

PUBLIC UTILITIES

CHAPTER 325

HOUSE BILL NO. 1398

(Representatives J. Nelson, Holman, Seibel, Skroch, Weisz)
(Senators Dotzenrod, Kannianen, Klein)

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to the jurisdiction of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eighteen thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eighteen thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.
2. Upon receipt of a resolution from the governing body of a city not served on August 1, 2017, with natural gas distribution service from a public utility requesting an exemption, and stating its reasons for doing so, the commission shall grant the public utility an exemption from sections 49-02-03, 49-02-11, and 49-02-15, and chapters 49-03.1 and 49-04 if the public utility:
 - a. Has a franchise to supply customers within the city and the area of the extraterritorial zoning jurisdiction of the city with natural gas distribution service;
 - b. Consents to the exemption; and

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- c. Serves no more than two thousand five hundred customers within the city and the area of the extraterritorial zoning jurisdiction of the city.
3. Upon approval of the exemption, the rates, contracts, or services rendered by the public utility within the exempted area are subject to regulation by the city.
4. Notwithstanding an exemption granted under this section, the public utility remains subject to any rules of the commission governing customer service disconnections, and resale of natural gas service furnished or causing the resale of natural gas service by any customer is prohibited.
5. If a city files with the commission a resolution of its governing body rescinding the request for exemption, if the public utility serves more than two thousand five hundred customers within the city and the area of the city's extraterritorial zoning jurisdiction, or if the public utility requests rescinding the exemption for good cause, the commission may rescind the exemption granted under this section. The commission may require a public utility providing nonexempt natural gas distribution service to provide any exempted natural gas distribution service as a separate business entity.
6. Equipment covered by this section must be installed and maintained in compliance with the instructions provided by the manufacturer of any previously installed equipment to which it will be added. Appliances designed to use only a specific fuel may not be converted to use a different fuel if the manufacturer has prohibited the conversions.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 326

HOUSE BILL NO. 1373

(Representative Streytle)
(Senator Armstrong)

AN ACT to amend and reenact section 49-21-01.3 of the North Dakota Century Code, relating to essential telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price changes from surcharges - Essential telecommunications services.

1. ~~All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement. This section does not prohibit the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no~~except a price change may not be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
 - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

3. This chapter does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 327

SENATE BILL NO. 2286

(Senators Schaible, Unruh)
(Representatives Nathe, Porter)

AN ACT to amend and reenact sections 49-22-03 and 49-22-14.1 and subsection 2 of section 49-22-16 of the North Dakota Century Code, relating to energy conversion and transmission facility siting; and to provide for a legislative management study regarding the consideration of local zoning ordinances and zoning provisions during the application and public hearing process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁵ **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 any clearing of land, excavation, or other action that would affect 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 subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;

¹⁴⁵ Section 49-22-03 was also amended by section 6 of House Bill No. 1144, chapter 328.

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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 energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or

- [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 in which a designated route may be established for a transmission facility.
 - 5. "Energy conversion facility" means any 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;
 - c. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. Enrichment of uranium minerals.
 - 6. "Facility" means an energy conversion facility, transmission facility, or both.
 - 7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
 - 8. "Person" includes any 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.

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9. "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.
10. "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.
11. "Route" means the location of a transmission facility within a designated corridor.
- ~~11-12.~~ "Site" means the location of an energy conversion facility.
- ~~12-13.~~ "Transmission facility" means any of the following:
- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that 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
 - (3) 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.
 - c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

43-14. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, 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 energy conversion facility.

SECTION 2. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies and political subdivisions.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.

¹⁴⁶ **SECTION 3. 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 energy conversion facility ~~shall~~may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site ~~shall~~may be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A
- b. ~~Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and preempt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route,~~
- c. ~~Before a gas or liquid 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 their location, or are in direct conflict with state or federal laws or rules. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.~~
- d. ~~When an application for a certificate for a gas or liquid 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~~

¹⁴⁶ Section 49-22-16 was also amended by section 17 of House Bill No. 1144, chapter 328.

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 requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.

