

Introduced by

Senators Mathern, Dever

Representatives Boschee, Brandenburg, Kempenich

1 A BILL for an Act to create and enact a new section to chapter 49-22 of the North Dakota
2 Century Code, relating to certificate reporting requirements for an applicant; to amend and
3 reenact sections 49-22-02 and 49-22-03, subsection 1 of section 49-22-08, and section
4 49-22-09 of the North Dakota Century Code, relating to providing a definition of a local worker,
5 application for certificate, and factors to be considered when evaluating an application and
6 designation of sites, corridors, and routes.

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

8 **SECTION 1. AMENDMENT.** Section 49-22-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **49-22-02. Statement of policy.**

11 The legislative assembly finds that the construction of energy conversion facilities and
12 transmission facilities affects the environment and the welfare of the citizens of this state.
13 Therefore, it is necessary to ensure that the location, construction, and operation of energy
14 conversion facilities and transmission facilities will produce minimal adverse effects on the
15 environment and upon the welfare of the citizens of this state by providing that no energy
16 conversion facility or transmission facility shall be located, constructed, and operated within this
17 state without a certificate of site compatibility or a route permit acquired pursuant to this chapter.
18 The legislative assembly hereby declares it to be the policy of this state to site energy
19 conversion facilities and to route transmission facilities in an orderly manner compatible with
20 environmental preservation ~~and the~~ efficient use of resources, and the maximization of local
21 benefits, including employment of local workers. In accordance with this policy, sites and routes
22 shall be chosen which minimize adverse human and environmental impact while ensuring
23 continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in
24 an orderly and timely fashion.

1 **SECTION 2. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-22-03. Definitions.**

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

- 5 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
6 compatibility issued under this chapter.
- 7 2. "Commission" means the North Dakota public service commission.
- 8 3. "Construction" includes a clearing of land, excavation, or other action affecting the
9 environment of the site after April 9, 1975, but does not include activities:
- 10 a. Conducted wholly within the geographic location for which a utility has previously
11 obtained a certificate or permit under this chapter, or on which a facility was
12 constructed before April 9, 1975, if:
- 13 (1) The activities are for the construction of the same type of facility as the
14 existing type of facility as identified in a subdivision of subsections 5 or 4213
15 of this section and the activities are:
- 16 (a) Within the geographic boundaries of a previously issued certificate or
17 permit;
- 18 (b) For an electric energy conversion facility constructed before April 9,
19 1975, within the geographic location on which the facility was built; or
- 20 (c) For an electric transmission facility constructed before April 9, 1975,
21 within a width of three hundred fifty feet [106.68 meters] on either side
22 of the centerline;
- 23 (2) Except as provided in subdivision b, the activities do not affect any known
24 exclusion or avoidance area;
- 25 (3) The activities are for the construction:
- 26 (a) Of a new electric energy conversion facility;
- 27 (b) Of a new electric transmission facility;
- 28 (c) To improve the existing electric energy conversion facility or electric
29 transmission facility; or
- 30 (d) To increase or decrease the capacity of the existing electric energy
31 conversion facility or electric transmission facility; and

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

1 expected to be impacted and the reasons why impact cannot be avoided;
2 and

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

10 c. Incident to preliminary engineering or environmental studies.

11 4. "Corridor" means the area of land where a designated route may be established for an
12 electric transmission facility.

13 5. "Electric energy conversion facility" means a plant, addition, or combination of plant
14 and addition, designed for or capable of:

15 a. Generation by wind energy conversion exceeding one-half megawatt of
16 electricity; or

17 b. Generation by any means other than wind energy conversion exceeding fifty
18 megawatts of electricity.

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

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

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

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

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

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

29 7. "Facility" means an electric energy conversion facility, electric transmission facility, or
30 both.

- 1 8. "Local worker" means an individual who is employed to construct or maintain an
2 energy infrastructure and is a North Dakota resident or who permanently resides
3 within one hundred fifty miles [241.40 kilometers] of a proposed electric energy
4 generation facility.
- 5 9. "Permit" means the permit for the construction of an electric transmission facility within
6 a designated corridor issued under this chapter.
- 7 ~~9-10.~~ "Person" includes an individual, firm, association, partnership, cooperative,
8 corporation, limited liability company, or any department, agency, or instrumentality of
9 a state or of the federal government, or any subdivision thereof.
- 10 ~~40-11.~~ "Power emergency" means an electric transmission line and associated facilities that
11 have been damaged or destroyed by natural or manmade causes resulting in a loss of
12 power supply to consumers of the power.
- 13 ~~44-12.~~ "Route" means the location of an electric transmission facility within a designated
14 corridor.
- 15 ~~42-13.~~ "Site" means the location of an electric energy conversion facility.
- 16 ~~43-14.~~ "Utility" means a person engaged in and controlling the electric generation, the
17 transmission of electric energy, or the transmission of water from or to any electric
18 energy conversion facility.

