

PUBLIC UTILITIES

CHAPTER 495

SENATE BILL NO. 2240

(Committee on Industry, Business and Labor)

(At the request of the North Dakota Public Service Commission)

PUBLIC SERVICE COMMISSION JURISDICTION

AN ACT to amend and reenact section 49-02-01 of the North Dakota Century Code, relating to public service commission jurisdiction over utilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01. GENERAL JURISDICTION OF THE PUBLIC SERVICE COMMISSION OVER PUBLIC UTILITIES.) The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers ~~for~~ engaged in the transportation of persons and property, excluding air carriers.
2. Telegraph and, telephone, and communications companies utilities engaged in the transmission of messages or conversations.
3. Pipeline ~~companies---~~ for utilities engaged in the transportation of gas, oil, coal, and water.
4. ~~Electric light-companies-for-the-purpose-of-generating-and distributing~~ utilities engaged in the generation and distribution of light, heat, or power.
5. ~~Gas companies-for~~ utilities engaged in the manufacture-or distribution of gas, natural, synthetic, or artificial gas.
6. ~~Water--companies-for-the-storage-and-distribution-of-water for-domestic-or-other-beneficial-use-~~
- 7- 6. All heating companies--for utilities engaged in the distribution of heat.

- 8- 7. Warehouse, ~~packing, and cold storage~~ companies for engaged in the marketing, storage, or handling of ~~feed--and--other~~ agricultural products.
- ~~9--Steekyard-companies-engaged-in-the-business-of-caring-for, feeding, and watering livestock.~~
- 10- 8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

Approved March 22, 1979

CHAPTER 496

SENATE BILL NO. 2359
(Peterson)

COOPERATION IN DEALING WITH FEDERAL ENERGY LAWS

AN ACT to create and enact a new subsection to section 49-02-02 of the North Dakota Century Code, relating to cooperation with federal and state agencies dealing with federal energy laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new subsection to section 49-02-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.

Approved March 15, 1979

CHAPTER 497

SENATE BILL NO. 2230
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

DEFINITION OF PUBLIC UTILITY

AN ACT to amend and reenact section 49-03.1-02 of the North Dakota Century Code, relating to the definition of public utility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-03.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Public utility" includes any association, person, firm, corporation, or agency engaged or employed in this state to furnish its product or services to the public generally and which are statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter shall not apply to electric public utilities or motor carriers of persons or property for hire.

Approved March 12, 1979

CHAPTER 498

HOUSE BILL NO. 1280

(Committee on Industry, Business and Labor)

(At the request of the North Dakota Public Service Commission)

ISSUANCE OF PUBLIC UTILITY SECURITIES

AN ACT to amend and reenact section 49-04-04 of the North Dakota Century Code, relating to sales of securities by public utilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-04. POWER OF PUBLIC UTILITY TO ISSUE EVIDENCE OF INDEBTEDNESS.) The power of a public utility to issue stocks, bonds, notes, and other evidences of indebtedness or to create liens upon its property situated in this state, except such as are payable within one year from date of issue, is a special privilege and shall be exercised by such utility under the supervision, regulation, restriction, and control of the commission, subject to such rules and regulations as the commission may prescribe. This section does not apply to the issuance by public utilities of securities registered with the federal securities and exchange commission or to the issuance by public utilities of securities not involving any public offering.

Approved March 8, 1979

CHAPTER 499

HOUSE BILL NO. 1104
(Representative Erickson)
(Senator Solberg)

ABANDONED RAILWAY REOPENING TRUST AGREEMENTS

AN ACT to create and enact a new section to chapter 49-09 of the North Dakota Century Code, relating to authorizing the public service commission to enter into limited trust agreements with railway corporations abandoning railroad lines, for the purposes of reorganization or negotiated attempts to open the line for use, and to provide for reversion of the property to the railway corporation after five years in certain instances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

ABANDONMENT OF RAILWAY LINES - PUBLIC SERVICE COMMISSION
AUTHORITY - TRUST AGREEMENT - TERM - REVERSION OF PROPERTY.)

1. If any railway corporation at any time abandons the use of any railway line in North Dakota, or if any railway corporation expresses an intent to abandon any railway line in North Dakota, the commission, as sole agent for the state, may enter into a trust agreement with the railway corporation for purposes of reorganization or reopening of the railway line. A trust agreement entered into pursuant to this subsection shall be for a period not to exceed five years.
2. If a railway corporation at any time abandons the use of any railway line in North Dakota, it may, at the request of the commission, execute a deed of trust transferring the railway track and ties, right of way, land, buildings, appurtenances, and other railway property necessary for the operation of railroads, to the commission, as trustee, for the purposes of reorganization or reopening of the railway line. Any deed of trust executed and delivered pursuant to this subsection shall provide for reversion of the deeded property to the railway corporation if there has been no reorganization or reopening of the railway line at the end of five years from the date of delivery of the deed.

