



KNOLL LEIBEL ^{LLP}
ATTORNEYS AT LAW

June 23, 2023

VIA U.S. & E-MAIL ONLY: ndpsc@nd.gov

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

RE: In the Matter of the Application of SCS Carbon Transport LLC for
Certificate of Corridor Compatibility and Route Permit for the Midwest
Carbon Express
Case No.: PU-22-391

Dear Mr. Kahl:

Enclosed for filing please find the following documents:

1. Response to Declare Emmons County and Burleigh County Ordinances
Superseded and Preempted;
2. Declaration of Service.

This Response is being filed with the North Dakota Public Service Commission (hereinafter "NDPSC") on behalf and at the request of Intervenors represented by Knoll Leibel LLP. Intervenors have a direct and substantial interest in these proceedings, as well as legal property rights which may be substantially affected by NDPSC's findings and conclusions.

Sincerely,

KNOLL LEIBEL LLP

Steven J. Leibel
steve@bismarck-attorneys.com

SJL: rmo

Enclosures

Steven J. Leibel, Partner

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345 PU-22-391 Filed 06/23/2023 Pages: 46

Response to 1 June Motion to Declare Emmons and Burleigh Cnty Ordinances Superseded and Preempted
Knoll Leibel, LLP, on behalf and at the request of Intervenors
Steven Leibel, Knoll Leibel LLP

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION
OF SCS CARBON TRANSPORT LLC FOR
A CERTIFICATE OF CORRIDOR
COMPATIBILITY AND ROUTE PERMIT
FOR THE MIDWEST CARBON EXPRESS
PROJECT IN BURLEIGH, CASS, DICKEY,
EMMONS, LOGAN, MCINTOSH,
MORTON, OLIVER, RICHLAND AND
SARGENT COUNTIES, NORTH DAKOTA

Case No. PU-22-391

**RESPONSE TO MOTION TO
DECLARE EMMONS COUNTY
AND BURLEIGH COUNTY
ORDINANCES SUPERSEDED
AND PREEMPTED**

Intervenors ¹ represented by the undersigned counsel (hereinafter “Intervenors”), hereby respectfully submits this, the Response to Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted. In support of this response, Intervenors state:

1. SCS Carbon Transport LLC has provided the PSC with the factual equivalent of an eighth grade science project and on this basis, asks the PSC to assume the role of a judiciary and take power from local North Dakota governments. There is a reason this determination should be left to the judicial branch of government, where the parties opposing SCS’s motion are entitled to due process provided by the North Dakota Rules of Civil Procedure, including a right to discovery, a right to a law trained judge deciding issues of law, and a right to a trial by jury on issues of fact. In this context, its

¹ See Order Granting Petition for Intervention (Doc. 82, 83, 168, 204) and Amended Order Granting Petition for Intervention (Doc. 159).

motion is nothing more than SCS hiding in the bathrooms again. As such, the motion should be denied.

ARGUMENT AND AUTHORITIES

2. SCS's brief would be laughed out of a North Dakota court. It was filed a few hours before the final evidentiary hearing. It does not rely upon any evidence that is reliable—much less admissible. It ignores the words of the statute it cites. The PSC should reject the findings requested by SCS because they are arbitrary and exceed the scope of the Commission's role.

A. SCS has not offered any reliable evidence in support of its motion.

3. SCS does not offer any testimony or evidence in support of its motion. In fact, the entire factual basis for its motion are two (2) diagrams pasted into the brief. There is no foundation for these diagrams, including evidence of when they were created, how they were created, or who created them. The scale is not identified. No witness is accountable for the truthfulness of the information depicted in the pictures, no witness has explained the methodology behind the creation of the pictures, and no witness has admitted to creating the pictures. Intervenors had no opportunity to conduct any discovery regarding the pictures, and Intervenors could not cross-examine any witness about any of the diagrams or to determine whether the methodology is reliable. For this reason, Intervenors object to the pictures pasted in SCS's brief based upon a lack of foundation, hearsay, and as unreliable opinion testimony. *Compare* N.D.A.C. § 69-02-05-01 (evidence to PSC is admissible in accordance with the North Dakota Rules of Evidence, and waivers of the rules of evidence may be made only when necessary to ascertain the

substantial rights of a party); *with* N.D.R.Evid. 602 (witness must testify on personal knowledge); 701 and 702 (testimony of witnesses that are not based upon personal knowledge); 801 (prohibition against hearsay); 901 (evidence must be sufficiently authenticated to prove what the proponent claims).

