
30                    designation process, with the approval of the emergency commission, the applicant  
31                    shall pay such additional fees as are reasonably necessary for completion of the

1 electric energy conversion facility site, electric transmission facility corridor, or electric  
2 transmission facility route evaluation and designation process by the commission. The  
3 application fee under subsection 1 and any additional fees required of the applicant  
4 under this subsection may not exceed an amount equal to one thousand dollars for  
5 each one million dollars of investment in a proposed energy conversion facility or ten  
6 thousand dollars for each one million dollars of investment in a proposed electric  
7 transmission facility.

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

15 4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility  
16 and route permit, and transfer of a certificate or permit under this chapter shall pay to  
17 the commission an administrative fee equal to one hundred dollars for each  
18 one million dollars of original investment, not to exceed twenty-five thousand dollars.  
19 The administrative fee must be deposited in the public service commission program  
20 fund.

21 **SECTION 6. AMENDMENT.** Subsections 6 and 7 of section 49-22.1-01 of the North Dakota  
22 Century Code are amended and reenacted as follows:

- 23 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of  
24 plant and addition, designed for or capable of:
- 25 a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic  
26 meters] or more of gas or hydrogen per day, regardless of the end use of the gas;
  - 27 b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or  
28 more of liquid hydrocarbon products per day; or
  - 29 c. Enrichment of uranium minerals.
- 30 7. "Gas or liquid transmission facility" means any of the following:

- 1           a. A gas or liquid transmission line and associated facilities designed for or capable  
2           of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products,  
3           hydrogen, or carbon dioxide. This subdivision does not apply to:
- 4           (1) An oil or gas pipeline gathering system;
- 5           (2) A natural gas distribution system;
- 6           (3) Carbon dioxide storage facility underground equipment, including a flow  
7           line, subject to chapter 38-22;
- 8           (4) A pipeline with an outside diameter of four and one-half inches  
9           [11.43 centimeters] or less which will not be trenched and will be plowed in  
10          with a power mechanism having a vertical knife or horizontally directionally  
11          drilled, and its associated facilities; or
- 12          (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of  
13          this chapter, a gathering system includes the pipelines and associated  
14          facilities used to collect oil from the lease site to the first pipeline storage  
15          site where pressure is increased for further transport, or pipelines and  
16          associated facilities used to collect gas from the well to the gas processing  
17          facility at which end-use consumer-quality gas is produced, with or without  
18          the addition of odorant.
- 19          b. A liquid transmission line and associated facilities designed for or capable of  
20          transporting water from or to an energy conversion facility.

21           **SECTION 7. AMENDMENT.** Subsection 4 of section 49-22.1-10 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23           4. Notice of a public hearing must be given by the commission by service on those  
24           persons the commission deems appropriate and twice by publication, ~~once at least~~  
25           ~~twenty days before the hearing and a second time within twenty days at a reasonable~~  
26           interval before the hearing. Notice of a public hearing and notice of opportunity for a  
27           public hearing on an application for a certificate, a permit, a transfer or amendment of  
28           a certificate or permit, or a waiver must be given at the expense of the applicant. ~~In an~~  
29           ~~emergency the commission may notice a hearing upon less than twenty days.~~

30           **SECTION 8. AMENDMENT.** Subsection 4 of section 49-22.1-21 of the North Dakota  
31 Century Code is amended and reenacted as follows:

- 1           4.   Every applicant for a certificate of site compatibility, certificate of corridor compatibility  
2           and route permit, and transfer of a certificate or permit under this chapter shall pay to  
3           the commission an administrative fee equal to one hundred dollars for each  
4           one million dollars of original investment, not to exceed twenty-five thousand dollars.  
5           The administrative fee must be deposited into the public service commission program  
6           fund.