2025 HOUSE ENERGY AND NATURAL RESOURCES

HB 1539

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1539
1/31/2025

Relating to backup electric generation.

10:32 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, M. Ruby, Conmy, Foss

Discussion Topics:

- Megawatt threshold
- Primary Grid Power
- Generation Facilities
- Backup electrical generation

10:32 a.m. Representative Novak introduced the bill and submitted testimony #33215

10:35 a.m. Etienne Snyman, Vice President of Applied Digital, testified in favor.

Additional written testimony:

Nick Phillips, Executive Vice President of External Affairs for Applied Digital Corporation, submitted testimony in favor # 32988

Dennis Pathroff, Lobbyist with the GA Group representing the Power Companies of ND (PCND), submitted testimony in favor #33096

10:51 a.m. Chairman Porter closed the hearing.

Leah Kuball, Committee Clerk

January 31, 2025

Honorable Chairman Porter and Committee Members,

Applied Digital Corporation (Nasdaq: APLD) is a designer, builder and operator of next-generation digital infrastructure for High Performance Compute ("HPC") applications. Applied Digital has been active in North Dakota since 2021. We've greatly appreciated the collaborative spirit of the state and the opportunity to work with North Dakota employees, contractors, and local and state officials. Our facilities north of Jamestown and in Ellendale reflect the strong partnerships we've built. To date we have invested over $1B in infrastructure in North Dakota and anticipate roughly $4B more in the coming years. According to our economic impact study, conducted by a third party earlier this year, we anticipate becoming a top-ten property tax payer in the state within the next few years. We believe this will create roughly 14,000 temporary and permanent jobs during construction. We anticipate we will be responsible for nearly one-half of a percent (0.5%) of state GDP. Our permanent employment footprint at our facilities is expected to be roughly 400 jobs. According to the study, we anticipate there will be roughly 2,500 indirect jobs as a result of our projects. **Our Ellendale project directly resulted in $5.4 Million being returned to MDU's North Dakota rate payers in 2023 and MDU is projecting that it will directly result in $14 Million being returned to MDU's North Dakota rate payers in 2024.**

As background, N.D.C.C. Ch. 49-22 (the "Siting Act") requires electric generation from sources other than wind and utility storage in excess of 50 megawatts ("MW") to undergo extensive regulatory review through the siting process before the North Dakota Public Service Commission ("PSC"). The definitions under the Siting Act are broad and any on-site backup electrical generation in excess of 50 MW, which is an ancillary use to the primary facility, could trigger siting before the PSC.

This creates a situation where the primary facility, a manufacturer for example, may be non-jurisdictional to the PSC. However, if the facility's on-site backup generation exceeds 50MW, the on-site backup generation component of the facility must undergo siting. From a practical perspective, we do not believe this regulatory framework makes sense. Further, we believe imposing siting requirements on on-site backup generation does not align with the intent of the Siting Act. The requirement to site on-site backup generation that is not injecting power to the grid effectively extends the PSC's siting jurisdiction to discrete portions of a facility not otherwise jurisdictional to the PSC.

Backup power generation is necessary for many data centers, manufacturers, hospitals, and other power users to function properly and safely. The purpose of backup power generation at our facilities is threefold:

1. To protect our workers and equipment from unintentional harm caused by unexpected disconnection from the grid.

2. To allow our large load to operate off-grid in emergency situations, thus improving the reliability of the grid for other customers and the grid's operators.

3. To satisfy the risk mitigation requirements of our tenants.

We believe that the amendment to the Century Code 49-22-03 presented by HB1539 is a correction in line with the intent of the law. The intent of the Siting Act is to enable the PSC to have a view into facilities

that will interconnect power to the grid and provide energy to customers. In the case of on-site backup power generation not transmitting power to the grid, there is no impact to the grid and therefore the Siting Act should not apply.