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

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS. During the 2017-18 interim, the legislative management shall study cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 328

HOUSE BILL NO. 1144

(Representatives Keiser, Mock, Seibel)
(Senators Armstrong, Kreun, Oban)

AN ACT to create and enact section 49-22-08.2 and chapter 49-22.1 of the North Dakota Century Code, relating to gas and liquid energy conversion, gas and liquid transmission facility siting, and combining application; to amend and reenact sections 11-09.1-04, 17-05-09, and 32-15-21, subsection 18 of section 38-08-02, sections 49-07-01.1, 49-22-03, 49-22-04, 49-22-05.1, 49-22-07, and 49-22-07.2, subsection 1 of section 49-22-08, sections 49-22-08.1, 49-22-09, 49-22-09.1, 49-22-14, 49-22-16, 49-22-17, 49-22-19, 49-22-20, and 49-22-21, subdivision e of subsection 1 of section 49-22-22, subsection 2 of section 49-22-22, subsection 1 of section 54-17.7-08, and section 61-24.3-03 of the North Dakota Century Code, relating to energy conversion and transmission facility siting; to repeal sections 49-22-01 and 49-22-16.3 of the North Dakota Century Code, relating to energy conversion short title and route adjustment before or during construction for gas or liquid transmission line; to provide a continuing appropriation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter.

If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The charter may not authorize the enactment of ordinances to diminish the authority of a board of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. No ordinance of a home rule county shall supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as ratified and approved must be filed with the secretary of state; one with the recorder for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 2. AMENDMENT. Section 17-05-09 of the North Dakota Century Code is amended and reenacted as follows:

17-05-09. Public service commission jurisdiction and consultation.

1. The authority and the transmission facilities built under this chapter, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for ~~chapter~~ chapters 49-22 and 49-22.1. Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise.

SECTION 3. AMENDMENT. Section 32-15-21 of the North Dakota Century Code is amended and reenacted as follows:

32-15-21. Power of court.

1. The court shall have power:
 - a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
 - b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages for the property.
 - c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22 or 49-22.1, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

SECTION 4. AMENDMENT. Subsection 18 of section 38-08-02 of the North Dakota Century Code is amended and reenacted as follows:

18. "Underground gathering pipeline" means an underground gas or liquid pipeline with associated above ground equipment which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22 or 49-22.1. As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.

SECTION 5. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22, ~~49-22.1~~, and 49-23, ~~shall~~, in addition to any other penalty provided, ~~be~~ subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

¹⁴⁷ **SECTION 6. 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 any clearing of land, excavation, or other action that would affect 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 subsections 5 or 12 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;
 - (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:

¹⁴⁷ Section 49-22-03 was also amended by section 1 of Senate Bill No. 2286, chapter 327.

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- (a) Of a new electric energy conversion facility;
 - (b) Of a new ~~gas, liquid, or~~ electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, 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 any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new ~~gas, liquid, or~~ electric transmission facility;
 - [3] To improve the existing electric energy conversion or ~~gas, liquid, or~~ electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, 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 any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new ~~gas, liquid, or~~ electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, 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 in which a designated route may be established for ~~a~~n electric transmission facility.
5. "~~Energy~~Electric energy conversion facility" means any 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; or
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - e. ~~Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;~~
 - d. ~~Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or~~
 - e. Enrichment of uranium minerals.
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.~~
- ~~7-8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.~~
- ~~8-9. "Person" includes any 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.~~
- ~~9-10. "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.~~
- ~~10-11. "Route" means the location of an electric transmission facility within a designated corridor.~~
- ~~11-12. "Site" means the location of an electric energy conversion facility.~~
- ~~12. "Transmission facility" means any of the following:~~
- ~~a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:~~
- ~~(1) A temporary transmission line loop that is:~~
- ~~(a) Connected and adjacent to an existing transmission facility that was sited under this chapter;~~
- ~~(b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and~~
- ~~(c) In place for less than one year; or~~
- ~~(2) A transmission line that is less than one mile [1.61 kilometers] long.~~
- ~~b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:~~
- ~~(1) An oil or gas pipeline gathering system;~~
- ~~(2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that 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~~
- ~~(3) 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.~~

- e. ~~A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.~~
13. ~~"Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.~~

SECTION 7. AMENDMENT. Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

49-22-04. Ten-year plans - Contents.