4. The reason a North Dakota trial court would reject this kind of conclusory diagram is that neither the Intervenors nor the county officials nor the public nor the Commission has any rational basis to determine whether the diagrams depict what SCS says it depicts. As such, SCS's motion should be denied out of hand. N.D.C.C. § 28-32-46 (a district court reviewing the findings of the Commission must affirm a Commission order unless "[t]he findings of fact are not supported by a preponderance of the evidence."); *Great N. Ry. Co. v. McDonnell*, 45 N.W.2d 721 (N.D. 1950) ("All material findings of the Public Service Commission must find substantial support in the evidence in the record, and if the evidence is either lacking or of such uncertain and speculative nature that a finding cannot be made thereon, the order must be reversed...A finding without evidence to support it is arbitrary and baseless.") (internal quotations omitted) *citing West Ohio Gas Company v. Public Utilities Commission*, 42 Fed2d 899; *Interstate Commerce Commission v. L. & N. Ry. Co.*, 227 U.S. 88.

B. SCS's request that the Commission determine questions of preemption is an effort to avoid judicial review.

5. SCS next asks the Commission to put on the black robes and determine that ordinances of local county commissions are preempted by a 2017 Century Code amendment. This is another effort by SCS to hide in the bathrooms. For example, SCS

claims to know what the legislature intended by the 2017 amendment. However, it does not mention anywhere that the legislature keeps records.

6. In this case, the legislative history for the 2017 House amendment, HB 1144, contains minutes from the committees. This history also contains written testimony, including testimony from the General Counsel for the Public Service Commission, Illona Jeffcoat-Sacco. See Legislative History, attached as Ex. 1². As testified by the PSC's General Counsel, the intention of HB 1144 was to separate electric generation and transmission siting requirements from gas or liquid refining and transmission. See Ex. 1, March 10, 2017 Testimony of Illona Jeffcoat-Sacco. In fact, Ms. Jeffcoat-Sacco testified that the intention of HB 1144 was not to make any substantive changes in the siting process or standards for gas or liquid refining and transmission facilities:

Engrossed HB 1144 retains this policy statement for siting electric generation and transmission, but not for siting gas or liquid refining and transmission. Instead, the bill creates new section 49-22.1-01.1, which is a specific list of mandatory duties imposed on the Commission.

We have several concerns with this approach. First of all, imposing these mandatory duties on the Commission unnecessarily subjects Commission decisions to generalized challenges rather than focusing on specific applicable siting criteria. **Secondly, this approach deviates from the original objective of House Bill 1144 to separate the two siting categories without making substantive changes in the siting process or standards for either industry. It is our understanding that neither this result was intended, and could cause in interpretation problems going forward.**

² The full legislative history includes documents that do not reflect upon the statements of the legislators that passed the bill. The attached exhibit includes the minutes of relevant committee meetings as well as the testimony of PSC's General Counsel cited herein. The full history can be found at https://www.ndlegis.gov/research-center/history?session_id=28740&chamber%5B622%5D=622&bill_number=&page=1

Ex. 1, March 10, 2017 Testimony of Illona Jeffcoat-Sacco (emphasis added). That same day, the Senate Energy and Natural Resources Committee adopted the changes requested by Ms. Jeffcoat-Sacco—and no others. *See* Ex. 1, March 10, 2017 Proposed Amendments to Engrossed House Bill No. 1144.

7. The 2017 Senate amendment, SB 2286, also has a lengthy legislative history. Intervenors attach as Ex. 2 copies of the pertinent legislative history file for this bill³. As demonstrated in the legislative history, the legislators were adamant that “the PSC would not overstep the authority of our local entities.” *See* Ex. 2, 3/9/2017 minutes (Sen. Schaible). In fact, Todd Kranda, the lobbyist for the North Dakota Petroleum Council, assured the Energy and Natural Resources Committee that the PSC always required compliance with the local zoning regulations:

If you look at my handout is a certification by the PSC, deals with the DAPL corridor findings and certification letter. The certification letter says, and the PSC has this for each applicant, says, “company agrees to comply with all rules and regulations of other agencies having jurisdiction, including all city, township, and county zoning regulations.” So the PSC is the one telling us you MUST comply and the locals aren’t losing any control. We’re not trying to take away from what they do and what we have to comply with. We’re saying it’s all done at the PSC level and this one order will define everybody complying with that.