State level siting requirements for on-site backup generation are rare among states across the country. Business-friendly states such as Alabama, Arkansas, Idaho, Indiana, Kansas, Michigan, Mississippi, Missouri, Texas, and Wyoming provide no such requirement. Maryland previously provided a requirement at the state level but repealed it. Colorado provides siting at the local level. A less business-friendly state, such as Minnesota, does provide for siting at the state level, but the limit is 80MW, less restrictive than North Dakota's current requirement.

We do not believe it is the intent of the Siting Act to require private businesses with no impact on the grid to seek input from dozens of state and federal agencies to locate their facilities in North Dakota. This process is not only administratively burdensome, but can cost up to hundreds of thousands of dollars and can delay projects for months, years, or potentially stop projects entirely. Finding a location for a large load anywhere in the country, including in North Dakota, is extremely difficult. The unintended consequence of a private company having to site its on-site backup generation component of the facility further limits the ability to locate otherwise non-jurisdictional facilities. These are the types of facilities that bring jobs and other positive economic impact to cities and towns in North Dakota.

There are notable differences between on-site back-up generation and traditional electric generation facilities. On-site backup power generation does not cause the same impacts as full time or peaker plant facilities. In the case of Applied Digital, our on-site backup power generation is permitted to run only 239 hours per year. The generation is not the same type of equipment as may be found at a power plant, the engines are much smaller, contained indoors, and they are not expected to run other than in very rare emergency cases and to conduct very small amounts of maintenance consisting of approximately 1 hour per machine per month.

Local jurisdictions provide oversight of the siting of the facilities that require on-site backup power generation through local ordinances and zoning. The siting of these non-jurisdictional facilities, including their secondary on-site backup generation, is and should continue to be done locally. Furthermore, on-site backup power generation remains subject to other environmental regulations. For example, on-site backup generation must still comply with any applicable air permitting requirements of the Department of Environmental Quality regardless of whether the PSC's siting requirement applies. For these reasons, it is unnecessary to extend the PSC's jurisdiction over on-site backup generation of an otherwise non-jurisdictional facility.

We urge the committee to advance HB1539 as we view this language change as a correction to address the changing needs of technology that will enhance expediting economic development in the state.

Thank you for your time and consideration. Please feel free to contact me for further information. We look forward to continuing our partnership with North Dakota.

Sincerely,

Nick Phillips
Executive Vice President of External Affairs

Nick@AppliedDigital.com

Power Companies OF NORTH DAKOTA

Good morning, Chairman Porter and members of the House Energy and Natural Resources Committee,

The Power Companies of North Dakota ("PCND") urges a "Do Pass" recommendation on HB 1539.

PCND is a coalition of the state's leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

Today, we express PCND's support for HB 1539, which defines "backup electric generation" and exempts it from the state's siting process.

This bill will improve grid stability by allowing large facilities, such as data centers and other major energy consumers, to deploy backup generation quickly and without unnecessary regulatory barriers. Backup systems provide critical support during outages or peak demand, reducing strain on the grid and ensuring that essential operations can continue uninterrupted. This not only benefits the facilities themselves but also protects utility customers by minimizing the risk of widespread disruptions.

Furthermore, by enabling large energy users to rely on backup electric generation during times of grid instability or power supply disruption, HB 1539 enhances the reliability of power delivery for all customers. This flexibility helps utilities maintain consistent service while avoiding unnecessary stress on the broader electric system.

Accordingly, we strongly urge a "Do Pass" recommendation for HB 1539.

Thank you, Chairman Porter and committee members, for your consideration.

Legislative Assembly

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Anna Novak
District 33
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anovak@ndlegis.gov

COMMITTEES:
Education
Energy and Natural Resources (Vice Chair)

January 31, 2025

Mr. Chairman and members of the committee:

For the record, my name is Anna Novak, representative from district 33. HB1539 relates to backup generation for large electricity users. This bill is coming at the request of data centers looking to invest and locate to the state; however, there are other large energy users in which this might apply to in the future.

