

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2116

Introduced by

Energy and Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new subsection to section 49-22-13 and a new
2 subsection to section 49-22.1-10 of the North Dakota Century Code, relating to public hearings
3 for energy conversion and transmission facilities; and to amend and reenact sections 49-22-03,
4 49-22-16.4, and 49-22.1-01 of the North Dakota Century Code, relating to public hearings and
5 light-mitigating technology systems.

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

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

9 **49-22-03. Definitions.**

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

- 11 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
12 compatibility issued under this chapter.
- 13 2. "Commission" means the North Dakota public service commission.
- 14 3. "Construction" includes a clearing of land, excavation, or other action affecting the
15 environment of the site after April 9, 1975, but does not include activities:
 - 16 a. Conducted wholly within the geographic location for which a utility has previously
17 obtained a certificate or permit under this chapter, or on which a facility was
18 constructed before April 9, 1975, if:
 - 19 (1) The activities are for the construction of the same type of facility as the
20 existing type of facility as identified in a subdivision of subsection 5 or 6 or in
21 subsection 13 of this section and the activities are:
 - 22 (a) Within the geographic boundaries of a previously issued certificate or
23 permit;

- 1 (b) For an electric energy conversion facility constructed before April 9,
2 1975, within the geographic location on which the facility was built; or
3 (c) For an electric transmission facility constructed before April 9, 1975,
4 within a width of three hundred fifty feet [106.68 meters] on either side
5 of the centerline;
- 6 (2) Except as provided in subdivision b, the activities do not affect any known
7 exclusion or avoidance area;
- 8 (3) The activities are for the construction:
- 9 (a) Of a new electric energy conversion facility;
- 10 (b) Of a new electric transmission facility;
- 11 (c) To improve the existing electric energy conversion facility or electric
12 transmission facility; or
- 13 (d) To increase or decrease the capacity of the existing electric energy
14 conversion facility or electric transmission facility; and
- 15 (4) Before conducting any activities, the utility certifies in writing to the
16 commission that:
- 17 (a) The activities will not affect a known exclusion or avoidance area;
- 18 (b) The activities are for the construction:
- 19 [1] Of a new electric energy conversion facility;
- 20 [2] Of a new electric transmission facility;
- 21 [3] To improve the existing electric energy conversion or electric
22 transmission facility; or
- 23 [4] To increase or decrease the capacity of the existing electric
24 energy conversion facility or electric transmission facility; and
- 25 (c) The utility will comply with all applicable conditions and protections in
26 siting laws and rules and commission orders previously issued for any
27 part of the facility.
- 28 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
29 are expected to affect a known avoidance area and the utility before conducting
30 any activities:
- 31 (1) Certifies in writing to the commission that:

- 1 (a) The activities will not affect a known exclusion area;
- 2 (b) The activities are for the construction:
 - 3 [1] Of a new electric energy conversion facility;
 - 4 [2] Of a new electric transmission facility;
 - 5 [3] To improve the existing electric energy conversion facility or
 - 6 electric transmission facility; or
 - 7 [4] To increase or decrease the capacity of the existing electric
 - 8 energy conversion facility or electric transmission facility; and
- 9 (c) The utility will comply with all applicable conditions and protections in
- 10 siting laws and rules and commission orders previously issued for any
- 11 part of the facility;
- 12 (2) Notifies the commission in writing that the activities are expected to impact
- 13 an avoidance area and provides information on the specific avoidance area
- 14 expected to be impacted and the reasons why impact cannot be avoided;
- 15 and
- 16 (3) Receives the commission's written approval for the impact to the avoidance
- 17 area, based on a determination that there is no reasonable alternative to the
- 18 expected impact. If the commission does not approve impacting the
- 19 avoidance area, the utility must obtain siting authority under this chapter for
- 20 the affected portion of the site or route. If the commission fails to act on the
- 21 notification required by this subdivision within thirty days of the utility's filing
- 22 the notification, the impact to the avoidance area is deemed approved.
- 23 c. Incident to preliminary engineering or environmental studies.
- 24 4. "Corridor" means the area of land where a designated route may be established for an
- 25 electric transmission facility.
- 26 5. "Electric energy conversion facility" means a plant, addition, or combination of plant
- 27 and addition, designed for or capable of:
 - 28 a. Generation by wind energy conversion exceeding one-half megawatt of
 - 29 electricity;
 - 30 b. Generation by any means other than wind energy conversion exceeding fifty
 - 31 megawatts of electricity; or

1 c. Utility-scale energy storage.

2 6. "Electric transmission facility" means an electric transmission line and associated
3 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission
4 facility" does not include:

5 a. A temporary electric transmission line loop that is:

6 (1) Connected and adjacent to an existing electric transmission facility that was
7 sited under this chapter;

8 (2) Within the corridor of the sited facility and does not cross known exclusion
9 or avoidance areas; and

10 (3) In place for less than one year; or

11 b. An electric transmission line that is less than one mile [1.61 kilometers] long.

