

2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2263

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2263
1/28/2021

A BILL for an Act to amend and reenact section 49-22-08 of the North Dakota Century Code, relating to notice requirements for an application for a certificate of site or corridor compatibility.

Chairman Kreun called the hearing to order at (9:08am)
Senators Kreun, Patten, Schaible, J. Roers, Piepkorn, and Bell were present

Discussion Topics:

- Notification of Landowner that a corridor is being constructed
- Need for bill and changes to current statute

Senator Kannianen, District 4, introduced the bill, testified in favor #3846, and passed out an amendment #4028 (9:09am)

Troy Coons, Northwest Land Owners Association, testified in favor #3969 (9:11am)

Levi Andrist, WIND Industry of ND, Lobbyist, testified in favor #3869 (9:18am)

Senator Piepkorn, moved to adopt the amendment #21.0984.01001 (9:40am)

Senator Roers, seconded the motion (9:40am)

Roll Call Vote

Motion Passes 6-0-0

Senator Piepkorn, moved DO PASS AS AMENDED (9:42am)

Senator J. Roers, seconded the motion (9:43am)

Motion Passes 5-1-0

Senator Roers will carry

Chairman Kreun, adjourned the hearing at 9:43am

Dave Owen, Committee Clerk

Roll Call Vote: Adopt Amendment 21.0984.01001	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Roll Call Vote: DO PASS AS AMENDED	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	N

PROPOSED AMENDMENTS TO SENATE BILL NO. 2263

Page 2, line 10, remove "The applicant shall serve the notice of filing of the application on a person that"

Page 2, remove line 11

Page 2, line 14, after "4." insert "Within thirty days following service of the notice of filing of a complete application by the commission, the applicant shall provide a copy of the commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested site or corridor. For purposes of this subsection, the owner of record means the owner designated to receive the property tax bill sent by the county treasurer.

5."

Page 2, line 16, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2263: Energy and Natural Resources Committee (Sen. Kreun, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2263 was placed on
the Sixth order on the calendar.

Page 2, line 10, remove "The applicant shall serve the notice of filing of the application on a person that"

Page 2, remove line 11

Page 2, line 14, after "4." insert "Within thirty days following service of the notice of filing of a complete application by the commission, the applicant shall provide a copy of the commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested site or corridor. For purposes of this subsection, the owner of record means the owner designated to receive the property tax bill sent by the county treasurer.

5."

Page 2, line 16, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Jordan Kannianen

District 4
8011 51st Street NW
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COMMITTEES:

Finance and Taxation
Political Subdivisions

Testimony on SB 2263

Senator Jordan Kannianen, District 4

Chairman Kreun and committee members,

SB 2263 would ensure that all landowners within an energy corridor would receive proper notification of a project development application that's been filed within that corridor.

In current law, the Public Service Commission "is to serve notice of filing of the application on such persons and agencies that the commission may deem appropriate", including publishing notice in each county paper that's necessary.

This bill would add the requirement that landowners within the corridor would be served notice by the applicant.

The signing of an easement and the application for development are different acts that can occur years apart. This bill would ensure that landowners who signed an easement within a corridor are made aware of the project details that are being proposed so they can respond if they choose.

The Wind Industry of North Dakota (WIND) suggested the language of the amendment, which adds clarity, and I ask for its adoption.

SB 2263 strengthens communication with landowners, and I ask for a Do Pass recommendation as amended.

Thank you.

21.0984.01001
Title.

Prepared by the Legislative Council staff for
Senator Kannianen

January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2263

Page 2, line 10, remove "The applicant shall serve the notice of filing of the application on a person that"

Page 2, remove line 11

Page 2, line 14, after "4." insert "Within thirty days following service of the notice of filing of a complete application by the commission, the applicant shall provide a copy of the commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested site or corridor. For purposes of this subsection, the owner of record means the owner designated to receive the property tax bill sent by the county treasurer."

5."

Page 2, line 16, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

Troy Coons
Northwest Landowners Association
Energy and Natural Resources Committee
Testimony for SB 2263
January 28, 2021



Good morning, Chairman Kreun and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

NWLA requests a “do pass” recommendation on SB 2263. Landowners are the hosts for most of the energy infrastructure cited by the PSC, whether it is a pipeline or a wind farm. Our organization is not and has never been opposed to energy development. Our goal is to work with the industry to find ways to conduct energy development in a responsible manner. One of ways to make sure that happens is to make sure that everyone is at the table when a landowner’s property is being discussed.