See Ex. 2, 3/9/2017 minutes (Todd Kranda). During this same dialogue with Attorney Kranda—and in response to a statement that this amendment would allow the PSC to automatically preempt any local land use or zoning ordinance—Chairman Porter

³ Intervenors attach only the minutes from the committee meetings contained in the legislative history because the full history is large. The full history for SB 2286 includes written testimony submitted by the interested persons, drafts of various amendments, and prior PSC permit approvals. It is available at https://www.ndlegis.gov/research-center/history?session_id=28740&chamber%5B623%5D=623&bill_number=&page=2

discussed the exact language SCS cites in its brief. As explained by Chairman Porter, the process involves two steps:

...I think it would be helpful if you broke it down into Step 1, certificate of site capability which may not supersede or preempt, and then Step 2 the permit for construction which has to because all the other stuff has been looked at during the certification process. I think so we keep it straight, what we're performing in each of the processes, even inside of this the amendment may not be correct. That each of those may need to be broken down into an A-B-C.

See id (Chairman Porter). In this context, SCS's arguments about the legislature's intent are not consistent with the actual legislative intent.

8. The statute supports the interpretation of Chairman Porter and PSC General Counsel Jeffcoat-Sacco's testimony. Under Chapter 49-22.1, the issuance of a certificate of site compatibility may be granted following consideration of a number of statutory factors. *See* N.D.C.C. § 49-22.1-06; § 49-22.1-09 (listing factors)(emphasis added). Within two (2) years of issuance of a certificate, an application for a route permit must be filed. *See* N.D.C.C. § 49-22.1-06 (emphasis added). The Code allows an applicant to combine an application for a certificate of corridor compatibility and a route permit, which is what SCS did here. *See* N.D.C.C. § 49-22.1-08; Consolidated Application for a Certificate of Corridor Compatibility and Route Permit [Docs. 1 and 95].

9. However, as Chairman Porter points out, the distinction between a certificate and a permit remains important. N.D.C.C. § 49-22.1-13(2)(b)—the section SCS relies on—provides that “[e]xcept as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations.” (emphasis added).

However, when it comes to an application for a certificate of corridor compatibility, the statute uses different language. *C.f.* 49-22.1-01(1)(defining a certificate to mean a certificate of corridor compatibility).

10. When an application for a certificate is filed, the Commission has the obligation to notify townships, cities, and counties of the filing of the application. N.D.C.C. § 49-22.1-13(2)(d). Thereafter, the political subdivision must provide a listing of all local requirements “at least ten (10) days before the hearing or the requirements are superseded and preempted.” N.D.C.C. § 49-22.1-13(2)(d)(emphasis added). In fact, under subsection (e), an applicant must comply with all local requirements provided to the commission “which are not otherwise superseded by the commission.” N.D.C.C. § 49-22.1-13(2)(e). In this context, the only way to read this statute and give effect to all of the language of § 49-22.1-13 is that the 2017 amendments made no substantive changes. As the PSC is aware, Emmons and Burleigh County filed their ordinances long before the final Bismarck hearing. [Doc. 49](Emmons County); [Doc. 161](Burleigh County).

11. SCS next argues that the PSC—an executive branch agency formed under Article V of the North Dakota constitution—should exercise judicial powers and determine that county ordinances promulgated by two local North Dakota legislatures are preempted by Federal law. *See* N.D.C.C. § 49-01-02; North Dakota Constitution, Art. V (executive branch). This exercise of judicial power to evaluate the ordinances of the local jurisdictions is not what the legislature intended. *See* Ex. 2. However, if the Commission chooses to put on the black robes, it should be aware that SCS takes some liberties with the cases it cites.