Approved March 18, 1979

CHAPTER 500

HOUSE BILL NO. 1463
(Berg)

ABANDONED RAILROAD RIGHT-OF-WAY ACQUISITION

AN ACT to provide landowners adjoining abandoned railroad right of way options to acquire the right of way, and to regulate the acquisition of abandoned railroad right of way for wildlife programs or projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. ABANDONED RAILROAD RIGHT OF WAY - SALE - FIRST
OPTION - PUBLIC USE - WILDLIFE USE.)

1. Whenever any state-owned land taken, held, and used pursuant to section 49-09-01 for railroad right of way, or any railroad spur, industrial, switching, or side track right of way located entirely within the state is abandoned and offered for sale, lease, exchange, or other disposal, the landowner or landowners adjoining the abandoned right of way shall be given next option to acquire the right of way upon reasonable terms, second only to the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a railroad.
2. In all instances where railroad abandonment or discontinuance is governed by federal law and abandoned railroad right of way is first offered for public purposes and refused, the landowner or landowners adjoining the abandoned right of way shall be given the next option to purchase, lease, exchange, or otherwise acquire the right of way upon reasonable terms. However, the next option of the adjoining landowner does not supersede the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a railroad.
3. Whenever abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions

must first be submitted to the board of county commissioners of the county or counties in which the right of way is located for the board's approval pursuant to section 20.1-02-17.1 if offered to the state game and fish department or pursuant to section 20.1-02-18.1 if offered to the United States department of the interior, its bureaus or agencies.

Approved March 3, 1979

CHAPTER 501

HOUSE BILL NO. 1169
(Erickson, Hedstrom, Hove, Melby, Peltier)

ABANDONED RAILWAY REOPENING NEGOTIATIONS

AN ACT to create and enact seven new sections to chapter 49-09 of the North Dakota Century Code, relating to authority for the public service commission to enter into negotiations or aid in negotiation for the reopening or reorganization of abandoned railway lines or for the sale, transfer, or lease of railroad property; and to amend and reenact sections 49-11-02, 49-11-05, and 57-05-01 of the North Dakota Century Code, relating to railroad bridge repair, maintaining sufficient railway highway crossings, and assessment of railroad property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

NEGOTIATIONS FOR REOPENING OF RAILWAY LINE - RAILROAD INTENDING TO ABANDON LINE.) The commission may enter into negotiations or aid in negotiation in cooperation with or on behalf of any railway corporation intending to abandon a railway line to sell, transfer, or lease all or any part of the real property to be abandoned to any person, firm, or corporation for continued operation of a railroad. However, approval for the continued operation must be granted by the interstate commerce commission of the United States, whenever approval is required.

SECTION 2.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

NEGOTIATIONS FOR REOPENING OF RAILWAY LINE - RAILROAD ABANDONING LINE.) The commission may enter into negotiations or aid in negotiation in cooperation with or on behalf of any railway corporation abandoning a railway line to sell, transfer, or lease all or any part of the real property to be abandoned to any person, firm, or corporation for continued operation of a railroad.

However, approval for the continued operation must be granted by the interstate commerce commission of the United States, whenever approval is required.

SECTION 3.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

NEGOTIATIONS FOR SALE, TRANSFER, OR LEASE OF RAILROAD PROPERTY - PUBLIC SERVICE COMMISSION AUTHORITY.) The commission may, upon the request of a railway corporation, cooperate with the railway corporation in negotiating the sale, transfer, or lease of all or any part of the railway track and ties, right of way, land, buildings, appurtenances, and other railway property necessary for the operation of railroads in this state. Upon request the commission may contact the other parties involved in the transaction, call a meeting to discuss the transaction, and act as negotiator in cooperation with the railroads involved in the transaction. The railroads, if all parties to the transaction agree, may provide for finalization of the transaction.

SECTION 4.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

COMMISSION'S AUTHORITY IN PUBLIC INTEREST - COOPERATION WITH OTHER STATES.) The authority of the commission in dealing with abandoned rail properties or negotiations for reopening of abandoned rail properties is for the purpose of continued and future operation of a railroad and is in the public interest. Actions taken by the commission are declared to be a public purpose and to be reasonably necessary. The commission may take action in concert with another state or states, as necessary to ensure continued rail service in this state.

