

Chairman Patten and Members of the Senate Energy and Natural Resources Committee.

My name is Richard Schlosser.

I am opposed to HB 1258, which is yet another legislative proposal in a series of past legislative actions, where we have witnessed the gradual erosion of local governance and landowner rights. Specifically these proposals over the years have picked winners, namely utilities, and losers - the landowners.

Just to name a few:

During the 2013 legislative session - SB 2209 was a bill to expedite condemnation proceedings. In 49-22-07, The old language stated: **“A utility may not begin construction of an energy conversion facility or a transmission facility in the state, - or exercise the right of eminent domain - in connection with that construction - without first having obtained a certificate of site compatibility or a route permit from the commission - pursuant to this chapter.”**

The language. **”or exercise the right of eminent domain in connection with that construction”** was stricken in 2209

In section 32-15-21 entitled “Power of the Court.” : The bill added new language,

“.... 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.”

This allowed the utility to initiate eminent domain proceedings **during** the PSC review of route permit. This replaced the original language - which **prohibited** the utility to exercise eminent domain until the PSC had **approved** the transmission route.

The bottom line is - the expedited process gave **preference** to timeliness of construction by the **utility** - over the extension of the timely **due process rights of landowners.**-

During the 2017 legislative session - SB 2286 was passed - striking existing language -which originally stated in section 49-22-16 subsection 2 a.of section 3. —

“ A certificate of sight compatibility for an 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.”

In that bill, ‘**shall**’ was replaced with ‘**may**’ -weakening political subs’ ability to **regulate land use -and the landowner’s right to self determination without outside interference.** It is a matter of legal semantics. - As we all know, ‘**shall**’ is an imperative command, whereas, ‘**may**’ is used to indicate a permissive provision.

During the 2019 Session - HB 1383 was passed.

Section 3 of the bill stated, - **“ The commission *may not* identify prime farm land, unique farmland, or irrigated land - -as exclusion or avoidance areas - when evaluating and designating geographical areas for site, - corridor - or route suitability.”**

- However, Several township comprehensive plans and model zoning ordinances - that **predate** that legislative action - speak to the “....**preservation of prime farmland... supporting agriculture, and support farms by being active in legislation affecting agriculture and industrial usage...**”

This brings us to November 2024.

The Public Service Commission, in a 2 to 1 vote, approved a Certificate of Public Convenience and Necessity for a high voltage JetX transmission line from Jamestown to Ellendale.

Commissioner Randy Christman, in his dissent, noted “... **that the Certificate of Public Convenience and Necessity for Ottertail Power Company’s and Montana-Dakota Utilities Co.’s 345 KV transmission line from Ellendale to Jamestown should be denied. The applicant’s have not met their burden to show the necessity for this investment. The applicants and MISO had opportunities to provide more and better information. Throughout the last seven months, the explanation has remained vague**”

Impacted landowners have come to the same conclusion - that the explanation and information they have received, has been misleading and “vague”.

Commissioner Christman’s dissent also mentions the huge energy demand of the data facility near Ellendale. -- The Certificate of Public Convenience and Necessity **implies** the facility is to serve a **public use or purpose**.

Does JetX fall within that criteria of - “**meeting the public use or public purpose**”?

According to JetX representatives - and our legislator’s recent **paid ads** - JetX will serve the data facility, bringing job growth and economic development to this area-

— — This would be **contrary to Section 32-15-01** which states, “**a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.**”

In addition, an **amendment** to HB 1258 - **adding a retroactive clause to the original bill** - clearly serves the purpose of facilitating JetX’s construction rights, over the rights of land owners, to determine the long term use of their land.

This bill, - once again - the continued erosion of landowner rights, if passed, will serve the **principle purpose** - to ensure the development of the JetX high voltage transmission line to serve this load - all in the name of economic development.

In conclusion, I’m sure that many of us here, are adherents to the principles of **subsidiarity** - that **decisions should be made at the lowest level possible** - which aligns with Jeffersonian democracy’s emphasis on, **limited government and local autonomy**, - where individuals and local communities are empowered to address issues themselves , **without outside intervention**.

Committee members I would ask that you give HB1258 a DO NOT PASS recommendation.

Thank you for the opportunity to appear before you this morning.