12. First, SCS takes great pains to emphasize that the ordinances only pertain to “safety.” This is an intentional characterization. While the 8th Circuit has held that PHMSA regulations pre-empt state efforts to regulate pipeline safety, state regulation of “distinct activities” is permissible where the state regulation does not conflict with the federal statute. For example, in *South Dakota Public Utilities Com. v. Fed. Energy Regulatory Com.*, 690 F.2d 674 (8th Cir. 1984), the Wisconsin Public Service Commission denied a company a permit to build a nuclear power plant despite that company having previously received a permit from the federal Nuclear Regulatory Commission. One of the arguments on appeal to the 8th Circuit was the Wisconsin Public Service Commission’s ability to deny the permit was preempted by Nuclear Regulatory Commission. *Id.* at 678. The 8th Circuit rejected that argument where “the Wisconsin Commission’s denial turned on lack of need for the nuclear plant, economic disbenefits, and superiority of alternative means of generation.” *Id.*; see also *ANR Pipeline Co. v. Iowa State Commerce Com.*, 828 F.2d 465, 471 (8th Cir. 1987).


13. In this case, safety was admittedly a concern for the non-SCS witnesses who testified live or via written testimony—after all, this is a 24” pressurized hazardous pipeline that has the potential to turn anyone within 1,000’ of a rupture into a frosty regret. However, equally important in Burleigh County was the fact that SCS chose to route the proposed pipeline through the heart of Bismarck’s target growth area and some of the most valuable real estate West of the Red River Valley. The Commission has received testimony from Burleigh County developers, realtors, elected officials, school

board members, farmers, ranchers, and other residents. The monetary impact to the real property, including the government's tax revenue, was always at the forefront.

14. As expressed by Commissioner Bitner, Mr. Wachter, Mr. Moldenhauer, and many others, the fundamental problem is that SCS's proposed carbon dioxide pipeline location will decapitate property values along the route—PHMSA can't preempt common sense. The suggestion that a Burleigh County buyer, given the choice between two otherwise equal pieces of property, will decline to locate his or her residence near a 24" hazardous pipeline is hardly unreasonable. The testimony was replete on this issue. Similarly, Emmons County residents and a commissioner also offered testimony to the PSC. During this testimony, the economic impact was discussed repeatedly, including the effect on drain tiling, livestock, and crop production. In this context, these local ordinances preserve the economic vitality and value of local property within the jurisdiction of these local legislative bodies. This is permissible.

15. Because SCS has failed to offer any evidence in support of its burden of proof—much less any persuasive or admissible evidence—its motion should be denied.

Respectfully submitted this 23rd day of June, 2023.



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2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

HB 1144
1/12/2017
26841

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to gas and liquid energy conversion, gas and liquid transmission facility siting and combining application;

relating to energy conversion and transmission facility siting;

relating to energy conversion short title, energy conversion statement of policy, and route adjustment before or during construction for gas or liquid transmission line;

to provide a continuing appropriation; and to provide a penalty

Minutes:

Attachments #1 #2 #3

Chairman Porter: Called the committee to order.

1:44

Rep. Keiser: Presented HB1144. As a preface this committee significant work over the last 4-5 sessions relative to deciding where you place a transmission or pipeline. You go thru PSC, etc, to get approval. There are some issues common whether it's an electrical generated or pipeline. Our technologies have developed some differences. This bill takes the section of the code which had been basically combined and starts to develop separate subdivisions for electric transmission versus oil and gas transmission lines. It provides a lot more flexibility. It's become more difficult to write statutes that some other compromises for one industry over the other. We want to be careful to not have a negative impact on one industry. Does reduce unintentional consequences. This bill has a fiscal note and shows no impact due to the passage of this bill. We'll be offering a small very technical amendment to the bill.

4:40

Dale Niezwaag: Basic Electric Power Cooperative. This bill will do 3 things. Attachments #1-#2.

- 1) separate oil and gas siting from the electric siting. Facilities and transmissions lines are both in that.
- 2) To eliminate the requirement for both a corridor and a route hearing
- 3) Removes the requirement for a 10 year plan for what your future facilities are.

I don't think it adds it additional work to the PSC and just makes things cleaner.

Rep. Keiser: On the combined hearing, does the PSC maintain the authority to say no, we want 2 hearings?

Dale Niezwaag: I believe so, but that would be a better response for the commission.

10:37

Rep. Lefor: Corridor you said is 1-6 miles, and the route is the actual physical pipeline location? Most of those are put together at one time?

Dale Niezwaag: Correct. As a utility we start out with a corridor study and determine where our exclusion and avoidance areas.