SECTION 5.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERSTATE COMMERCE COMMISSION CERTIFICATE.) The commission may assist any person, firm, or corporation to secure, as promptly as possible, any order or certificate required by the interstate commerce commission for the performance of rail service.

SECTION 6.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

PUBLIC SERVICE COMMISSION AUTHORIZED TO CONDUCT PERIODIC MEETINGS CONCERNING FUTURE OPERATION OF RAILROADS.) The commission may in the public interest call an annual meeting for the purpose of discussing efficient operations of railroads in the state. The commission may invite all railway corporations operating in the state, and the meeting shall be open to the public.

SECTION 7.) A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

RULES FOR ENFORCEMENT.) The commission is authorized to adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of sections 1 through 4 of this Act.

SECTION 8. AMENDMENT.) Section 49-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-02. RAILROAD BRIDGES MUST BE IN GOOD REPAIR.) Every railroad corporation shall maintain and keep in good repair all bridges and their abutments which ~~sueh~~ the corporation shall construct for the purpose of enabling its road to pass over or under any public highway, watercourse, or other way. Railroad corporations which have transferred railway property to the public service commission in trust for the purposes of reorganization or reopening are not liable for failure to maintain railroad bridges in good repair during the period of trust.

SECTION 9. AMENDMENT.) Section 49-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-05. RAILROAD TO MAINTAIN SUFFICIENT HIGHWAY CROSSINGS.) All railroad corporations operating a line of railway in this state shall build or cause to be built and kept in repair safe and sufficient crossings in accordance with section 49-11-06 over ~~sueh~~ the railway line at all points where it shall ~~interseet~~ intersects any public highway in use. Any railway corporation transferring railway properties to the public service commission in trust for the purposes of reorganization or reopening is not liable for failure to maintain sufficient crossings during the period of trust.

* SECTION 10. AMENDMENT.) Section 57-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-05-01. RAILROAD PROPERTY TO BE ASSESSED BY STATE BOARD OF EQUALIZATION.) The state board of equalization, at its annual meeting in August in each year, shall assess at its actual value, the operating property, including franchises, ~~except-that-if~~ of each railroad operated in this state including any electric or other street or interurban railway. If any railroad allows any portion of its railway to be used for any purpose other than the operation of a railroad ~~thereon, ~~sueh~~~~, the portion of its railway while so used shall be assessed in a manner provided for the assessment of other real property, ~~of each railroad operated in this state, including any electric or other street or interurban railway.~~ To enable ~~said~~ the board to make a correct valuation of ~~sueh~~ property, it shall have access to all reports, estimates, and surveys of a line of railroad on file in the office of the public service commission and shall have power to summon and compel the attendance of witnesses, and to examine ~~sueh~~ witnesses under oath in any matter relating to the value of ~~sueh~~ the property. In fixing the value of any ~~sueh~~

* NOTE: Section 57-05-01 was also amended by section 3 of Senate Bill No. 2258, chapter 589.

railroad, and of ~~the-branches~~ branch lines and sidetracks ~~thereof~~, the board shall be governed by the rules prescribed for county and township assessors in valuing other property in this state. The board shall make a record of the value placed by it upon the property of the railroad, including the valuation per mile of main line and of branch lines and sidetracks. Railroad property held in trust by the public service commission for purposes of reorganization or reopening of the railway line shall be exempt from assessment as provided in this section.

Approved March 18, 1979

CHAPTER 502

HOUSE BILL NO. 1103
(Representative Erickson)
(Senator Solberg)

RAIL SERVICE ASSISTANCE

AN ACT to authorize the state highway department, upon approval by the public service commission, to apply for rail service assistance under the Railroad Revitalization and Regulatory Reform Act of 1976, to authorize the highway department to act as the designated state agency to receive rail service assistance, and to authorize cooperation between the highway department and the public service commission to take steps necessary to improve transportation utilization; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.)

1. "Commission" means the public service commission.
2. "Department" means the state highway department.

SECTION 2. HIGHWAY DEPARTMENT AS DESIGNATED STATE AGENCY.)
The department, with the approval of the commission, is authorized to exercise those powers necessary for the state to qualify for rail service assistance grants pursuant to provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat 149; 49 U.S.C. 1651 et seq.], including authority to:

1. Prepare and recommend a state plan for all rail transportation and local rail services under the direction of an intermodal team appointed by the governor.
2. Administer and coordinate the state plan.
3. Provide in the plan for the equitable distribution of rail service assistance grants among state, local, and regional transportation authorities.