In our experience, many landowners are not aware of how the PSC’s siting proceedings affect their land and their rights. The mission of NWLA starts with education, and we work with members to help them better understand their rights, and how the PSC siting authority can affect them and their land. One important step in this education process is making sure that the landowners whose property is subject to the PSC citing proceedings are aware of the proceeding. This amendment simply requires that applicants for a siting permit from the PSC must send notice to the property owner of record for any property in the application.

We have spoken to some of the folks with industry, and our understanding is that they are generally in favor of this bill. The WIND group approached us with some proposed friendly amendments, and we agree with those amendments and the additional direction and clarity they provide.

It is critical that landowners are given notice of government decisions that affect their land. As the law stands now, no such notice of siting proceedings is given to the landowners impacted by the project most. We are simply asking to make sure those landowners are given notice so they have an opportunity to voice any concerns they might have, and for the PSC to get some of their local knowledge of the land with respect to facilities it is sitting on their land.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Coons", is located below the "Sincerely," text.

Troy Coons, Chairman
Northwest Landowners Association



Senate Energy & Natural Resources Committee

Thursday, January 28, 2021

Testimony in Support of House Bill No. 2263 (with amendments)

Chairman Kreun and Members of the Committee,

Wind Industry of North Dakota (WIND) supports SB 2263, which requires applicants of projects to provide notice to affected landowners. WIND is a coalition of wind industry members who believe North Dakota should harness its abundance of wind for the continued benefit of its communities and residents. WIND's members include American Clean Power Association (formerly the American Wind Energy Association), Apex Clean Energy, Capital Power, EDF Renewables, Enel North America, Invenergy, NextEra Energy Resources, and Orsted.

The goal of the bill, as introduced, is for the applicant of a project at the PSC to provide notice of the application to landowners within the site or corridor for the project. Although WIND member companies maintain an open line of communication with landowners within a project footprint, as well as the surrounding community—throughout the development, construction, and operation phases—we believe all parties stand to benefit from a more formal notification process, as outlined in SB 2263.

We have been in communication with the prime sponsor and the NW Landowners Association. We appreciate their collaboration with WIND in offering of the clarifying amendment, and we fully support the amendment. These amendments retain the core function of the bill—notice to affected landowners—and clarify a 30-day timeframe for providing the notice, clarify that notice by US Mail is appropriate (as opposed to a project having to “serve” notice), and clarify that owner of record is the person that receives the property tax bill.

WIND appreciates your consideration and respectfully urges a DO PASS recommendation with the amendment.



Wind Industry of North Dakota

Please feel free to contact any of us for continued discussion.

American Clean Power Association

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2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2263

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2263

3/11/2021 10:32 AM

Relating to notice requirements for an application for a certificate of site or corridor compatibility

10:32 AM

Chairman Porter opened the hearing on SB 2263. Present: Representatives Porter, Damschen, Anderson, Roers Jones, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, M Ruby, Zubke, Guggisberg, and Ista.

Discussion Topics:

- Developer notification
- PSC
- Proposed amendment

#7230, #7449 Sen Kannianen, District 4
#7407 Troy Coons, NW Area Landowners
#7411 Levi Andrist, Wind Industry of ND

No additional written testimony.

10:44 AM closed the hearing.

Kathleen Davis, Committee Clerk

Testimony on SB 2263

Senator Jordan Kannianen, District 4

Chairman Porter and committee members,

SB 2263 would ensure that all landowners within an energy corridor receive proper notification of a project development application that's been filed with the Public Service Commission.

Chapter 49-22, The Energy Conversion and Transmission Facility Siting Act, is under the jurisdiction of the PSC, and it deals specifically with energy conversion facilities (including wind farms) and transmission lines.

In current law, the Public Service Commission "is to serve notice of filing of the application on such persons and agencies that the commission may deem appropriate", including publishing notice in each necessary county paper.

This bill would add the requirement that landowners within the corridor would be served notice by the applicant.

The signing of an easement and the application for development are separate acts that can occur years apart. This bill would ensure that landowners who signed an easement within a corridor are made aware of the project details that are being proposed so they can provide public input if they choose.

SB 2263 strengthens communication with landowners, and I ask for a Do Pass recommendation.

Thank you.