19 **SECTION 3. AMENDMENT.** Subsection 1 of section 49-22-08 of the North Dakota Century
20 Code is amended and reenacted as follows:

- 21 1. An application for a certificate must be in such form as the commission may prescribe,
22 containing the following information:
- 23 a. A description of the size and type of facility.
- 24 b. A summary of any studies which have been made of the environmental impact of
25 the facility.
- 26 c. A statement explaining the need for the facility.
- 27 d. An identification of the location of the preferred site for any electric energy
28 conversion facility.
- 29 e. An identification of the location of the preferred corridor for any electric
30 transmission facility.

- 1 f. A description of the merits and detriments of any location identified and a
2 comprehensive analysis with supporting data showing the reasons why the
3 preferred location is best suited for the facility.
- 4 g. A description of mitigative measures that will be taken to minimize all foreseen
5 adverse impacts resulting from the location, construction, and operation of the
6 proposed facility.
- 7 h. An evaluation of the proposed site or corridor with regard to the applicable
8 considerations set out in section 49-22-09 and the criteria established pursuant to
9 section 49-22-05.1.
- 10 i. A description of measures that will be taken to maximize the benefits resulting
11 from the location, construction, and operation of the facility to North Dakota
12 citizens and local workers.
- 13 j. Such other information as the applicant may consider relevant or the commission
14 may require.

15 **SECTION 4. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **49-22-09. Factors to be considered in evaluating applications and designation of**
18 **sites, corridors, and routes.**

- 19 1. The commission shall be guided by, but is not limited to, the following considerations,
20 where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 - 21 a. Available research and investigations relating to the effects of the location,
22 construction, and operation of the proposed facility on public health and welfare,
23 natural resources, and the environment.
 - 24 b. The effects of new electric energy conversion and electric transmission
25 technologies and systems designed to minimize adverse environmental effects.
 - 26 c. The potential for beneficial uses of waste energy from a proposed electric energy
27 conversion facility.
 - 28 d. Adverse direct and indirect environmental effects that cannot be avoided should
29 the proposed site or route be designated.
 - 30 e. Alternatives to the proposed site, corridor, or route which are developed during
31 the hearing process and which minimize adverse effects.

- 1 f. Irreversible and irretrievable commitments of natural resources should the
- 2 proposed site, corridor, or route be designated.
- 3 g. The direct and indirect economic impacts of the proposed facility, including efforts
- 4 to maximize employment of local workers.
- 5 h. Existing plans of the state, local government, and private entities for other
- 6 developments at or in the vicinity of the proposed site, corridor, or route.
- 7 i. The effect of the proposed site or route on existing scenic areas, historic sites
- 8 and structures, and paleontological or archaeological sites.
- 9 j. The effect of the proposed site or route on areas unique because of biological
- 10 wealth or because the areas are habitats for rare and endangered species.
- 11 k. Problems raised by federal agencies, other state agencies, and local entities.
- 12 2. The commission may not condition the issuance of a certificate or permit on the
- 13 applicant providing a mitigation payment assessed or requested by another state
- 14 agency or entity to offset a negative impact on wildlife habitat.
- 15 3. The commission may not issue a permit under this section for a wind or solar energy
- 16 conversion facility unless the applicant can show the project will maximize
- 17 employment of local workers to build and operate the proposed facility.

18 **SECTION 5.** A new section to chapter 49-22 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Reporting.**

21 An applicant for any project under this chapter shall file a quarterly report with the
22 commission within forty-five days of the end of the calendar quarter regarding construction
23 workers who participated in the construction of a project. The report must:

- 24 1. Detail the applicant's efforts and the site contractor's efforts to hire North Dakota
- 25 workers; and
- 26 2. Provide an account of:
 - 27 a. The gross number of hours worked by a worker who is a North Dakota resident;
 - 28 b. The gross number of hours worked by a worker who is a resident of another
 - 29 state, but maintains permanent residence within one hundred fifty miles [241.40
 - 30 kilometers] of the facility; and
 - 31 c. The total gross hours worked.

- 1 3. The report may not include personally identifiable information.