4. Promote and support safe, adequate, and efficient rail services for those railway lines receiving rail service assistance grants.
5. Employ sufficient trained and qualified personnel for these purposes.
6. Maintain adequate programs of investigation, research, promotion, and development in connection with these purposes and to provide for public participation therein.
7. Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state as may be necessary to assure proper disbursement of an account for federal funds paid to the state as rail service assistance grants.
8. Comply with the regulations of the secretary of transportation of the United States department of transportation affecting rail service assistance grants.
9. Do all things otherwise necessary to maximize federal assistance to the state under the Railroad Revitalization and Regulatory Reform Act of 1976, and any amendments to it.

SECTION 3. APPLICATION FOR ASSISTANCE.) The department, with the approval of the commission, may make application on behalf of the state for grants made available by the secretary of transportation under the Railroad Revitalization and Regulatory Reform Act of 1976.

SECTION 4. USE OF PUBLIC AND PRIVATE FUNDS - PUBLIC SERVICE COMMISSION PARTICIPATION.) The department, with the approval of the commission, may utilize public and private funds appropriated by the legislative assembly in carrying out the purpose of this Act. The department shall cooperate with the commission and with other states in the reorganization or reopening of any railway line which may have been abandoned by any railway corporation providing railway services within the state. In carrying out the authority conferred by this section, the department may enter into agreements, contracts, or other arrangements with the necessary parties to accomplish the purposes of this Act.

SECTION 5. SUBSIDY OF RAILWAY LINES.) The department, with the approval of the commission, may provide financial assistance, within the limits of funds appropriated by the legislative assembly, for the continuation of operations and maintenance of any railroad within the state, as provided for in the Railroad Revitalization and Regulatory Reform Act of 1976, or other relevant federal legislation. The department or the commission may act as the agent in cooperation with the federal government, any local or regional transportation authority, local governmental units, any group of rail users, or any person in any rail service assistance program.

SECTION 6. RAILROAD PLAN AND PROPOSALS.) The department and the commission may develop and make available to interested persons feasibility plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail services which the department and the commission believe would result in a rail system which is more efficient and consistent with public interest.

SECTION 7. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved February 20, 1979

CHAPTER 503

HOUSE BILL NO. 1285

(Committee on Transportation)

(At the request of the North Dakota Public Service Commission)

MOTOR CARRIER CERTIFICATES

AN ACT to create and enact a new section to chapter 49-18 of the North Dakota Century Code, relating to interstate carrier registration and identification; to create and enact a new section to chapter 49-18 of the North Dakota Century Code, relating to violation of commission order or rule and penalty; to amend and reenact subsections 4, 5, 6, 7, 8, 9, 10, and 11 of section 49-18-01, subsection 6 of section 49-18-02 and sections 49-18-14 and 49-18-17 of the North Dakota Century Code, relating to definitions, exemption of agricultural commodities, factors to be considered by the commission in granting certificates, and discontinuance of service by common motor carriers by order of the commission; and to repeal sections 49-18-34.1, 49-18-35, 49-18-36, 49-18-37, 49-18-38, 49-18-38.1, 49-18-38.2, 49-18-38.3, and 49-18-39 of the North Dakota Century Code, relating to regulation of agricultural carriers; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsections 4, 5, 6, 7, 8, 9, 10, and 11 of section 49-18-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

~~4. "Agricultural carrier" shall mean any person, firm, association, or corporation, hauling and transporting for hire, poultry, livestock, and dairy products, from the farm where such products are produced, grown, or further processed, to the market or place where such products or supplies are sold, stored, disposed of, purchased or acquired, and from the market or place where the same are purchased or acquired to the farm where the same are to be used, consumed, or further processed.~~

5- 4. "Common motor carrier of property" shall mean any person who holds himself out to the public as willing to undertake for hire to transport by motor vehicle from place to place the property of others who may choose to

~~employ him. Transportation for more than one consignee, or to more than three consignees, by any motor carrier, shall be prima facie evidence that such motor carrier is operating as a common carrier.~~

- 6- 5. "Class A common carriers" shall mean those common motor carriers operating between fixed termini, over fixed routes, on schedule time.
- 7- 6. "Special common motor carrier" shall mean a common motor carrier operating over irregular routes, not on schedule time, at the will and command of the shipper.
- 8- 7. "Common motor carrier of passengers" shall mean any person who holds himself out to the public as willing to undertake for hire to transport by motor vehicle from place to place persons who may choose to employ him.
- 9- 8. "Contract motor carrier of property" shall mean any person engaged in the transportation by motor vehicle of property for hire and not included in the term "common motor carrier of property".
- 10- 9. "Contract motor carrier of passengers" shall mean any person engaged in the transportation by motor vehicle of persons for hire and not included in the term "common motor carrier of passengers".
- 11- 10. "Special common motor carrier of buildings" shall mean a common motor carrier of property engaged in the transportation of buildings, sections of buildings, and other bulky objects which, because of their nature, require the use of equipment characteristic to the house moving industry.