21.0984.02001

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2263

Introduced by

Senators Kannianen, Schaible, Weber

Representatives D. Anderson, Fegley, Jones

1 A BILL for an Act to amend and reenact section 49-22-08 of the North Dakota Century Code,
2 relating to notice requirements for an application for a certificate of site or corridor compatibility;
3 and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Section 49-22-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-22-08. Application for a certificate - Notice of filing - Amendment - Designation of a**
8 **site or corridor.**

- 9 1. An application for a certificate must be in such form as the commission may prescribe,
10 containing the following information:
- 11 a. A description of the size and type of facility.
 - 12 b. A summary of any studies which have been made of the environmental impact of
13 the facility.
 - 14 c. A statement explaining the need for the facility.
 - 15 d. An identification of the location of the preferred site for any electric energy
16 conversion facility.
 - 17 e. An identification of the location of the preferred corridor for any electric
18 transmission facility.
 - 19 f. A description of the merits and detriments of any location identified and a
20 comprehensive analysis with supporting data showing the reasons why the
21 preferred location is best suited for the facility.
 - 22 g. A description of mitigative measures that will be taken to minimize all foreseen
23 adverse impacts resulting from the location, construction, and operation of the
24 proposed facility.

- 1 h. An evaluation of the proposed site or corridor with regard to the applicable
2 considerations set out in section 49-22-09 and the criteria established pursuant to
3 section 49-22-05.1.
- 4 i. Such other information as the applicant may consider relevant or the commission
5 may require.
- 6 2. After determining that the application is complete, the commission shall serve a notice
7 of filing of the application on such persons and agencies that the commission may
8 deem appropriate and shall publish a notice of filing of the application in the official
9 newspaper of each county in which any portion of the site or corridor is proposed to be
10 located.
- 11 3. A copy of the application shall be furnished to any person or agency, upon request to
12 the commission within thirty days of either service or publication of the notice of filing.
- 13 4. Within thirty days following service of the notice of filing of a complete application by
14 the commission, the applicant shall provide a copy of the commission's notice of filing
15 of the application by first-class mail to the owner of record of any land located within
16 the requested site or corridor. For purposes of this subsection, the owner of record
17 means the owner ~~designated~~ identified by the county treasurer to receive the ~~property~~
18 ~~tax bill sent by the county treasurer~~ real estate tax statement.
- 19 5. An application for an amendment of a certificate shall be in such form and contain
20 such information as the commission shall prescribe.
- 21 5.6. The commission may designate a site or corridor for a proposed facility following the
22 study and hearings provided for in this chapter. Any designation shall be made in
23 accordance with the evidence presented at the hearings, an evaluation of the
24 information provided in the application, the criteria established pursuant to section
25 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with
26 reasons for the designation, and shall be made in a timely manner no later than six
27 months after the filing of a completed application for a certificate of site compatibility or
28 no later than three months after the filing of a completed application for a certificate of
29 corridor compatibility. The time for designation of a site or corridor may be extended by
30 the commission for just cause. The failure of the commission to act within the time
31 limits provided in this section shall not operate to divest the commission of jurisdiction

1 in any certification proceeding. The commission shall indicate the reasons for any
2 refusal of designation. Upon designation of a site or corridor, the commission shall
3 issue a certificate of site compatibility or a certificate of corridor compatibility with such
4 terms, conditions, or modifications deemed necessary. The commission may not
5 condition the issuance of a certificate or permit on the applicant providing a mitigation
6 payment assessed or requested by another state agency or entity to offset a negative
7 impact on wildlife habitat.

8 **SECTION 2. APPLICATION.** This Act applies to a siting application filed after July 31, 2021.

Troy Coons
Northwest Landowners Association
Energy and Natural Resources Committee
Testimony for SB 2263
March 4, 2021



Good morning Chairman Porter and members of the committee, thank you for taking my testimony into consideration today. My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

NWLA requests a “do pass” recommendation on SB 2263 and we are in favor of the proposed amendments. Landowners are the hosts for most of the energy infrastructure cited by the PSC, whether it is a pipeline or a wind farm. Our organization is not and has never been opposed to energy development. Our goal is to work with the industry to find ways to conduct energy development in a responsible manner. One of ways to make sure that happens is to make sure that everyone is at the table when a landowner’s property is being discussed.

In our experience, many landowners are not aware of how the PSC’s siting proceedings affect their land and their rights. The mission of NWLA starts with education, and we work with members to help them better understand their rights, and how the PSC siting authority can affect them and their land. One important step in this education process is making sure that the landowners whose property is subject to the PSC citing proceedings are aware of the proceeding. This amendment simply requires that applicants for a siting permit from the PSC must send notice to the property owner of record for any property in the application. We have spoken to some of the folks with industry, and our understanding is that they are generally in favor of this bill. The WIND group approached us with some proposed friendly amendments, and we agree with those amendments and the additional direction and clarity they provide.