Each utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall develop a ten-year plan as specified in this section and submit the plan to the commission. Each utility shall file an updated plan on or before July first of each even-numbered year after the year of its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all electric energy conversion facilities and the tentative location of all electric transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.

6. Any other relevant information as may be requested by the commission. Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

¹⁴⁸ **SECTION 8. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

SECTION 9. AMENDMENT. Section 49-22-07 of the North Dakota Century Code is amended and reenacted as follows:

49-22-07. Certificate of site compatibility or route permit required.

1. A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.
2. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

SECTION 10. AMENDMENT. Section 49-22-07.2 of the North Dakota Century Code is amended and reenacted as follows:

49-22-07.2. Waiver of procedures and time schedules.

Any utility which proposes to construct an electric energy conversion facility or an electric transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and

¹⁴⁸ Section 49-22-05.1 was also amended by section 3 of Senate Bill No. 2313, chapter 63.

upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

SECTION 11. AMENDMENT. Subsection 1 of section 49-22-08 of the North Dakota Century Code is amended and reenacted as follows:

1. An application for a certificate ~~shall~~must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies which have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any electric energy conversion facility.
 - e. An identification of the location of the preferred corridor for any electric transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
 - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - i. Such other information as the applicant may consider relevant or the commission may require.

SECTION 12. AMENDMENT. Section 49-22-08.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for ~~aan~~ an electric transmission facility within a designated corridor ~~shall~~must be filed no later than two years after the issuance of the certificate and ~~shall~~must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.

- c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
 3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
 5. The commission shall designate a route for the construction of aan electric transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

SECTION 13. Section 49-22-08.2 of the North Dakota Century Code is created and enacted as follows:

49-22-08.2. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

SECTION 14. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
4. Adverse direct and indirect environmental effects ~~which~~that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

SECTION 15. AMENDMENT. Section 49-22-09.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly required.

After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state ~~that~~which transmits hydroelectric power produced outside the United States, or exercise the right of

eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section ~~shall~~ does not apply to any electric transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued after July 1, 1985.

SECTION 16. AMENDMENT. Section 49-22-14 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation ~~shall~~ must be composed of as many persons as may be appointed by the commission, but ~~shall~~ must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an electric energy conversion facility or electric transmission facility is proposed to be located. Members of advisory committees ~~shall~~ are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

¹⁴⁹ **SECTION 17. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. A certificate of site compatibility for an electric energy conversion facility shall not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of ~~aan~~ an electric transmission facility within a designated corridor may supersede and preempt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other

¹⁴⁹ Section 49-22-16 was also amended by section 3 of Senate Bill No. 2286, chapter 327.

matters for which authority has been granted to the commission by this chapter.

4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

SECTION 18. AMENDMENT. Section 49-22-17 of the North Dakota Century Code is amended and reenacted as follows:

49-22-17. Improvement of sites or locations.

Utilities ~~which that~~ have acquired an electric energy conversion facility site or electric transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or electric transmission facility construction permit was issued.

SECTION 19. AMENDMENT. Section 49-22-19 of the North Dakota Century Code is amended and reenacted as follows:

49-22-19. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or electric transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing ~~shall~~must be conducted pursuant to chapter 28-32. There ~~shall be~~is a right of appeal to the district court from any adverse ruling by the commission.

SECTION 20. AMENDMENT. Section 49-22-20 of the North Dakota Century Code is amended and reenacted as follows:

49-22-20. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of aan electric transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.