12 7. "Facility" means an electric energy conversion facility, electric transmission facility, or
13 both.

14 8. "Permit" means the permit for the construction of an electric transmission facility within
15 a designated corridor issued under this chapter.

16 9. "Person" includes an individual, firm, association, partnership, cooperative,
17 corporation, limited liability company, or any department, agency, or instrumentality of
18 a state or of the federal government, or any subdivision thereof.

19 10. "Power emergency" means an electric transmission line and associated facilities that
20 have been damaged or destroyed by natural or manmade causes resulting in a loss of
21 power supply to consumers of the power.

22 11. "Public hearing" means a proceeding conducted for the purpose of acquiring
23 information that will be considered in a certificate or permit action evaluation and
24 which affords the public an opportunity to present views, opinions, and information.

25 12. "Repower" means construction activities to completely or partially dismantle and
26 replace turbine equipment at an existing wind energy conversion facility site that result
27 in an increase of the facility's generation output potential or turbine height. The term
28 does not include routine turbine maintenance or routine replacement of malfunctioning
29 turbines or turbine components.

30 ~~42.13.~~ "Route" means the location of an electric transmission facility within a designated
31 corridor.

1 ~~13:14.~~ "Site" means the location of an electric energy conversion facility.

2 ~~14:15.~~ "Utility" means a person engaged in and controlling the electric generation, the
3 transmission of electric energy, or the transmission of water from or to any electric
4 energy conversion facility.

5 ~~15:16.~~ "Utility-scale energy storage" means a plant, addition, or combination of plant and
6 addition, designed for operation as a grid resource and capable of five megawatts or
7 more of rated power capacity.

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

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

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

16 **49-22-16.4. Light-mitigating technology system - Rules.**

- 17 1. The commission shall adopt rules by January 1, 2019, relating to the implementation
18 of light-mitigating technology systems on wind energy conversion facilities. The rules
19 must be consistent with the federal aviation administration regulations [14 CFR
20 1.1 et seq.] and must include service and maintenance requirements, safety
21 standards, and lighting system requirements.
- 22 2. By December 31, 2019, every wind energy conversion facility for which the
23 commission issued a certificate of site compatibility after June 5, 2016, must be
24 equipped with a functioning light-mitigating technology system that complies with rules
25 adopted by the commission. ~~After public hearing, the~~ The commission may grant a
26 waiver or an extension of time based on technical or economic feasibility
27 considerations.
- 28 3. By December 31, 2021, every wind energy conversion facility for which the
29 commission issued a certificate of site compatibility before June 5, 2016, must be
30 equipped with a functioning light-mitigating technology system that complies with the
31 rules adopted by the commission. ~~After public hearing, the~~ The commission may grant

1 a waiver or an extension of time based on technical or economic feasibility
2 considerations.

3 4. Any costs associated with the implementation, operation, and maintenance of
4 light-mitigating technology systems are the sole responsibility of the wind energy
5 conversion facility owner.

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

8 **49-22.1-01. Definitions.**

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

- 10 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
11 compatibility issued under this chapter.
- 12 2. "Commission" means the North Dakota public service commission.
- 13 3. "Construction" includes a clearing of land, excavation, or other action affecting the
14 environment of the site after April 9, 1975, but does not include activities:
- 15 a. Conducted wholly within the geographic location for which a utility has previously
16 obtained a certificate or permit under this chapter, or on which a facility was
17 constructed before April 9, 1975, if:
- 18 (1) The activities are for the construction of the same type of facility as the
19 existing type of facility as identified in subsection 6 or 7 and the activities
20 are:
- 21 (a) Within the geographic boundaries of a previously issued certificate or
22 permit;
- 23 (b) For a gas or liquid energy conversion facility constructed before
24 April 9, 1975, within the geographic location on which the facility was
25 built; or
- 26 (c) For a gas or liquid transmission facility constructed before April 9,
27 1975, within a width of three hundred fifty feet [106.68 meters] on
28 either side of the centerline;
- 29 (2) Except as provided in subdivision b, the activities do not affect any known
30 exclusion or avoidance area;
- 31 (3) The activities are for the construction:

