

1 Chairman Todd Porter & members of the committee, my name is Scott Skokos and I am  
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me  
3 to testify today. I stand here today to discuss some of the challenges in the bill HB 1096.

4 Dakota Resource Council (DRC) has spent the last 40 years working to empower local  
5 people to speak for themselves on issues that affect their families and communities. Public  
6 hearings are one of the ways that our members, and other citizens of ND, can express their views  
7 on proposed projects. The removal of those hearings for temporary approval, as we believe is  
8 proposed in HB 1096, is taking away the voices of people who may be impacted directly, or  
9 indirectly, by the project. We understand that public hearings might seem like they are a time-  
10 consuming formality, but we believe they are a vital component of our democratic institutions.  
11 HB 1096, as it is currently written, is taking away the rights of North Dakotans to have their  
12 concerns on a project heard, and be considered, through the hearing process. The feedback given  
13 by people can be used to mitigate potential problems that were possibly not identified by the  
14 project proposer or utility. Many of DRC's members are landowners and even small projects can  
15 have big impacts on them as individuals. If temporary approval is given, without a public  
16 hearing, the likelihood that the project will stop if impacts are identified later is very low once  
17 construction is underway. It also increases the likelihood for public backlash on a project, if no  
18 public hearings were held. HB 1096 takes away the ability for local citizens to give their  
19 perspective and we believe that is negligent. We oppose HB 1096 as the process with public  
20 hearings is currently working as is. Public hearings are a necessity.

21 On page 6 lines 1-3, HB 1096 states "The commission may issue a temporary approval or  
22 variance without the necessity of notice, publication, or public hearing with any additional terms,  
23 conditions, or modifications deemed necessary to minimize impacts." We believe that this  
24 directly removes the commission's responsibility to hold public hearings to gather public input.  
25 It is also concerning that even "notice" and "publication" are also being removed. This is going  
26 backwards on government transparency rather forward. Transparency reduces the risk for  
27 corruption. DRC advocates for the law to stay as is. There is no reason for a change, as the  
28 original process is working.

29 We also believe that the changes in wording of 49-22-07.2. in HB 1096 removes a key  
30 definition of what constitutes an emergency. We understand that sometimes, in case of an  
31 emergency, a public hearing process would impede leadership's ability to move swiftly on  
32 immediately needed action. However, beginning on page 3 line 30 the proposed bill would  
33 remove "which requires immediate construction and that adherence to the procedures and time  
34 schedules would jeopardize the utility's system." It leaves in "demonstrable emergency exists".  
35 We ask, who decides what constitutes an "demonstrable emergency" if not explicitly defined?  
36 An emergency is a very subjective concept and this language is ambiguous. The original  
37 language defined that a waiver could be issued if the normal process would jeopardize the utility  
38 system. We understand that emergency exemptions are necessary, however, the definition is now  
39 being removed to become entirely subjective. While we oppose HB 1096, we request that if the

40 bill is passed, the original language that defines the emergency remain or new language to define  
41 what constitutes an emergency be created.

42 Beginning on page 5 line 29-30, “showing of good cause and receipt of a utility  
43 certification that the activities will have no adverse impacts upon the welfare of the citizens of  
44 this state or the environment.” DRC asks how is “good cause” going to be determined and what  
45 does a utility certification include? We believe this language is again, ambiguous. How can a  
46 utility certification be approved without a public hearing? It takes months of research and  
47 consulting experts in multiple fields to determine the impacts of projects on the health of citizens  
48 and the environment. Is this done by a utility certification? There are very good reasons that  
49 public hearings are already included in the law and DRC proposes that the law remain as is.

50 Finally, on page 4 line 10-12 HB 1096 states “If the commission determines there is an  
51 emergency that would prevent an in-person hearing in the county in which any portion of a site,  
52 corridor, or route is proposed, a remote public hearing may be held.” We agree with the inclusion  
53 of language to clarify when to hold remote hearings, however, we disagree with the use of the  
54 word “may” in this context. If there is an emergency in which an in-person hearing cannot be  
55 held than a remote hearing must or shall be held. The use of the word “may” is not strong enough  
56 to ensure that a hearing is held even during an emergency such as the COVID-19 pandemic.  
57 These projects still have impacts on landowners even during emergencies that might prevent an  
58 in-person hearing. We believe that if an in-person hearing cannot be held due to an emergency  
59 than a remote public hearing must be held.

60 I urge the committee to oppose HB 1096 or amend it to clarify the definition of  
61 emergency and keep public hearings included, I stand for questions.