4. A determination by a district court pursuant to section 49-22-16.1.

SECTION 21. AMENDMENT. Section 49-22-21 of the North Dakota Century Code is amended and reenacted as follows:

49-22-21. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an electric energy conversion facility or electric transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an electric energy conversion facility or electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct ~~shall be~~ subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day ~~that such~~ the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise ~~shall~~ must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

4. Notwithstanding any other provision of this chapter, the commission ~~may~~, by injunctive procedures, without bond or other undertaking, may proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

SECTION 22. 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 3 of section 49-22-03 ~~or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22-16.3;~~ shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

SECTION 23. AMENDMENT. Subsection 2 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. At the request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. ~~In no event shall the~~The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.

SECTION 24. Chapter 49-22.1 of the North Dakota Century Code is created and enacted 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 any clearing of land, excavation, or other action that would affect 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 5 or 12 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

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- (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:
- (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 any 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;

plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or

- (3) 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 any 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. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
11. "Site" means the location of a gas or liquid energy conversion facility.
12. "Utility" means any 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.

49-22.1-02. Statement of policy.

The legislative assembly finds the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. It is necessary to ensure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state by prohibiting energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a certificate of site compatibility or a route permit acquired under this chapter. The policy of this state is to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. Sites and routes must be selected to minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and fulfilling energy needs in an orderly and timely fashion.

49-22.1-03. Exclusion and avoidance areas - Criteria.

The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for oil and gas transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural

residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

49-22.1-04. Certificate of site compatibility or route permit required.

A utility may not begin construction of a gas or liquid energy conversion facility or gas or liquid transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

49-22.1-05. Waiver of procedures and time schedules.

Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or liquid transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of a length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.

1. An application for a certificate must be in the form prescribed by the commission containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies that have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any gas or liquid energy conversion facility.
 - e. An identification of the location of the preferred corridor for any gas or liquid transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.

- g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
 - i. Any other information as the applicant considers relevant or the commission may require.
 2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.
 3. A copy of the application must be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a certificate must be in the form and contain the information as the commission prescribes.
 5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation must be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-09 in a finding with reasons for the designation, and must be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section does not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with the terms, conditions, or modifications deemed necessary.

49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for a gas or liquid transmission facility within a designated corridor must be filed no later than two years after the issuance of the certificate and must be in the form the commission prescribes, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.

- c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Any other information the utility considers relevant or the commission requires.
2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
 3. A copy of the application must be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a permit must be in the form and contain the information the commission prescribes.
 5. The commission shall designate a route for the construction of a gas or liquid transmission facility following the study and hearings provided for in this chapter. This designation must be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-06 in a finding with reasons for the designation, and must be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section does not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with the terms, conditions, or modifications deemed necessary.

49-22.1-08. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

49-22.1-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

The commission is guided by, but is not limited to, the following considerations, when applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility.
4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.
6. Irreversible and ir retrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

49-22.1-10. Public hearings - Notice.

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22.1-03, and the factors to be considered pursuant to section 49-22.1-09. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county may not be consolidated if five or more affected landowners in that county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission is not required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a

public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. If more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.

3. One or more public hearings must be held at a location or locations determined by the commission concerning the following matters:
 - a. A substantial or material change in the criteria established pursuant to section 49-22.1-03.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22.1-17.
 - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver must be given at the expense of the applicant. In an emergency the commission may notice a hearing upon less than twenty days.

49-22.1-11. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation must be composed of as many persons as may be appointed by the commission, but must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which a gas or liquid energy conversion facility or gas or liquid transmission facility is proposed to be located. Members of advisory committees are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

49-22.1-12. Cooperation with state and federal agencies.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter.

49-22.1-13. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit is, subject to subsections 2 and 3, the sole site or route approval required to be obtained by the utility.

2. A certificate of site compatibility for an energy conversion facility does 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. A permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and preempt any local land use; zoning; or building rules, regulations, or ordinances, upon a finding by the commission that the rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without that finding by the commission, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate gas or liquid energy conversion facilities and gas or liquid transmission facilities. A state agency in processing a utility's facility permit application is bound to the decisions of the commission with respect to the site designation for the gas or liquid energy conversion facility or the corridor or route designation for the gas or liquid transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. A site or route may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position must clearly state whether the site, corridor, or route being considered for designation will be in compliance with the agency's rules. For purposes of this chapter it is presumed a proposed facility will be in compliance with a state agency's rules if that agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

49-22.1-14. Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.