12:00

Rep. Heinert: How far out do you reach (inaudible, did not have his mic on)

Dale Niezwaag: I don't know that I have a good answer for that. PSC could answer for that. When we have public hearings, we will post in all local newspapers. We try to get everyone in the county that's affected in the county that we're going into we'll have notices about the hearings, multiple locations on lines on that. Exactly how far out I don't have an answer.

Rep. Heinert: (inaudible – did not have his mic on)

Dale Niezwaag: Yes. We're not eliminating the corridor study, we're combining them in one hearing.

Rep. Heinert: Then the landowners within the corridor are not (inaudible- no mic on)

Dale Niezwaag: True but then they would be. I can follow up on who we contact and how wide of an area we go if the PSC can't handle that I can find that out.

Rep. Keiser: Can you do just a route study without the corridor?

Dale Niezwaag: I don't believe so. You have to do a combination.

Rep. Keiser: right now you have to do 2. So you're advocating combining the 2 into one hearing but you are in effect doing both, never eliminate the corridor.

Dale Niezwaag: correct

Chairman Porter: inside of the bill, do you have the technical amendment?

14:56

Dale Niezwaag: Inside the bill we do have one small error, Page 2, line 5 Attachment #2.

Chairman Porter: There isn't any continuing appropriation authority inside of this bill that you know of?

Dale Niezwaag: We offer not new changes other than the 3 I described.

Chairman Porter: Explain to us Section 28 of the bill.

Dale Niezwaag: I don't have a good answer for you.

17:30

Todd Pranda, attorney from Mandan, lobbyist from ND Petroleum Council. ATTACHMENT 3. We do urge your support.

Chairman Porter: Why would be getting rid of the statement of policy?

Todd Pranda: I honestly don't know. I think it's something the legislative council did.

26:13

Carlee McLeod: (did not sign Registration) President of the Utilities Shareholders of ND representing of shareholders of the investor and utilities, MDU, Otter Tail and Xel. They support this bill.

27:10

Zach Smith: ND Association of Rural Electric Cooperatives. Time for this change. In favor.

Al Christianson: Great River Energy. In support.

28:25

Julie Fedorachek, PSC member. This really reflects how it's being done today. Doesn't make sense to go out once and talk about the corridor, go out again and talk about the route. We would be in support of the policy back as a one section.

Rep. Lefor: Can you explain the 10 year plan.

Julie Fedorachek: 10 year plans are really are something the commission has been asking for, for a number of years. They have good intent, let's ask the companies what their plans are in our state for the next 10 years. Some are more willing, some are not willing to say when they're working on or looking at a project. It's public information, posted on our website and now their competitors can go on the website

32:27

Rep. Heinert: (inaudible, no mic on) Question about policy, how about the short title? Do you utilize that at all.

Julie Fedorachek: That is not something I have used. Our attorney might have different feelings. I think the Statement of Policy is the piece we'd like to retain if possible.

Chairman Porter: Further testimony? Opposition? Seeing none we will close the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1144
1/13/2017
26881

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to gas and liquid energy conversion, gas and liquid transmission facility siting and combining application;
relating to energy conversion and transmission facility siting;
relating to energy conversion short title, energy conversion statement of policy, and route adjustment before or during construction for gas or liquid transmission line;
to provide a continuing appropriation; and to provide a penalty

Minutes:

Proposed Amendment #1

Chairman Porter: Called the committee to order. The amendment fixes two things.
(1) fixes the typo on Page 2 Line 5 instead of being 49-22.1-08 it makes it 49.22.1-12;
(2) it removes 49-22.02 and then it puts very similar into the new section of the new portion. Both the electrical and transmission section have the language and the oil and gas have the language. They are a little different. The PSC wants this language to remain in the law.

Rep. Keiser: Moved adoption of the amendment.

Rep. Ruby: Second.

Chairman Porter: no discussion. Voice vote, all present in favor. Motion carries. We have an amended bill in front of us.

Rep. Keiser: Moved Do Pass as amended on HB 1144.

Rep. Ruby: Second.

Chairman Porter: Any discussion? None.

Roll call vote: 13 yes 0 no 1 absent Motion carries. Rep. Keiser is the carrier.