Currently, the definitions under the PSC's Siting Act are broad and would require siting for generation types that are outside the scope of what the Siting Act was intended to regulate. Under the Siting Act, any electric generation (other than wind and utility storage) that exceeds 50MW must be sited. The result is that if an entity has onsite back up generators for example, they would fall under the PSC's siting jurisdiction if it exceeds the 50MW threshold. This bill creates a new definition for "backup electric generation" by defining backup electric generation as electric generation that is not interconnected to the electrical grid to supply power, and is used in the event that the primary grid power is unavailable - like a blackout.

The current definition should be updated to keep up with technology and the needs of businesses such as data centers, manufacturing or other industries that may require large amounts of highly-reliable power. Backup generation is not like power generation that is intended to be interconnected to the grid and run for long lengths of time. Local jurisdictions already have the opportunity and are best suited to evaluate siting of these businesses. Environmental protections are still required despite this change. The new definition will enable businesses to innovate and invest without being overly burdened by dozens of state and federal agencies. In the case of data centers, backup generation is needed on-site and is incidental to the business. The generators themselves are relatively small, not interconnected to the grid and are prohibited from running more than 239 hours per year.

HB1539 makes two changes to the Century code. Under CC 49-22-03 on page 1 of the bill, lines 8-10, it defines what "backup electrical generation" is. The other change is on page 3, line 27, which adds the words "excluding onsite backup electric generation", under the definition of "electric energy conversion facility". One very important word in the definition is "onsite", so the generation facility can't be miles away - it has to be right there, onsite. I believe this word prevents any potential of an entity trying to work around going through the PSC's siting act process.

With that, Mr. Chairman, I'd be happy to answer any questions. Thank you!

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1539
1/31/2025

Relating to backup electric generation.

11:11 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, M. Ruby, Conmy, Foss

Discussion Topics:

- Committee action

11:12 a.m. Representative Dockter moved a Do Pass.

11:12 a.m. Representative Hagert Seconded the Motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Austin Foss	Y
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	Y
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	AB

Motion carried: 12-0-1

Bill Carrier: Representative Dockter

11:13 a.m. Chairman Porter closed the hearing.

Saydee Wahl for Leah Kuball, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1539 (25.1287.01000)

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1539 was placed on the Eleventh order on the calendar.

2025 SENATE ENERGY AND NATURAL RESOURCES

HB 1539

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

HB 1539
3/6/2025

A BILL for 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.

2:30 p.m. Chairman Patten opened the hearing.

Members present: Chairman Patten, Vice Chairman Kessel, Senators Beard, Boehm, Enget, Gerhardt, Van Oosting

Discussion Topics:

- 239 hour limitation for backup generation
- Process and penalties under Siting act

2:30 p.m. Representative Novak, District 33, introduced HB 1539 and testified in favor and submitted testimony #39358.

2:34 p.m. Nick Phillips, Executive Vice President of External Affairs, Applied Digital, testified in favor and submitted testimony #38949.

2:42 p.m. Terry Effertz, Executive Director, Data Center Coalition of North Dakota, testified in favor and submitted testimony #39147.

2:43 p.m. Chairman Patten closed the hearing.

2:43 p.m. Senator Beard moved a Do Pass.

2:43 p.m. Senator Enget seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	AB

Motion passed 6-0-1.

Vice Chairman Kessel will carry the bill.

Additional written testimony:

Dennis Pathroff, Power Companies of North Dakota, submitted written testimony #38633.

2:46 p.m. Chairman Patten closed the hearing.

Chance Anderson for Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1539 (25.1287.01000)

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1539 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

Power Companies OF NORTH DAKOTA

Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee,

The Power Companies of North Dakota ("PCND") urges a "Do Pass" recommendation on HB 1539.

PCND is a coalition of the state's leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

Today, we express PCND's support for HB 1539, which defines "backup electric generation" and exempts it from the state's electric energy conversion facility siting process.

This bill will improve grid stability by allowing large, energy-intensive facilities, such as data centers and other major energy consumers, to deploy backup generation quickly and without unnecessary regulatory barriers. Backup systems provide critical support during outages or peak demand, reducing strain on the grid and ensuring that essential operations can continue uninterrupted. This not only benefits the facilities themselves but also protects utility customers by minimizing the risk of widespread power supply disruptions.

