

PUBLIC UTILITIES

CHAPTER 430

HOUSE BILL NO. 1063

(Government and Veterans Affairs Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact a new section to chapter 49-02 of the North Dakota Century Code, relating to public service commission requirements for open meetings; and to declare an emergency.

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:

Public service commission open meetings.

Except as otherwise provided by law, a meeting of the public service commission is subject to the requirements of chapter 44-04. A meeting of the public service commission does not include a quorum of members attending a legislative committee. The public service commission is exempt from posting notice at the location of a meeting, as required under section 44-04-20, if the meeting was not scheduled or organized by the public service commission.

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

Approved April 15, 2025

Filed April 17, 2025

CHAPTER 431

HOUSE BILL NO. 1211

(Representatives Monson, Beltz, Hagert, Nelson, Vigasaa, Weisz)
(Senators Klein, Lemm, Myrdal, Wanzek)

AN ACT to amend and reenact sections 49-02-26, 49-02-29, and 49-02-31 of the North Dakota Century Code, relating to renewable electricity and recycled energy credits; and to repeal section 49-02-30 of the North Dakota Century Code, relating to energy from hydroelectric facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸³ **SECTION 1. AMENDMENT.** Section 49-02-26 of the North Dakota Century Code is amended and reenacted as follows:

49-02-26. Qualifying for renewable electricity and recycled energy credits - ~~Exception for certain hydroelectric facilities.~~

~~Except as otherwise provided in this section, for~~For purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. ~~For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on August 1, 2007.~~

¹⁸⁴ **SECTION 2. AMENDMENT.** Section 49-02-29 of the North Dakota Century Code is amended and reenacted as follows:

49-02-29. Qualifying for renewable electricity and recycled energy objective.

For purposes of qualifying for the renewable electricity and recycled energy objective contained in section 49-02-28, electricity, ~~except for electricity generated from a hydroelectric facility with an inservice date before January 1, 2007, and electricity that is not obtained from repowering or efficiency improvements to a hydropower facility existing on August 1, 2007, regardless of the source's inservice date,~~ qualifies for meeting the statewide objective provided that the source meets the requirements of the North Dakota public service commission's rules for tracking, recording, and verifying renewable energy certificates.

¹⁸⁵ **SECTION 3. AMENDMENT.** Section 49-02-31 of the North Dakota Century Code is amended and reenacted as follows:

49-02-31. Purchase and retirement of renewable energy and recycled energy certificates to meet the objective.

¹⁸³ Section 49-02-26 was also amended by section 1 of Senate Bill No. 2359, chapter 432.

¹⁸⁴ Section 49-02-29 was repealed by section 2 of Senate Bill No. 2359, chapter 432.

¹⁸⁵ Section 49-02-31 was repealed by section 2 of Senate Bill No. 2359, chapter 432.

A portion or all of the renewable energy and recycled energy objective may be met by the purchase and retirement of renewable energy and recycled energy certificates representing credits from qualified sources and facilities as ~~defined~~described in ~~sections~~section 49-02-26 and ~~49-02-30~~. Renewable energy and recycled energy certificates do not need to be acquired from an in-state facility.

¹⁸⁶ **SECTION 4. REPEAL.** Section 49-02-30 of the North Dakota Century Code is repealed.

Approved March 14, 2025

Filed March 14, 2025

¹⁸⁶ Section 49-02-30 was also repealed by section 2 of Senate Bill No. 2359, chapter 432.

CHAPTER 432

SENATE BILL NO. 2359

(Senators Patten, Kessel, Boehm)
(Representatives Novak, Porter)

AN ACT to amend and reenact section 49-02-26 of the North Dakota Century Code, relating to qualifications for renewable electricity and recycled energy credits; and to repeal sections 49-02-28, 49-02-29, 49-02-30, 49-02-31, 49-02-32, 49-02-33, and 49-02-34 of the North Dakota Century Code, relating to the state renewable and recycled energy objectives, public reporting, qualifications and applications to the statewide objectives, the purchase and retirement of renewable energy certificates to meet the objectives, verification of generation and the purchase of certificates, and economic evaluations on the use of renewable and recycled energy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁷ **SECTION 1. AMENDMENT.** Section 49-02-26 of the North Dakota Century Code is amended and reenacted as follows:

49-02-26. Qualifying for renewable electricity and recycled energy credits - ~~Exception for certain hydroelectric facilities.~~

~~Except as otherwise provided in this section, for~~For purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. ~~For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on August 1, 2007.~~

¹⁸⁸ **SECTION 2. REPEAL.** Sections 49-02-28, 49-02-29, 49-02-30, 49-02-31, 49-02-32, 49-02-33, and 49-02-34 of the North Dakota Century Code are repealed.