January 16, 2017

1/16/17 DA

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1144

Page 1, line 1, after "enact" insert "section 49-22-08.2 and"

Page 1, line 1, remove "and section 49-22-08.2"

Page 1, line 3, after "siting" insert a comma

Page 1, line 5, after the third comma insert "and"

Page 1, line 9, remove the comma

Page 1, line 10, remove "49-22-02,"

Page 1, line 11, remove ", energy conversion statement of policy,"

Page 2, line 5, replace "49-22.1-08" with "49-22.1-12"

Page 23, after line 12, insert:

"49-22.1-01.1. Public service commission duties.

The public service commission shall:

1. Ensure the location, construction, and operation of energy conversion and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state.
2. Provide an energy conversion facility or transmission facility may not be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter.
3. Site energy conversion facilities and route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.
4. Ensure chosen sites and routes will minimize adverse human and environmental impact while maintaining system reliability and integrity.
5. Ensure energy needs are met and fulfilled in an orderly and timely fashion."

Page 39, line 1, remove ", 49-22-02,"

Renumber accordingly

Date: 1-13-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1144

House Energy & Natural Resources Committee

☐ Subcommittee

Amendment LC# or
Description:

17.0563.01001

Recommendation

☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐

Motion Made By Rep Keiser

Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) all voice No

Absent Rep Mock

Floor
Assignment

If the vote is on an amendment, briefly indicate intent:

AB 1144
3-16-17
AA #2
pg 1

House Bill 1144

Presented by: Illona Jeffcoat-Sacco
General Counsel, Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Jessica Unruh, Chairman

Date: March 10, 2017

TESTIMONY

Ms. Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to appear today to request two small changes to First Engrossed House Bill 1144.

The Commission has no objection to the objective of House Bill 1144, to separate electric generation and transmission siting requirements from those for gas or liquid refining and transmission. Further, the Commission appreciates that the House amended the bill to keep the statement of policy in chapter 49-22. However, the Commission requests that this same statement of policy also be enacted as part of the new chapter for gas and liquid siting. The description of the siting law's standards and objectives in the policy section provides a useful summary of the content and purpose of the siting law.

Engrossed HB 1144 retains this policy statement for siting electric generation and transmission, but not for siting gas or liquid refining and transmission. Instead, the bill creates new section 49-22.1-01.1, which is a specific list of mandatory duties imposed on the Commission. We have several concerns with this approach. First of all, imposing these mandatory duties on the Commission unnecessarily subjects

original

AB 1144
3-10-17
AA #3
pg 2

Commission decisions to generalized challenges rather than focusing on specific applicable siting criteria. Secondly, this approach deviates from the original objective of House Bill 1144 to separate the two siting categories without making substantive changes in the siting process or standards for either industry.

It is our understanding that neither this result was intended, and could cause in interpretation problems going forward. Consequently, we request that the new duties language on page 23, lines 13 through 25 (new section 49-22.1-01.1) be replaced with the existing statement of policy found in section 49-22-02. A proposed amendment to this effect is attached.

Finally, the changes to N.D.C.C. section 49-21.1-01.1 are unnecessary, so Section 6 of the engrossed bill is unnecessary. Section 49-21.1-01 does currently reference the siting law, but the reference is only relevant to electric transmission lines. Consequently, the reference in section 49-21.1-01 to chapter 49-22 (which under House bill 1144 will be limited to electric generation and transmission) is sufficient. No further change is necessary to any part of chapter 49-21.1. The attached proposed amendment deletes this unnecessary change.

This concludes my testimony. I will be happy to answer any questions you may have.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Fort Lincoln Room, State Capitol

HB1144

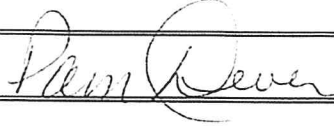
3/10/2017

Job # 29030

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to gas & liquid energy conversion, gas and liquid transmission facility siting, and combining application; relating to energy conversion short title and route adjustment before or during construction for gas or liquid transmission; provide a continuing appropriation; provide a penalty.

Minutes:

Attch#1=Dale Nieswaag; Attch#2=Todd Kranda; Attch#3= Illona Jeffcoat-Sacco; Attch#4=PSC amendment;

Chairwoman Unruh: Let's open HB 1144.

Dale Nieswaag, Basin Electric: Here in support of HB 1144. (see Attch #1) (.15-) It is a straight forward bill. He explained all the sections and changes.