Furthermore, by enabling large energy users to rely on backup electric generation during times of grid instability or power supply disruption, HB 1539 enhances the reliability of power delivery for all customers. This flexibility helps utilities maintain consistent service while avoiding unnecessary stress on the broader electric grid.

Accordingly, we strongly urge a "Do Pass" recommendation for HB 1539.

Thank you, Chairman Patten and committee members, for your consideration.

March 5, 2025

Honorable Chairman Patten and Committee Members,

Applied Digital Corporation (Nasdaq: APLD) is a designer, builder and operator of next-generation digital infrastructure for High Performance Compute ("HPC") applications. Applied Digital has been active in North Dakota since 2021. We've greatly appreciated the collaborative spirit of the state and the opportunity to work with North Dakota employees, contractors, and local and state officials. Our facilities north of Jamestown and in Ellendale reflect the strong partnerships we've built. To date we have invested over $1B in infrastructure in North Dakota and anticipate roughly $4B more in the coming years. According to our economic impact study, conducted by a third party earlier this year, we anticipate becoming a top-ten property tax payer in the state within the next few years. We believe this will create roughly 14,000 temporary and permanent jobs during construction. We anticipate we will be responsible for nearly one-half of a percent (0.5%) of state GDP. Our permanent employment footprint at our facilities is expected to be roughly 400 jobs. According to the study, we anticipate there will be roughly 2,500 indirect jobs as a result of our projects. **Our Ellendale project directly resulted in $5.4 Million being returned to MDU's North Dakota rate payers in 2023 and MDU is projecting that it will directly result in $14 Million being returned to MDU's North Dakota rate payers in 2024.**

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This creates a situation where the primary facility, a manufacturer for example, may be non-jurisdictional to the PSC. However, if the facility's on-site backup generation exceeds 50MW, the on-site backup generation component of the facility must undergo siting. From a practical perspective, we do not believe this regulatory framework makes sense. Further, we believe imposing siting requirements on on-site backup generation does not align with the intent of the Siting Act. The requirement to site on-site backup generation that is not injecting power to the grid effectively extends the PSC's siting jurisdiction to discrete portions of a facility not otherwise jurisdictional to the PSC.

Backup power generation is necessary for many data centers, manufacturers, hospitals, and other power users to function properly and safely. The purpose of backup power generation at our facilities is threefold:

1. To protect our workers and equipment from unintentional harm caused by unexpected disconnection from the grid.

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3. To satisfy the risk mitigation requirements of our tenants.

We believe that the amendment to the Century Code 49-22-03 presented by HB1539 is a correction in line with the intent of the law. The intent of the Siting Act is to enable the PSC to have a view into facilities

that will interconnect power to the grid and provide energy to customers. In the case of on-site backup power generation not transmitting power to the grid, there is no impact to the grid and therefore the Siting Act should not apply.

State level siting requirements for on-site backup generation are rare among states across the country. Business-friendly states such as Alabama, Arkansas, Idaho, Indiana, Kansas, Michigan, Mississippi, Missouri, Texas, and Wyoming provide no such requirement. Maryland previously provided a requirement at the state level but repealed it. Colorado provides siting at the local level. A less business-friendly state, such as Minnesota, does provide for siting at the state level, but the limit is 80MW, less restrictive than North Dakota's current requirement.

We do not believe it is the intent of the Siting Act to require private businesses with no impact on the grid to seek input from dozens of state and federal agencies to locate their facilities in North Dakota. This process is not only administratively burdensome, but can cost up to hundreds of thousands of dollars and can delay projects for months, years, or potentially stop projects entirely. Finding a location for a large load anywhere in the country, including in North Dakota, is extremely difficult. The unintended consequence of a private company having to site its on-site backup generation component of the facility further limits the ability to locate otherwise non-jurisdictional facilities. These are the types of facilities that bring jobs and other positive economic impact to cities and towns in North Dakota.