SECTION 2. AMENDMENT.) Subsection 6 of section 49-18-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. To the transportation, for hire, of non-liquid fertilizers or unmanufactured agricultural commodities, excluding including dairy commodities, poultry, and livestock.

SECTION 3. AMENDMENT.) Section 49-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-14. FACTORS TO BE CONSIDERED BY COMMISSION IN GRANTING CERTIFICATE.) Before granting a certificate to a common motor carrier, the commission shall take into consideration:

1. Existing travel upon the route of the carrier;
2. The increased cost of maintaining the highway concerned; and

3. The effect on other essential-forms-of-transportation,-and existing transportation facilities adequately serving the territory for which a certificate is sought.

~~4. Existing transportation facilities in the territory for which a certificate is sought.~~

In case it appears from the evidence that the service furnished or that could be furnished by existing transportation facilities is reasonably adequate, the commission shall not grant such certificate.

SECTION 4. AMENDMENT.) Section 49-18-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-17. DISCONTINUANCE OF SERVICE BY COMMON MOTOR CARRIER - ONLY BY ORDER OF COMMISSION.) No common motor carrier authorized by this chapter to operate shall abandon or discontinue any service established under the provisions thereof without an order of the commission. Non-user, plus inability to operate, refusal to accept business, or noncompliance with a proper commission order shall, in the discretion of the commission, constitute sufficient cause for revocation under section 49-18-16 of the North Dakota Century Code.

SECTION 5.) A new section to chapter 49-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERSTATE CARRIER REGISTRATION AND IDENTIFICATION.) The public service commission is authorized to collect such fees as it may establish by rule for the registration and identification of interstate motor carriers operating within this state. Such fees shall not exceed the maximums provided for by the laws of the United States and shall be credited to the general fund pursuant to section 49-18-42 of the North Dakota Century Code.

SECTION 6.) A new section to chapter 49-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

VIOLATION OF COMMISSION ORDER OR RULE - PENALTY.) Any person who violates or fails to comply with any provision of this chapter, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, or any part or provision thereof issued pursuant to this chapter, shall be guilty of an infraction.

SECTION 7. REPEAL.) Sections 49-18-34.1, 49-18-35, 49-18-36, 49-18-37, 49-18-38, 49-18-38.1, 49-18-38.2, 49-18-38.3, and 49-18-39 of the North Dakota Century Code are hereby repealed.

SECTION 8. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 8, 1979

CHAPTER 504

SENATE BILL NO. 2233

(Committee on Natural Resources)

(At the request of the North Dakota Public Service Commission)

ENERGY FACILITY SITING AMENDMENTS

AN ACT to create and enact section 49-22-08.1 of the North Dakota Century Code, relating to applications for route permits and the designation of transmission facility routes; to amend and reenact section 49-22-02, subsections 1, 5, 10, 11, and 12 of section 49-22-03, sections 49-22-05.1, 49-22-07, 49-22-07.2, 49-22-08, 49-22-09, 49-22-13, 49-22-14.1, 49-22-16, and 49-22-18, subsections 3 and 4 of section 49-22-21, and section 49-22-22 of the North Dakota Century Code, relating to the statement of policy; definitions; the inventory of exclusion and avoidance areas; criteria; certificates of site compatibility and route permits; the waiver of procedures and time schedules; applications for certificates; the designation of sites and corridors; factors to be considered in evaluating applications and the designation of sites, corridors, and routes; public hearings; cooperation with state and federal agencies; the effect of issuance of certificates or permits; local land-use, zoning, or building rules, regulations, or ordinances; state agency rules; rules and regulations; penalties; and application fees; to repeal sections 49-22-10, 49-22-11, 49-22-12.1, and 49-22-15 of the North Dakota Century Code, relating to the designation of sites and corridors, the approval of specific routes, emergency certification, and public participation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-02. STATEMENT OF POLICY.) The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or

transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

SECTION 2. AMENDMENT.) Subsections 1, 5, 10, 11, and 12 of section 49-22-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under the provisions of this chapter.
5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation of fifty thousand kilowatts or more of electricity;
 - b. Manufacture or refinement of one hundred million cubic feet [2,831,684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - c. Manufacture or refinement of fifty thousand barrels [7,949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - d. Enrichment of uranium minerals.
10. "Site" means the location of an energy conversion facility ~~or a corridor~~.
11. "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 ~~or more~~.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, or liquid hydrocarbon products. The provision of this subdivision shall not apply to ~~any person operating~~ an oil or gas pipeline gathering system. For purposes of this chapter a gathering system shall include 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.

- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
12. "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, but not limited to, 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 3. AMENDMENT.) Section 49-22-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-05.1. INVENTORY OF EXCLUSION AND AVOIDANCE AREAS - CRITERIA---PUBLIC-HEARINGS.)

1. The commission shall assemble and publish an energy conversion and transmission facility inventory of exclusion and avoidance areas. The commission shall have a continuing responsibility to evaluate, update, and publish its inventory. ~~An exclusion or avoidance area shall be removed from the inventory if, due to changed circumstances or information, it is inconsistent with the prescribed criteria, an area shall be included in the inventory if it is found to be consistent with the prescribed criteria.~~
2. ~~The inventory report prepared by the commission shall contain an identification of the exclusion and avoidance areas and the criteria used in identifying them. The criteria developed by the commission shall also guide the site or corridor suitability evaluation and designation process. A public hearing shall be held before any substantial modification to the criteria is adopted. The commission shall develop criteria which shall be used in identifying exclusion and avoidance areas and which shall guide the site, corridor, and route suitability evaluation and designation process. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.~~
The commission shall develop criteria which shall be used in identifying exclusion and avoidance areas and which shall guide the site, corridor, and route suitability evaluation and designation process. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

SECTION 4. AMENDMENT.) Section 49-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-07. CERTIFICATE OF SITE COMPATIBILITY OR ROUTE PERMIT REQUIRED.) No utility shall begin construction of an energy conversion facility or transmission facility in the state, or exercise the right of eminent domain in connection with such construction, without first having obtained a certificate of site compatibility ~~issued with respect to such facility--by~~ or a route permit from the commission pursuant to this chapter. ~~Any A facility, with respect to which a certificate is required,~~ shall thereafter be constructed, operated, and maintained in conformity with such certificate or permit, and any terms and conditions contained therein and subsequent modifications thereof. 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.

SECTION 5. AMENDMENT.) Section 49-22-07.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-07.2. WAIVER OF PROCEDURES AND TIME SCHEDULES.) Any utility which proposes to construct an energy conversion facility ~~with a design not in excess of one hundred thousand kilowatts~~ or a 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 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, ~~or both,~~ with such conditions as the commission may require. ~~The proposed facility shall thereafter be constructed, operated, and maintained in compliance with this chapter.~~

SECTION 6. AMENDMENT.) Section 49-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-08. APPLICATION FOR A CERTIFICATE - PROOF-OF-SERVICE---NOTICE OF FILING - AMENDMENT - DESIGNATION OF A SITE OR CORRIDOR.)

1. An applicant application for a certificate shall ~~file with the commission an application,~~ 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 energy conversion facility.
 - e. An identification of the location of the preferred corridor for any 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.
- g- i. Such other information as the applicant may consider relevant or the commission may require.
2. After receiving determining that the application is complete, the commission shall serve a notice of filing of the application on the--chairman-of-the-board-of-county commissioners-of-each-county-in-which-any-portion-of-the facility--is--proposed--to-be-located,--the-chief-executive officer-of-each-city-in-the-county-in-which-any-portion-of the--facility--is--proposed-to-be-located,--and-the-head-of each-government-agency-charged-with-the-duty-of-protecting the--environment-or-planning-land-use-in-the-area-in-which any-portion-of-the-facility-is-to-be-located 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 site or corridor is proposed to be located.
 3. Copies A copy of the application shall be furnished to all entities-entitled-to-notice-of-filing any person or agency, upon request to the commission within thirty days of receipt either service or publication of the notice of filing. In-addition,--the-commission-shall-serve-notice-of the-filing-of-the-application-or-copies-thereof,--or--both, upon--such--other--persons--as--the--commission--may--deem appropriate.

4. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
5. The commission shall designate a site or corridor for a proposed 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 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 shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary.