1. Any person employed by a public utility to acquire easements for a facility subject to this chapter may not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that a person employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court, by order, shall declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain the compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The court shall award costs and

reasonable attorney's fees to the plaintiff if the court rules in favor of the plaintiff.

4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with a person utilizing an unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

49-22.1-15. Route adjustment before or during construction for gas or liquid transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause

- and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
- (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
- b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
- (1) The construction activities will not affect any known exclusion or avoidance areas;
- (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
- (3) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
- (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
- (1) The construction activities will not affect any known exclusion areas;
- (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
- (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;

- (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

49-22.1-16. Improvement of sites or locations.

Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid transmission line route in accordance with this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22.1-13; provided, that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, the utility must certify to the commission that the site or route continues to meet the conditions upon which the certificate of site compatibility or gas or liquid transmission facility construction permit was issued.

49-22.1-17. Rules and regulations.

The commission shall adopt rules in conformity with this chapter and prescribe methods and procedures required therewith.

49-22.1-18. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or gas or liquid transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission.

49-22.1-19. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of a gas or liquid transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.

2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained in the certificate or permit.
3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22.1-14.

49-22.1-20. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of a gas or liquid energy conversion facility or gas or liquid transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains a gas or liquid energy conversion facility or gas or liquid transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained in the certificate or permit is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter is guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each violation for each day the violations persist, except the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a gas or liquid transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.
4. The civil penalty provided for in subsection 3 may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.
5. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person that willfully engages in any conduct described in subsection 3. No liability may accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

49-22.1-21. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant under this chapter shall pay to the commission an application fee:
 - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
 - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
 - c. An applicant for a waiver shall pay the amount that would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, the application fee paid must be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
 - d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - e. An applicant certifying to the commission under subsection 3 of section 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22.1-15, shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
2. At the request of the commission and with the approval of the emergency commission, the applicant shall pay any additional fees as are reasonably necessary for completion of the gas or liquid energy conversion facility site, gas or liquid transmission facility corridor, or gas or liquid transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed gas or liquid transmission facility.
3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

49-22.1-22. Safety.

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of construction of the generation.

SECTION 25. AMENDMENT. Subsection 1 of section 54-17.7-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Until sold or disposed of by the authority, the authority and the pipeline facilities built under this chapter are exempt from the provisions of title 49 except for ~~chapter~~chapters 49-22 and 49-22.1 and sections 49-02-01.2 and 49-07-05.1. Upon sale or disposal by the authority, pipeline facilities built under this chapter are subject to the provisions of title 49.

SECTION 26. AMENDMENT. Section 61-24.3-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-03. Authorization of southwest pipeline project.

The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this chapter. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. ~~Chapter~~Chapters 49-22 and 49-22.1 shall not apply to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

SECTION 27. REPEAL. Sections 49-22-01 and 49-22-16.3 of the North Dakota Century Code are repealed.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 329

HOUSE BILL NO. 1378

(Representatives Johnston, Headland, Kiefert, Simons)
(Senator Clemens)

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to light-mitigating technology systems on wind energy conversion facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

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.
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 commission may grant 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 is the sole responsibility of the wind energy conversion facility owner.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 330

HOUSE BILL NO. 1026

(Legislative Management)
(Economic Impact Committee)