Approved April 2, 2025

Filed April 3, 2025

¹⁸⁷ Section 49-02-26 was also amended by section 1 of House Bill No. 1211, chapter 431.

¹⁸⁸ Section 49-02-29 was amended by section 2 of House Bill No. 1211, chapter 431; section 49-02-30 was also repealed by section 4 of House Bill No. 1211, chapter 431; section 49-02-31 was amended by section 3 of House Bill No. 1211, chapter 431.

CHAPTER 433

HOUSE BILL NO. 1062

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-04-07 of the North Dakota Century Code, relating to unreasonable preferences or advantages from public utilities; and to repeal sections 49-04-08, 49-04-09, and 49-04-10 of the North Dakota Century Code, relating to regulation of common carriers relating to permissible discrimination, long and short hauls, and freight pooling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-04-07 of the North Dakota Century Code is amended and reenacted as follows:

49-04-07. Unreasonable preferences or advantages prohibited.

No public utility shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, limited liability company, or locality, or to any particular character of ~~traffic or~~ service in any respect whatsoever, nor subject any particular person, firm, corporation, limited liability company, company, or locality, or any particular character of ~~traffic or~~ service to any undue or unreasonable prejudice or disadvantage in any respect. No public utility corporation, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand, collect, or receive from any person, firm, corporation, or limited liability company a greater or less compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, corporation, or limited liability company for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. Nothing in this chapter shall prohibit a public utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the franchise or permit under which such public utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the commission.

SECTION 2. REPEAL. Sections 49-04-08, 49-04-09, and 49-04-10 of the North Dakota Century Code are repealed.

Approved March 14, 2025

Filed March 14, 2025

CHAPTER 434

HOUSE BILL NO. 1110

(Judiciary Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-10.1-14 of the North Dakota Century Code, relating to access to investigative and surveillance records and meetings of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-14 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-14. Commission may adopt and enforce safety rules - Investigation and surveillance records - Railroads - Exempt.

1. The commission, for the protection of persons and property, may adopt and enforce railroad safety rules not inconsistent with any federal agency having jurisdiction over railroads. The commission may adopt rules more stringent than federal rules when necessary to eliminate an essentially state or local safety hazard if the rules are not incompatible with any federal law or rule and do not create an undue burden on interstate commerce.
2. A record and portion of a meeting related to the ongoing railroad investigation and surveillance activities of the national transportation safety board and federal railroad administration state safety participation program is an exempt record as defined under section 44-04-17.1.

Approved April 15, 2025

Filed April 17, 2025

CHAPTER 435

SENATE BILL NO. 2068

(Transportation Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact sections 49-17.1-02, 49-17.1-03, and 49-17.1-04 of the North Dakota Century Code, relating to rail service assistance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

49-17.1-02. Department of transportation as designated state agency.

The department, with the ~~approval~~cooperation of the commission, is authorized to exercise those powers necessary for the state to qualify for rail service assistance grants pursuant to provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], including authority to:

1. Prepare and recommend a state plan for all rail transportation and local rail services.
2. Administer and coordinate the state plan.
3. Provide in the plan for the equitable distribution of rail service assistance grants among state, local, and regional transportation authorities.
4. Promote and support safe, adequate, and efficient rail services for those railway lines receiving rail service assistance grants.
5. Employ sufficient trained and qualified personnel for these purposes.
6. Maintain adequate programs of investigation, research, promotion, and development in connection with these purposes and to provide for public participation therein.
7. Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state as may be necessary to assure proper disbursement of an account for federal funds paid to the state as rail service assistance grants.
8. Comply with the regulations of the secretary of transportation of the United States department of transportation affecting rail service assistance grants.
9. Do all things otherwise necessary to maximize federal assistance to the state under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], and any amendments to it.