SECTION 7.) Section 49-22-08.1 of the North Dakota Century Code is hereby created and enacted to read 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 a transmission facility within a designated corridor shall be filed no later than two years after the issuance of the certificate and shall 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 a 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 8. AMENDMENT.) Section 49-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-09. FACTORS TO BE CONSIDERED IN EVALUATING APPLICATIONS AND DESIGNATION OF SITES AND, CORRIDORS AND ROUTES.) The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the study, ~~research, evaluation, and designation of sites and, corridors for energy conversion facilities and transmission facilities and the approval of specific transmission facilities,~~ and their routes:

1. ~~Evaluation~~ of Available research and investigations relating to the effects of ~~energy conversion facilities and transmission facilities on land, water, and air resources and the effects of water and air discharges from such facilities~~ the location, construction, and operation of the proposed facility on public health and welfare, ~~vegetation, animals, materials, and aesthetic values, including baseline studies, predictive modeling, and monitoring of the water and air mass at proposed sites and sites of operating energy conversion facilities, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges, and other matters pertaining to the effects of energy conversion facilities on the water and air environment~~ natural resources, and the environment.
2. ~~Environmental evaluation of energy conversion facility sites and transmission facility corridors and routes proposed for future development and expansion and their relationship to the land, water, air, and human resources of the state.~~
3. 2. ~~Evaluation of the~~ The effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects.
4. 3. ~~Evaluation of the~~ The potential for beneficial uses of waste energy from a proposed energy conversion ~~facilities~~ facility.
5. 4. ~~Evaluation of~~ Adverse direct and indirect environmental effects which cannot be avoided should the proposed site, ~~corridor,~~ or route be accepted designated.
6. 5. ~~Evaluation of alternatives~~ Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
7. 6. ~~Evaluation of irreversible~~ Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be approved designated.
8. 7. ~~Analysis of the~~ The direct and indirect economic ~~impact~~ impacts of the proposed ~~energy conversion facilities and transmission facilities~~ facility.

- 9- 8. ~~Analysis-of-existing~~ 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.
- 10- 9. ~~Evaluation-of-the~~ The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites at-or-in-the vicinity-of-the-proposed-site,-corridor,-or-route.
- 11- 10. ~~Evaluation-of-the~~ 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 at-or-in-the-vicinity-of-the-proposed-site,-corridor,-or-route.
- 12- 11. ~~Where-appropriate,-consideration-of-problems~~ Problems raised by federal agencies, other state agencies, and local entities.

SECTION 9. AMENDMENT.) Section 49-22-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-13. PUBLIC HEARINGS - NOTICE.) ~~The-commission-shall hold-public-hearings-as-prescribed-by-regulation-to-afford interested-persons-an-opportunity-to-be-heard-regarding-its inventory-of-exclusion-and-avoidance-areas-and-any-other-aspects-of the-commission's-activities,-duties,-or-policies-arising-under-or set-forth-in-this-chapter.-The-commission-shall-hold-at-least-one public-hearing-in-each-county-where-a-site-or-corridor-is-being considered-for-designation-pursuant-to-section-49-22-10-as-suitable for-construction-of-an-energy-conversion-facility-or-transmission facility,-however,-where-more-than-one-county-is-involved,-the commission-may-consolidate-the-county-hearings-and-hold-a consolidated-hearing-or-hearings-in-a-place-designated-by-the commission.-Notice-of-public-hearings-shall-be-given-by-the commission-at-the-expense-of-the-applicant-at-least-twenty-days prior-to-such-hearings.-In-an-emergency,-the-commission,-in-its discretion,-may-notice-a-hearing-upon-less-than-twenty-days.-Notice shall-be-by-publication-in-the-official-county-newspaper-of-the county-in-which-the-public-hearing-is-to-be-held-and-by-mailed notice-to-the-persons-designated-in-subsection-2-of-section 49-22-08-~~

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. Where 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 shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.

2. The commission shall not be 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. Where 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 shall 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 49-22-05.1.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22-18.
 - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing shall be given by the commission by service on such persons and agencies that the commission may deem appropriate and by publication at least twenty days prior to such 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 shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.

SECTION 10. AMENDMENT.) Section 49-22-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-14.1. COOPERATION WITH STATE AND FEDERAL AGENCIES.) The commission shall have the authority may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with the--United--States,--any--state,--or any department, agency, or officer thereof of any state or of the federal government to eliminate duplication of effort, to establish a common data base, or for any other purpose relating to the ~~siting~~ of energy conversion and transmission facilities provisions of this chapter and in furtherance of the statement of policy contained herein.