It is critical that landowners are given notice of government decisions that affect their land. As the law stands now, no such notice of siting proceedings is given to the landowners impacted by the project most. We are simply asking to make sure those landowners are given notice so they have an opportunity to voice any concerns they might have, and for the PSC to get some of their local knowledge of the land with respect to facilities it is sitting on their land.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Coons".

Troy Coons, Chairman
Northwest Landowners Association



House Energy & Natural Resources Committee

Thursday, March 4, 2021

Testimony in Support of House Bill No. 2263

Chairman Porter and Members of the Committee,

Wind Industry of North Dakota (WIND) supports SB 2263, which requires applicants of projects to provide notice to affected landowners. WIND is a coalition of wind industry members who believe North Dakota should harness its abundance of wind for the continued benefit of its communities and residents. WIND's members include American Clean Power Association (formerly the American Wind Energy Association), Apex Clean Energy, Capital Power, EDF Renewables, Enel North America, Invenergy, NextEra Energy Resources, and Orsted.

The goal of the bill is for the applicant of a project at the PSC to provide notice of the application to landowners within the site or corridor for the project. We'd respectfully request two friendly and technical, clarifying amendments, which are attached. The first is to clarify who is considered the owner of property to which notice must be given. This clarification simply harmonizes the language with the property tax code. The second technical amendment makes it explicitly clear that this new notice requirement is applicable only to siting applications that have been submitted after the effective date of the legislation, August 1, 2021. There could be instances in which a project is in the middle of a siting process when the new notice requirement would become effective, and this amendment makes clear that only for applications filed after August 1, 2021, will this new notice requirement be applied.

WIND appreciates your consideration and respectfully urges a DO PASS recommendation with this amendment.



Wind Industry of North Dakota

Please feel free to contact any of us for continued discussion.

American Clean Power Association

Jeff Danielson

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Apex Clean Energy

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Capital Power

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Orsted

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PROPOSED AMENDMENT TO SENATE BILL NO. 2263

By Wind Industry of ND

Page 2, line 17, after “owner” insert “identified by the county treasurer”, remove “designated”, after the second “the” insert “real estate tax statement”, and remove “property tax bill sent by the county”

Page 2, line 18 remove “treasurer”

Page 3, after line 7 insert a new section:

SECTION 2. This Act applies to siting applications filed after the August 1, 2021.

Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2263

3/11/2021

11:14 AM

Relating to notice requirements for an application for a certificate of site or corridor compatibility

11:14 AM

Chairman Porter opened the hearing on SB 2263. Present: Representatives Porter, Damschen, Anderson, Roers Jones, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Zubke, Guggisberg, and Ista. Absent: Rep M Ruby

Discussion topics:

Committee work

Rep Zubke moved to adopt the amendment 21.0984.02002, seconded by Rep Guggisberg. Voice vote. Motion carried.

Rep Zubke moved a Do Pass as Amended, seconded by Rep Ista.

Representatives	Vote
Representative Todd Porter	Y
Representative Chuck Damschen	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Bill Devlin	Y
Representative Ron Guggisberg	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative George Keiser	Y
Representative Mike Lefor	Y
Representative Andrew Marschall	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	AB
Representative Denton Zubke	Y

Motion carried. 13 – 0 – 1 Rep Zubke is carrier.

11:18 AM closed the hearing.

Kathleen Davis, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2263

Page 1, line 2, after "compatibility" insert "; and to provide for application"

Page 2, line 17, replace "designated" with "identified by the county treasurer"

Page 2, line 17, remove "property tax bill sent by the county"

Page 2, line 18, replace "treasurer" with "real estate tax statement"

Page 3, after line 7, insert:

"SECTION 2. APPLICATION. This Act applies to a siting application filed after
August 31, 2021."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2263, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2263 was placed on the Sixth order on the calendar.

Page 1, line 2, after "compatibility" insert "; and to provide for application"

Page 2, line 17, replace "designated" with "identified by the county treasurer"

Page 2, line 17, remove "property tax bill sent by the county"

Page 2, line 18, replace "treasurer" with "real estate tax statement"

Page 3, after line 7, insert:

"SECTION 2. APPLICATION. This Act applies to a siting application filed after August 31, 2021."

Renumber accordingly