

Introduced by

Representatives Keiser, Porter

Senator Lyson

1 A BILL for an Act to create and enact a new subsection to section 49-22-03 and a section to  
2 chapter 49-22 of the North Dakota Century Code, relating to definitions and route variances for  
3 gas and liquid transmission lines; to amend and reenact subsections 4 and 10 of section  
4 49-22-03 and sections 49-22-07.1 and 49-22-13 of the North Dakota Century Code, relating to  
5 definitions and the procedure for siting a gas or liquid transmission line; and to declare an  
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Subsections 4 and 10 of section 49-22-03 of the North Dakota  
9 Century Code are amended and reenacted as follows:

10 4. "Corridor" means the ~~general location of~~ strip of land proposed and surveyed, as  
11 applicable, by an applicant in which a designated route may be established for a  
12 transmission facility.

13 10. "Route" means the ~~specific~~ location of a transmission facility within a ~~designated~~  
14 corridor.

15 **SECTION 2.** A new subsection to section 49-22-03 of the North Dakota Century Code is  
16 created and enacted as follows:

17 "Intervenor" means a person, other than the applicant to a pending proceeding, who  
18 becomes a party under rules adopted by the commission. The commission's act of  
19 permitting a party to join a pending proceeding as an intervenor shall not be construed  
20 as an acknowledgment or finding by the commission that the intervenor has, is, or may  
21 suffer damages by the issuance of any order in the proceeding.

22 **SECTION 3. AMENDMENT.** Section 49-22-07.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

1       **49-22-07.1. Letter of intent prior to construction.**

2       Every utility which plans to construct any energy conversion or transmission facility within  
3 this state shall submit a letter of intent to the commission in the form and manner prescribed by  
4 the commission. A utility seeking to construct an energy conversion or transmission facility must  
5 submit its letter of intent thirty days before filing an application for a certificate of corridor  
6 compatibility or a route permit.

7       **SECTION 4. AMENDMENT.** Section 49-22-13 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9       **49-22-13. Public hearings - Notice.**

- 10       1. The commission shall hold a public hearing in each county in which any portion of a  
11 site, corridor, or route is proposed to be located in an application for a certificate or a  
12 permit. At the public hearing, any person may present ~~testimony or evidence~~ oral or  
13 written comments relating to the information provided in the application, the criteria  
14 developed pursuant to ~~under~~ section 49-22-05.1, and the factors to be considered  
15 pursuant to ~~under~~ section 49-22-09. The applicant or an intervenor may present  
16 testimony or evidence, or both, and only this evidence is part of the official record used  
17 by the commission to make a decision. ~~When~~ If more than one county is involved, the  
18 commission may hold a consolidated hearing in one or more of the affected counties.  
19 A hearing for any county ~~shall~~ may not be consolidated if five or more affected  
20 landowners in ~~such a~~ county file a petition with the commission within ten days of the  
21 publication of the notice of hearing.
- 22       2. The commission ~~shall~~ may not be required to hold a public hearing on an application  
23 for the transfer of a certificate or a permit, or an application for a waiver of procedures  
24 and time schedules, but shall publish a notice of opportunity for a public hearing in the  
25 official newspaper of each county in which any portion of the facility or the proposed  
26 site, corridor, or route is located. If requested by ~~any interested person~~ an intervenor  
27 and good cause has been shown ~~therefor~~ for a hearing, the commission shall hold a  
28 public hearing. ~~When~~ If more than one county is involved, the commission may hold a  
29 consolidated hearing in one or more of the affected counties.
- 30       3. ~~One~~ The commission shall hold one or more public hearings ~~shall be held~~ at a location  
31 or locations determined by the commission concerning the following matters:

- 1           a. A substantial or material change in the criteria established pursuant to under  
2           section 49-22-05.1.
- 3           b. A substantial or material change in the rules adopted pursuant to under section  
4           49-22-18.
- 5           c. The revocation or suspension of a certificate or permit.
- 6           d. In this subsection, a "substantial or material change" means any alteration of a  
7           project which has a significant impact on any finding of fact, conclusion of law, or  
8           term or condition of the project's permit and which affects one or more of the  
9           criteria used by the commission to guide and govern the preparation of the  
10          inventory of exclusion and avoidance areas or the corridor and route suitability  
11          evaluation process.
- 12          4. ~~Notice~~ The commission shall give notice of a public hearing shall be given by the  
13          commission by service on such persons and agencies a person or agency that the  
14          commission may deem appropriate and The commission shall give notice twice by  
15          publication, once at least twenty days prior to such before a hearing and a second time  
16          within twenty days prior to such before a hearing. ~~Notice~~ The applicant shall pay for the  
17          cost of notice of a public hearing and notice of opportunity for a public hearing on an  
18          application for a certificate, a permit, a transfer, or a waiver ~~shall be given at the~~  
19          ~~expense of the applicant.~~ In an emergency the commission, ~~in its discretion,~~ may  
20          notice a hearing upon less than twenty days.
- 21          5. To be an intervenor at a hearing for a gas or liquid transmission line, a person shall file  
22          a petition to intervene in compliance with rules adopted by the commission. The  
23          petition for intervenor status shall affirm that the petitioner:
- 24               a. Has a vested interest in real property within the proposed corridor;
- 25               b. Received notice by service from the commission;
- 26               c. Is a governmental entity with jurisdiction over property within the proposed  
27               corridor; or
- 28               d. Any other individual or governmental entity that files notice with the commission  
29               and receives permission from the commission to provide certain testimony or  
30               evidence as to a particular factor under section 49-22-09 or a criteria developed

1                   under section 49-22-05.1 because of a particular and substantial interest of that  
2                   individual or governmental entity.

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

5           **Route variance for gas or liquid transmission line.**

6           1. Without any action by the commission, a utility may adjust the location of a gas or  
7           liquid transmission line within the approved corridor width, as specified in a route  
8           permit and a certificate of corridor compatibility if:

9           a. The activities will not affect a known exclusion or avoidance area;

10          b. Directly affected landowners do not oppose the variance;

11          c. The utility will comply with all applicable conditions and protections in siting laws  
12          and rules and commission orders previously issued for any part of the  
13          transmission facility; and

14          d. Upon completion of the project, the utility reports any route changes authorized  
15          under this subsection in its final "as built" drawings of the transmission line.

16          2. For a good and just cause, a utility may apply for a route variance to relocate its gas or  
17          transmission line outside the permitted corridor width specified in the route permit and  
18          certificate of corridor compatibility. If the applicant has filed an application for route  
19          variance and certifies in writing the information enumerated in this subsection, the  
20          secretary of the commission shall approve the variance within fifteen days of such  
21          filing. The applicant shall certify the following:

22          a. The activities will not affect a known exclusion or avoidance area unless the  
23          activities affect an avoidance area for which the utility has appropriate written  
24          approval to use and the written approval is filed with the application;

25          b. The route variance located is within the study area used to determine the  
26          approved corridor width and there are no known additional adverse factors under  
27          section 40-22-09 other than those considered by the commission for the initial  
28          designated route;

29          c. There is a special condition that demonstrates the existence of good cause;

30          d. Directly affected landowners do not oppose the variance;

- 1           e. All environmental clearances have been obtained and the clearances are filed  
2           with the application;
- 3           f. A map, showing the location of the gas or liquid transmission line within the  
4           approved and permitted corridor width and the proposed route adjustment, is filed  
5           with the application; and
- 6           g. The utility will comply with all applicable conditions and protections in siting laws  
7           and rules and commission orders previously issued for any part of the  
8           transmission facility.
- 9           3. If the secretary of the commission does not take action with respect to the applicant's  
10          application for route variance within fifteen days of the applicant's filing, the route  
11          variance is deemed approved by the secretary unless:
- 12          a. The applicant requests an extension of time to meet a condition in subsection 2;  
13          or
- 14          b. The secretary of the commission requests an extension of time to request  
15          additional information. The secretary shall grant additional time as deemed  
16          necessary for the applicant to provide the requested information or to meet one  
17          of the conditions as identified by the secretary.
- 18          4. If the applicant is unable to resolve any of the conditions raised by the secretary, then  
19          the secretary may schedule an informal hearing. The notice of an informal hearing  
20          shall be given by the commission by service on the applicant and other parties of  
21          record, and any other person that the commission deems appropriate. The informal  
22          hearing shall be scheduled twenty days after the notice is served, and shall be limited  
23          to the condition necessary for approval and to testimony and evidence from the  
24          applicant or an intervenor who has a substantial interest in the particular condition, or  
25          both.

26          **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.