SECTION 2. AMENDMENT. Section 49-17.1-03 of the North Dakota Century Code is amended and reenacted as follows:

49-17.1-03. Application for assistance.

The department, ~~with the approval of the commission,~~ may make application on behalf of the state for grants made available by the secretary of transportation under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.].

SECTION 3. AMENDMENT. Section 49-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

49-17.1-04. Use of public and private funds - Public service commission participation.

The department, with the ~~approval~~cooperation of the commission, may utilize public and private funds appropriated by the legislative assembly in carrying out the purpose of this chapter. The department shall cooperate with the commission and with other states in the reorganization or reopening of any railway line which may have been abandoned by any railway corporation providing railway services within the state. In carrying out the authority conferred by this section, the department may enter into agreements, contracts, or other arrangements with the necessary parties to accomplish the purposes of this chapter.

Approved March 17, 2025

Filed March 18, 2025

CHAPTER 436

HOUSE BILL NO. 1539

(Representatives Novak, Grueneich)
(Senators Erbele, Kessel, Patten)

AN ACT to amend and reenact section 49-22-03 and subdivision e of subsection 1 of section 49-22-22 of the North Dakota Century Code, relating to backup electric generation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁹ **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions.

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

1. "Backup electric generation" means electric generation that is not interconnected with the grid and is generated on a temporary basis to replace primary source electric generation when unavailable.
2. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
- ~~2-3.~~ "Commission" means the North Dakota public service commission.
- ~~3-4.~~ "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsection ~~56~~ or ~~67~~ or in subsection ~~43~~14 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;

¹⁸⁹ Section 49-22-03 was also amended by section 1 of Senate Bill No. 2116, chapter 437.

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- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and

- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
- 4-5. "Corridor" means the area of land where a designated route may be established for an electric transmission facility.
- 5-6. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, excluding onsite backup electric generation, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or
- c. Utility-scale energy storage.
- 6-7. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
 - a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or
 - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 7-8. "Facility" means an electric energy conversion facility, electric transmission facility, or both.

- ~~8-9.~~ "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
- ~~9-10.~~ "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
- ~~40-11.~~ "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
- ~~44-12.~~ "Repower" means construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.
- ~~42-13.~~ "Route" means the location of an electric transmission facility within a designated corridor.
- ~~43-14.~~ "Site" means the location of an electric energy conversion facility.
- ~~44-15.~~ "Utility" means a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.
- ~~45-16.~~ "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

SECTION 2. AMENDMENT. Subdivision e of subsection 1 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

- e. An applicant certifying to the commission under subsection ~~34~~ of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

Approved March 19, 2025

Filed March 20, 2025

CHAPTER 437

SENATE BILL NO. 2116

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact a new subsection to section 49-22-13 and a new subsection to section 49-22.1-10 of the North Dakota Century Code, relating to public hearings for energy conversion and transmission facilities; and to amend and reenact sections 49-22-03, 49-22-16.4, and 49-22.1-01 of the North Dakota Century Code, relating to public hearings and light-mitigating technology systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁰ **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions.

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsection 5 or 6 or in subsection 13 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;

¹⁹⁰ Section 49-22-03 was also amended by section 1 of House Bill No. 1539, chapter 436.

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- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and

- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
- 4. "Corridor" means the area of land where a designated route may be established for an electric transmission facility.
 - 5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or
 - c. Utility-scale energy storage.
 - 6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
 - a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or
 - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
 - 7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.

8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
9. "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. "Public hearing" means a proceeding conducted for the purpose of acquiring information that will be considered in a certificate or permit action evaluation and which affords the public an opportunity to present views, opinions, and information.
- ~~12.~~ "Repower" means construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.
- ~~42-13.~~ "Route" means the location of an electric transmission facility within a designated corridor.
- ~~43-14.~~ "Site" means the location of an electric energy conversion facility.
- ~~44-15.~~ "Utility" means a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.
- ~~45-16.~~ "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

SECTION 2. A new subsection to section 49-22-13 of the North Dakota Century Code is created and enacted as follows:

The commission may hold a technical hearing on an application by the commission's own motion or by motion of a directly interested person. During a technical hearing the parties shall be afforded an opportunity to present evidence, examine witnesses, and cross-examine witnesses as permitted under sections 28-32-24 and 28-32-25.