- 1 (a) Of a new gas or liquid energy conversion facility;
- 2 (b) Of a new gas or liquid transmission facility;
- 3 (c) To improve the existing gas or liquid energy conversion facility, or gas
- 4 or liquid, transmission facility; or
- 5 (d) To increase or decrease the capacity of the existing gas or liquid
- 6 energy conversion facility or gas or liquid transmission facility; and
- 7 (4) Before conducting any activities, the utility certifies in writing to the
- 8 commission that:
 - 9 (a) The activities will not affect a known exclusion or avoidance area;
 - 10 (b) The activities are for the construction:
 - 11 [1] Of a new gas or liquid energy conversion facility;
 - 12 [2] Of a new gas or liquid transmission facility;
 - 13 [3] To improve the existing gas or liquid energy conversion or gas or
 - 14 liquid transmission facility; or
 - 15 [4] To increase or decrease the capacity of the existing gas or liquid
 - 16 energy conversion facility or gas or liquid transmission facility;
 - 17 and
 - 18 (c) The utility will comply with all applicable conditions and protections in
 - 19 siting laws and rules and commission orders previously issued for any
 - 20 part of the facility.
- 21 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
- 22 are expected to affect a known avoidance area and the utility before conducting
- 23 any activities:
 - 24 (1) Certifies in writing to the commission:
 - 25 (a) The activities will not affect any known exclusion area;
 - 26 (b) The activities are for the construction:
 - 27 [1] Of a new gas or liquid energy conversion facility;
 - 28 [2] Of a new gas or liquid transmission facility;
 - 29 [3] To improve the existing gas or liquid energy conversion facility or
 - 30 gas or liquid facility; or

1 [4] To increase or decrease the capacity of the existing gas or liquid
2 energy conversion facility or gas or liquid transmission facility;
3 and

4 (c) The utility will comply with all applicable conditions and protections in
5 siting laws and rules and commission orders previously issued for any
6 part of the facility;

7 (2) Notifies the commission in writing that the activities are expected to impact
8 an avoidance area and provides information on the specific avoidance area
9 expected to be impacted and the reasons why impact cannot be avoided;
10 and

11 (3) Receives the commission's written approval for the impact to the avoidance
12 area, based on a determination that there is no reasonable alternative to the
13 expected impact. If the commission does not approve impacting the
14 avoidance area, the utility must obtain siting authority under this chapter for
15 the affected portion of the site or route. If the commission fails to act on the
16 notification required by this subdivision within thirty days of the utility's filing
17 the notification, the impact to the avoidance area is deemed approved.

18 c. Incident to preliminary engineering or environmental studies.

19 4. "Corridor" means the area of land where a designated route may be established for a
20 gas or liquid transmission facility.

21 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission
22 facility, or both.

23 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of
24 plant and addition, designed for or capable of:

25 a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic
26 meters] or more of gas or hydrogen per day, regardless of the end use of the gas;

27 b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or
28 more of liquid hydrocarbon products per day; or

29 c. Enrichment of uranium minerals.

30 7. "Gas or liquid transmission facility" means any of the following:

- 1 a. A gas or liquid transmission line and associated facilities designed for or capable
2 of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products,
3 hydrogen, or carbon dioxide. This subdivision does not apply to:
- 4 (1) An oil or gas pipeline gathering system;
5 (2) A natural gas distribution system;
6 (3) Carbon dioxide storage facility underground equipment, including a flow
7 line, subject to chapter 38-22;
8 (4) A pipeline with an outside diameter of four and one-half inches
9 [11.43 centimeters] or less which will not be trenched and will be plowed in
10 with a power mechanism having a vertical knife or horizontally directionally
11 drilled, and its associated facilities; or
12 (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of
13 this chapter, a gathering system includes the pipelines and associated
14 facilities used to collect oil from the lease site to the first pipeline storage
15 site where pressure is increased for further transport, or pipelines and
16 associated facilities used to collect gas from the well to the gas processing
17 facility at which end-use consumer-quality gas is produced, with or without
18 the addition of odorant.
- 19 b. A liquid transmission line and associated facilities designed for or capable of
20 transporting water from or to an energy conversion facility.
- 21 8. "Permit" means the permit for the construction of a gas or liquid transmission facility
22 within a designated corridor issued under this chapter.
- 23 9. "Person" includes an individual, firm, association, partnership, cooperative,
24 corporation, limited liability company, or any department, agency, or instrumentality of
25 a state or of the federal government, or any subdivision thereof.
- 26 10. "Public hearing" means a proceeding conducted for the purpose of acquiring
27 information that will be considered in a certificate or permit action evaluation and
28 which affords the public an opportunity to present views, opinions, and information.
- 29 11. "Road use agreement" means permits required for extraordinary road use, road
30 access points, approach or road crossings, public right-of-way setbacks, building

1 rules, physical addressing, dust control measures, or road maintenance and any repair
2 mitigation plans.

3 ~~41.12.~~ "Route" means the location of a gas or liquid transmission facility within a designated
4 corridor.

5 ~~42.13.~~ "Site" means the location of a gas or liquid energy conversion facility.

6 ~~43.14.~~ "Utility" means a person engaged in and controlling the generation, manufacture,
7 refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon
8 products, including coal gasification, coal liquefaction, petroleum refinement, uranium
9 enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid
10 hydrocarbon products, or the transmission of water from or to any gas or liquid energy
11 conversion facility.

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

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