AN ACT to create and enact section 49-23-04.1 of the North Dakota Century Code, relating to survey of areas having underground facilities; to amend and reenact sections 49-23-01, 49-23-03, 49-23-04, 49-23-05, and 49-23-06 of the North Dakota Century Code, relating to location of underground facilities before excavation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-23-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means:
 - a. Manually excavating within twenty-four inches [60.96 centimeters] of the outer edges of ~~any~~ underground facility on a horizontal plane as located manually and marked by the owner or operator by stakes, paint, or other customary manner; and supporting
 - b. Supporting and protecting the uncovered facility.
4. "Damage" means:
 - a. Substantial weakening of structural or lateral support of an underground facility;
 - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
 - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
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, 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 roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
 - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.
9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the actual holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
10. "Local governmental unit" means a county, township, or city.
11. "Locate" means an operator's markings of an underground facility showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.
12. "Locate period" means the later of:
 - a. The forty-eight hour period beginning at 12:01 a.m. of the day after the location request was submitted to the notification center; excluding any Saturday, Sunday, or holiday; and any twenty-four hour extension provided through the notification center; or
 - b. The period between the submission of a location request to the notification center and the noted date and time of excavation.
13. "Nonprofit corporation" means a corporation established under chapter 10-33.
- 13-14. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.

- 44-15. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
16. "Positive response" means notification by the operator to the notification center that underground facilities within the area covered by a location request have been marked or cleared.
- 45-17. "Tangible marking materials" means any material perceptible by touch used to mark the location of an underground facility, including flags, stakes, poles, or other materials inserted into or affixed to the ground. The term does not include paint, chalk, or other liquid ink-based materials applied to the ground.
- 46-18. "Underground facility" means an underground line, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.
- 47-19. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
- 48-20. "Water" includes potable water, wastewater, and storm water.

SECTION 2. AMENDMENT. Section 49-23-03 of the North Dakota Century Code is amended and reenacted as follows:

49-23-03. Notification center - Participation - Establishment.

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. ~~A~~ A person doing business as an excavator licensed or operator under this chapter shall participate in and share in the costs of a statewide notification center on a per-call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:
 - a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
 - b. Updating the information provided to the notification center on a timely basis;

- c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
 - d. Paying the costs charged by the notification center on a timely basis; and
 - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation, North Dakota one-call, incorporated, shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.
- a. ~~The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative management, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative management. The legislative council shall pay the compensation for the legislative members.~~
 - b. The initial incorporators shall establish, before August 1, 1996, a~~The board of directors of the nonprofit corporation which consists~~North Dakota one-call, incorporated must consist of eight~~nine~~ members representing the participants in the center. The members of the board of directors must be chosen and serve for terms as provided in the bylaws of the corporation. One member of the board of directors must be chosen by representatives of each of the following participant groups:
 - (1) Telecommunications service providers.
 - (2) Gas distribution lines operators.
 - (3) Oil or gas transmission or gathering lines operators.

- (4) Electrical transmission and distribution operators.
 - (5) Rural water systems.
 - (6) Cities of five thousand or more population.
 - (7) Cities of fewer than five thousand population.
 - (8) Cable television service providers.
 - (9) Excavators.
- b. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. ~~The notification center must be in operation by March 1, 1998.~~

SECTION 3. AMENDMENT. Section 49-23-04 of the North Dakota Century Code is amended and reenacted as follows:

49-23-04. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice ~~at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension.~~ An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
 - a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the excavator;

- c. The date and time when excavation is scheduled to begin;
 - d. The depth of planned excavation;
 - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
 - g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record;
 - (3) An identifiable roadway or roadway intersection; or
 - (4) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
 - h. ~~If the location of the excavation is too large or complex to be clearly and adequately identified by description in the location request~~
2. ~~Unless otherwise exempted, the excavator shall provide additional location ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means agreed upon by the parties to the ticket. An excavator may not be required to provide additional location information if the excavator plans a meeting with the affected operators at the location of the excavation before beginning any excavation, or if the notice given under this section includes a specific street address or reference to a platted lot number of record of the location of the excavation. Site identification under this subsection is not required if:~~
- a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;
 - b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or
 - c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation.
- i-3. ~~A request for location is limited to the area to be excavated during the twenty-one day period following the location request an area not exceeding three contiguous city blocks within an urban area or an area of four contiguous quarter sections or five linear miles [8.05 kilometers] in a rural area.~~
- j-4. ~~An excavator may begin excavation in a location if the location period has passed without notification of a requested extension or prior to the expiration~~

~~of the location period if when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.~~

2.5. The notification center shall:

- a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
- b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
- c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
- d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
- e. Establish procedures to receive from operators and convey to ticket holders positive response when operators have located or cleared underground facilities identified within the area of a location request.