SECTION 3. AMENDMENT. Section 49-22-16.4 of the North Dakota Century Code is amended and reenacted as follows:

49-22-16.4. Light-mitigating technology system - Rules.

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.

2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission. ~~After public hearing, the~~The commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. ~~After public hearing, the~~The commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems are the sole responsibility of the wind energy conversion facility owner.

SECTION 4. AMENDMENT. Section 49-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

49-22.1-01. Definitions.

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

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 6 or 7 and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:

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- (a) Of a new gas or liquid energy conversion facility;
 - (b) Of a new gas or liquid transmission facility;
 - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
 - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new gas or liquid energy conversion facility;
 - [2] Of a new gas or liquid transmission facility;
 - [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
 - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new gas or liquid energy conversion facility;
 - [2] Of a new gas or liquid transmission facility;
 - [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
 - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;

- (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land where a designated route may be established for a gas or liquid transmission facility.
 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.
 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;
 - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:
- a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A natural gas distribution system;
 - (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
 - (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first

pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
- 8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
- 9. "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
- 10. "Public hearing" means a proceeding conducted for the purpose of acquiring information that will be considered in a certificate or permit action evaluation and which affords the public an opportunity to present views, opinions, and information.
- 11. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
- ~~44-12.~~ "Route" means the location of a gas or liquid transmission facility within a designated corridor.
- ~~42-13.~~ "Site" means the location of a gas or liquid energy conversion facility.
- ~~43-14.~~ "Utility" means a person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

SECTION 5. A new subsection to section 49-22.1-10 of the North Dakota Century Code is created and enacted as follows:

The commission may hold a technical hearing on an application by the commission's own motion or by motion of a directly interested person. During a technical hearing the parties shall be afforded an opportunity to present evidence, examine witnesses, and cross-examine witnesses as permitted under sections 28-32-24 and 28-32-25.

Approved March 27, 2025

Filed March 31, 2025

CHAPTER 438

HOUSE BILL NO. 1258

(Representatives Brandenburg, Bosch, Grueneich, Hagert, Nathe, Porter, Headland,
Kempenich)
(Senators Conley, Kessel, Patten, Wanzek)

AN ACT to amend and reenact subsection 2 of section 49-22-16 of the of the North Dakota Century Code, relating to energy conversion and transmission facility siting; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and a site may not be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

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- b. ~~Except as provided in this section, a~~ permit for the construction of an electric transmission facility within a designated corridor supersedes and preempts ~~any local land use, or zoning, or building rule, regulation, or ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as applied to the proposed route, is~~ regulations.
- c. ~~Before an electric transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location. Without such a finding by the commission, a route may not be designated which violates a local land use, zoning, or building rule, regulation, or ordinance, or are in direct conflict with state or federal laws or rules.~~
- d. ~~When an application for a certificate for an electric transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The listing of requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.~~

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- e. An applicant must comply with all local requirements provided to the commission under subdivision d, which are not otherwise superseded by the commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to January 1, 2025.

Approved April 15, 2025

Filed April 17, 2025

CHAPTER 439

HOUSE BILL NO. 1153

(Representatives Dockter, D. Anderson, Novak, Porter)
(Senator Patten)

AN ACT to amend and reenact subsection 7 of section 49-23-01 of the North Dakota Century Code, relating to the one-call excavation notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
 - a. Opening a grave in a cemetery.
 - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
 - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
 - d. Normal maintenance of paved roads and streets if the maintenance does not ~~change the original grade~~ extend deeper than the depth of the existing pavement and does not involve the road ditch.
 - e. Normal surface maintenance of gravel roads and streets if the maintenance does not involve the road ditch.
 - e-f. Normal repair and maintenance of track and track bed by a railroad on its own right of way.