SECTION 11. AMENDMENT.) Section 49-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-16. EFFECT OF ISSUANCE OF CERTIFICATE OR PERMIT - ~~FACILITY LICENSING~~ LOCAL LAND-USE, ZONING, OR BUILDING RULES, REGULATIONS, OR ORDINANCES - STATE AGENCY PARTICIPATION RULES.)

1. The issuance of a certificate of site compatibility or a ~~transmission-facility route permit and subsequent purchase and use of such site or route locations for energy conversion facilities and transmission facilities~~ 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 energy conversion facility shall not supersede or preempt any ~~county or city~~ 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 a transmission facility within a designated corridor may supersede and preempt any ~~county or city~~ 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 ~~whether located in or out of the county or city~~ 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 energy conversion facilities and 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 energy conversion facility or the corridor or route designation for the transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. ~~State agencies authorized to issue permits required for construction or operation of energy conversion facilities or transmission facilities shall participate in and present the position of the agency at public hearings and all other activities of the commission on specific site, corridor, or route designations of the commission, which position shall clearly state whether the site, corridor, or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, regulations, or policies.~~ No site or route shall be designated which violates the rules of any state agency regulations. 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 12. AMENDMENT.) Section 49-22-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-18. RULES AND REGULATIONS.) ~~The commission shall adopt rules and regulations with respect to the promulgation of facility siting criteria, information to be furnished by the utilities, guidelines for public participation in the development, revision, and enforcement of any regulation, plan, or program of the commission, and other matters of procedure and enforcement pursuant to chapter 28-32 in conformity with the provisions of this chapter and to prescribe methods and procedures required therewith.~~

SECTION 13. AMENDMENT.) Subsections 3 and 4 of section 49-22-21 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. ~~Any person who violates this chapter~~ willfully engages in any of the following conduct shall be subject to a civil penalty of not more than ten thousand dollars:
 - a. Begins construction of an energy conversion facility or a transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an energy conversion facility or a 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 section shall be recoverable by suit filed~~ subsection may be compromised by the commission and. The amount of the penalty when finally determined or agreed upon in compromise shall 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, proceed against any person in violation of the provisions of this chapter, or the rules and regulations issued thereunder who willfully engages in any conduct described in subsection 3 of this section. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

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

49-22-22. APPLICATION FEES - ADDITIONAL FEES - DEPOSIT GENERAL FUND.)

1. Every applicant for a certificate of site compatibility for an energy conversion facility shall pay to the commission an application fee in an amount equal to five hundred dollars for each one million dollars of investment in the proposed installation facility as defined in the federal power energy regulatory commission uniform system of accounts. Every applicant for a certificate of site corridor compatibility for a transmission facility shall pay to the commission an application fee in an amount equal to five thousand dollars for each one million dollars of investment in the proposed installation facility as defined in the federal power energy regulatory commission uniform system of accounts. Every applicant for a waiver shall pay to the commission an application fee in the amount which 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, such application fee paid shall 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. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred fifty thousand dollars. The commission shall specify the time and manner of payment of the application fee.
2. The applicant shall pay such additional fees as are reasonably necessary for completion of the energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the commission. The commission shall specify the time and method of payment of any additional fees and shall refund the portion of such additional fees received from the applicant for completion of the site, corridor,

or route evaluation and designation process which exceeds the expenses incurred for the evaluation and designation process. In no event shall the application fee under subsection 1 and any additional fees required of the applicant under this subsection 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 transmission facility.

3. All fees collected under the provisions of this chapter shall be deposited in the general fund.

SECTION 15. REPEAL.) Sections 49-22-10, 49-22-11, 49-22-12.1, and 49-22-15 of the North Dakota Century Code are hereby repealed.

Approved April 7, 1979

CHAPTER 505

HOUSE BILL NO. 1461
(Representatives Dietz, Crabtree, Erickson)
(Senators Naaden, Smykowski)

ELECTRIC TRANSMISSION FACILITY EASEMENT PAYMENT

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to payment terms of easements for electric transmission facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

EASEMENTS FOR A FACILITY - TERMS.) Any easement for an electric transmission facility as defined in chapter 49-22 acquired contractually by a utility after July 1, 1979, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amount including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by the Bank of North Dakota on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July 1 and all following annual installments shall fall due on July 1. The option provided herein shall not apply to any easement providing for compensation of less than \$5,000.00. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time of sale of the real estate to which the easement attaches shall accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of his option to choose annual installments.

Approved March 19, 1979