3.6. a. ~~An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.~~

- b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. An operator of a facility required to be locatable is responsible for the costs of location. If an excavator is unable to locate a facility within two feet on either side of the operator's facility location markings and requests assistance from the operator to locate the facility, but the operator fails to provide the requested assistance within a reasonable time, the operator is responsible for the excavator's reasonable costs incurred to locate the facility. This subdivision does not apply to an underground facility to convey water installed before August 1, 2013.
- c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

- d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
- e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
- f. After facilities are located by an operator, an excavator shall notify the notification center if:
 - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
- g. An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.
- h. If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred.
- i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.
- j. An excavator that makes repeated location requests within the area of a previously made location request due to the excavator's failure to reasonably maintain and remove markings under subsection 3 of section 49-23-05 or failure to follow prudent and careful digging practices required by subsection 5 of section 49-23-05 is responsible for reasonable costs of location and removal if the public service commission determines the additional location request was caused by the excavator's failure described in this subdivision.

- k. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
- k-l. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
- l-m. An underground facility owner shall make all new facilities locatable.
- n. An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators.
- 4-7. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

SECTION 4. Section 49-23-04.1 of the North Dakota Century Code is created and enacted as follows:

49-23-04.1. Survey.

1. An individual making a request for location for information, design, or purposes other than excavation shall contact the notification center for a survey location. The survey notice must contain:
- a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the surveyor;
 - c. The date and time information will be captured;
 - d. The depth of any planned future excavation;
 - e. The type and extent of any planned future excavation, including whether it involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated;
 - g. Any other information the notification center requires;
 - h. The location of the area to be surveyed by one of the following means:

- (1) A specific street address;
 - (2) A reference to a platted lot number of record;
 - (3) An identifiable roadway or roadway intersection; or
 - (4) A specific quarter section by section number, range, township, and county. In this case, the location must be further described by coordinates measured in feet from the nearest quarter section corner or section corner.
2. Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:
 - a. The precise location of planned future excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record; or
 - b. Prior to any survey, the excavator requests and conducts a meeting with the affected operators at the location of the survey.
3. The notification center shall:
 - a. Immediately transmit the information contained in a survey notice to every operator that has an underground facility in the survey area; and
 - b. Inform the individual who made the survey location request of the names of participating operators of underground facilities to whom the notice will be given.
4. Within five days, excluding Saturdays, Sundays, and holidays; an operator with a facility within the survey area shall locate or mark the facilities physically, provide location information electronically, or meet with the ticket holder.
5. Meetings may be held at the discretion of the ticket holder.
6. Electronic information may be exchanged at the discretion of the operator.
7. The survey ticket holder shall assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings until the survey information has been captured, and remove all tangible marking materials used to mark the facility and the site area upon completion of the capture.
8. The survey ticket holder is responsible for the reasonable costs of any relocate after a survey location has been properly located and marked.

SECTION 5. AMENDMENT. Section 49-23-05 of the North Dakota Century Code is amended and reenacted as follows:

49-23-05. Precautions to avoid damage.

To avoid damage to and minimize interference with underground facilities in and near the construction excavation area, an excavator ticket holder shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and remove all tangible marking materials used to mark the underground facility and site area upon completion of the excavation.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

SECTION 6. AMENDMENT. Section 49-23-06 of the North Dakota Century Code is amended and reenacted as follows:

49-23-06. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- c. An excavator who knowingly is guilty of a class A misdemeanor if the excavator damages an underground facility or its protective covering and knew or reasonably should have known the damage occurred and who;
 - (1) The excavator does not notify the operator as soon as reasonably possible; or who
 - (2) The excavator backfills in violation of subdivision b is guilty of a class A misdemeanor.

2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of location, repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
- b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

Approved March 9, 2017

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