Approved March 21, 2025

Filed March 24, 2025

CHAPTER 440

SENATE BILL NO. 2339

(Senators Kessel, Bekkedahl, Patten)
(Representatives Novak, J. Olson, Porter)

AN ACT to create and enact a new chapter to title 49 of the North Dakota Century Code, relating to strict liability and a wildfire mitigation plan of a qualified utility; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

As used in this chapter:

1. "Hazardous vegetation" means plants, such as trees, shrubs, and grass, which are dry, diseased, dead, or in close proximity to power lines and could come into contact with power lines, especially in dry and windy conditions, and lead to electrical faults or wildfires.
2. "Qualified utility" means an electric public utility, rural electric cooperative, municipal electric utility, municipal joint action agency, or electric transmission provider as defined in section 49-03-01.5.
3. "Wildfire mitigation plan" means a plan submitted to the commission or the qualified utility's board of directors in accordance with this chapter.

Limitation on strict liability standard for a qualified utility.

A court may not apply a standard of strict liability to a qualified utility in any cause of action alleging the qualified utility caused wildfire related damages.

Wildfire mitigation plan.

1. A qualified utility may prepare a wildfire mitigation plan in accordance with this chapter.
2. A wildfire mitigation plan under this section must include a description of:
 - a. Areas within the service territory of the qualified utility which may be subject to a heightened risk of wildfire;
 - b. The procedures, standards, and time frames the qualified utility will use to safely and reliably operate and inspect its infrastructure affected by hazardous vegetation;
 - c. The procedures and standards the qualified utility will use to perform vegetation management;

- d. The modifications or upgrades to facilities and preventative programs the qualified utility will implement to reduce the risk of its electric facilities initiating a wildfire;
 - e. Procedures for disabling reclosers to mitigate potential wildfires taking into consideration:
 - (1) The ability of the qualified utility to reasonably disable reclosers and access the proposed power line if it becomes de-energized;
 - (2) The balance of the risk of wildfire with the need for continued supply of electricity to a community; and
 - (3) Any potential impact to public safety, first responders, and health and communication infrastructure;
 - f. Procedures the qualified utility intends to use to restore its electrical system in the event of a wildfire;
 - g. The costs for implementation of the plan, including system improvements and upgrades;
 - h. Community outreach and public awareness efforts before and during a wildfire season; and
 - i. Potential participation with state or local wildfire protection or mitigation plans.
3. The procedures and standards under this section must be compliant with the American national standards institute standard A300, part 7, and the 2023 national electrical safety code.

Wildfire mitigation plan submission.

- 1. An electric public utility or electric transmission provider may submit for filing a wildfire mitigation plan to the commission. An electric public utility or electric transmission provider shall publish on its website all wildfire mitigation plans within thirty days of filing. If an electric public utility or electric transmission provider submits a wildfire mitigation plan, the plan must be updated and resubmitted to the commission every two years.
- 2. A rural electric cooperative, municipal electric utility, or municipal joint action agency may submit a wildfire mitigation plan to its board of directors. The electric cooperative, municipal electric utility, or municipal joint action agency shall publish on its website all wildfire mitigation plans within thirty days of approval from its board of directors. If a rural electric cooperative, municipal electric utility, or municipal joint action agency submits a wildfire mitigation plan, the plan must be updated and reapproved by the board of directors every two years.
- 3. The preparation and publishing of, and compliance with, the qualified utility's wildfire mitigation plan constitutes a rebuttable presumption that the qualified utility exercised a reasonable standard of care.

Annual report.

1. An electric public utility or electric transmission provider with a wildfire mitigation plan on file may submit an annual report detailing the utility's compliance with the plan to the commission, no later than December thirty-first of each year the plan is effective. If the utility submits an annual report, the utility shall publish the report on its website.
2. A rural electric cooperative, municipal electric utility, or municipal joint action agency with a wildfire mitigation plan may submit an annual report to its board of directors or governing body summarizing the rural electric cooperative's, municipal electric utility's, or municipal joint action agency's compliance with its approved wildfire mitigation plan. The rural electric cooperative, municipal electric utility, or municipal joint action agency shall publish the report on its website.

Approved April 24, 2025

Filed April 25, 2025