There are notable differences between on-site back-up generation and traditional electric generation facilities. On-site backup power generation does not cause the same impacts as full time or peaker plant facilities. In the case of Applied Digital, our on-site backup power generation is permitted to run only 239 hours per year. The generation is not the same type of equipment as may be found at a power plant, the engines are much smaller, contained indoors, and they are not expected to run other than in very rare emergency cases and to conduct very small amounts of maintenance consisting of approximately 1 hour per machine per month.

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In the House, this bill passed unanimously.

We urge the committee to advance HB1539 as we view this language change as a correction to address the changing needs of technology that will enhance expediting economic development in the state.

Thank you for your time and consideration. Please feel free to contact me for further information. We look forward to continuing our partnership with North Dakota.

Sincerely,

Nick Phillips
Executive Vice President of External Affairs
APPLIED DIGITAL

Nick@AppliedDigital.com

Testimony in Support of HB 1539
Senate Energy and Natural Resources Committee
Testimony of Terry Effertz, Executive Director
Data Center Coalition of North Dakota (DCCND)
March 6, 2025

Chairman Patten and members of the Senate Energy and Natural Resources Committee,

My name is Terry Effertz, and I serve as the Executive Director of the Data Center Coalition of North Dakota (DCCND). The mission of DCCND is to advocate for policies that foster the growth and sustainability of the data center industry in North Dakota, ensuring a competitive and business-friendly environment for this vital sector.

I am here today to express DCCND's support for HB 1539 and urge a "Do Pass" recommendation. This bill provides a necessary clarification to North Dakota's siting laws by exempting on-site backup electric generation from the state's energy conversion facility siting process.

The data center industry is a rapidly growing economic driver in North Dakota, attracting billions in investment and creating high-paying jobs. These facilities require uninterrupted power to ensure the continuous operation of critical digital infrastructure. Backup generation is not intended for routine power supply but rather serves as an emergency safeguard to maintain operational stability, prevent data loss, and protect sensitive equipment.

The current siting requirements create unnecessary regulatory hurdles for data centers and other large energy users that rely on backup generation for business continuity. As HB 1539 rightly recognizes, backup power that is not interconnected to the grid should not be subject to the same permitting process as primary electric generation facilities. Removing this barrier will align North Dakota with best practices in other states and encourage continued investment in our growing technology sector.

By passing HB 1539, the Legislature will help ensure that North Dakota remains a premier destination for data centers and other energy-intensive industries, enhancing economic growth while maintaining grid reliability. Thank you.

Legislative Assembly

North Dakota House of Representatives

STATE CAPITOL
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BISMARCK, ND 58505-0360

Representative Anna Novak
District 33
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anovak@ndlegis.gov

COMMITTEES:
Education
Energy and Natural Resources (Vice Chair)

March 5, 2025

Mr. Chairman and members of the committee:

For the record, my name is Anna Novak, representative from district 33. HB1539 relates to backup generation for large electricity users. This bill is coming at the request of data centers looking to invest and locate to the state; however, there are other large energy users in which this might apply to in the future.

Currently, the definitions under the PSC's Siting Act are broad and would require siting for generation types that are outside the scope of what the Siting Act was intended to regulate. Under the Siting Act, any electric generation (other than wind and utility storage) that exceeds 50MW must be sited. The result is that if an entity has onsite back up generators for example, they would fall under the PSC's siting jurisdiction if it exceeds the 50MW threshold. This bill creates a new definition for "backup electric generation" by defining backup electric generation as electric generation that is not interconnected to the electrical grid to supply power, and is used in the event that the primary grid power is unavailable - like a blackout.

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HB1539 makes two changes to the Century code. Under CC 49-22-03 on page 1 of the bill, lines 8-10, it defines what "backup electrical generation" is. The other change is on page 3, line 27, which adds the words "excluding onsite backup electric generation", under the definition of "electric energy conversion facility". One very important word in the definition is "onsite", so the generation facility can't be miles away - it has to be right there, onsite. I believe this word prevents any potential of an entity trying to work around going through the PSC's siting act process.

With that, Mr. Chairman, I'd be happy to answer any questions. Thank you!