Todd Kranda: I'm here on behalf of ND Petroleum Council. (see Attch #2) We have 500 members. Segregating the siting act for two industries that have been combined and taking away the complications we have had in the past. Some things do not fit both industries. Like to discuss two things. The combined application process and the removal of the 10-year plan for oil and gas facilities. These are new. Generally, the bill does not do anything different for each industry in the siting act with the exception of these two changes. Both electric and oil/gas are included in the combined application. (8.10-9.50) With oil and gas it is a repetitive filing. Electric is different. The PSC can get more information anyway, if needed. Please Do Pass. There are some PSC amendments around. We have no problem with these. (10.49)

Illona Jeffcoat-Sacco, General Counsel for PSC: (see Attch#3) We are in support only with the amendments. (see Attch #4) We like the concept of the bill. We just ask for two small changes.

Sen. Armstrong: I talked with Commissioner Fadorchak about this and she said you use this daily and for sure weekly.

Illona: Yes, Julie Fadorachak uses this a lot in siting, because it is a good description of what a siting is.

Illona: (13.18) continues. We would like to delete that duties language and put the policy statement in instead. We have an amendment attached. (see Attch#4). Any questions?

Senate Energy and Natural Resources Committee
HB1144
3-10-2017
Page 2

Carlee McCloud, President of Utilities Shareholders: Here to support and urge a Do Pass.

Chairwoman Unruh: Any more in support? Any opposing? Any agencies?
Hearing is closed.

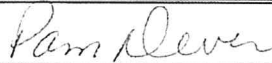
2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1144
3/16/2017
Job#29344

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Committee work

Chairwoman Unruh: Please look at HB 1144. We got amendments from Julie at PSC. This does not have a number but it was drafted by PSC. So we will call it the PSC amendment.

Sen. Armstrong: I move the PSC amendment.

Sen. Oban: I second.

Chairwoman Unruh: We have a motion for engrossed HB 1144.

Sen. Armstrong: They had issues with LC, but I think this amendment is because they do not like these policy statements at the beginning. They do not like to draft code that way. These use this with the people that call them and ask questions. This is a very effect tool in their regulatory process. I think it is worth it if we have to argue with LC.

Chairwoman Unruh: I agree. I think it is important to sometimes make a statement in policy and intent in Code.

Chairwoman Unruh: All in favor of the PSC amendments, please say yea, all opposed same sign. The amendments passed all yea.

Chairwoman Unruh; We have in front of us HB engrossed HB1144 as amended.

Sen. Armstrong: I move a DO Pass as amended.

Sen. Oban: I second.

Chairwoman Unruh: Any discussion. Seeing none, call the roll: YES 7 NO 0 -0-ab

HB 1144 as amended Passed. **Sen. Armstrong** will carry the bill.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2286
2/9/2017
Job # 28143

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Pam Weaver

Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Attch#1=Sen Schaible; Attch#2, #3, #4=Todd Kranda;
Attch#5 and #6=Geoff Simon; Attch#7=Mike Fladeland;

Chairwoman Unruh: We will open the hearing on SB 2286.

Sen. Schaible: Dist. 31. This updates chapter 44.22.16 of ND Code also known as Energy Conversion Transmission Facility Siting Act. This is administered by the PSC. (see Attch#1)

Todd Kranda, Kelsch, Kelsch Ruff & Kranda Law Firm: I am here on behalf of ND Petroleum Council to support SB2286. (see Attch#2) (see Attch #3 and #4). If you look at part 4, which is not included in the bill, but it establishes a similar provision for state agencies. (10.20) We are asking the political subdivisions to come to the table at PSC and present any concerns, just like a state agency does now. I was involved in the original Trans Canada Keystone Pipeline, that ran completely through the state. We dealt with 8-10 counties. We could have had separate proceedings other than the PSC. This bill is intended to bring those concerns to the table at the PSC. The PSC travels to counties. Do pass with amendments.

Sen. Oban: I have a hard time with because I do not want to change a law because of one bad experience. Did this process work before the DAPL stuff?

Todd: DAPL just brought to faster forward to the forefront. We have had problems where companies had delays or jumping through more hoops after they get the permit. We thought it was handled at PSC level and finding out later there were problems at county level and not go forward. DAPL really highlighted it.

Chairwoman Unruh: Further in support. Testimony in opposition of SB2286.

Geoff Simon, Executive Director of Western Dakota Energy Assoc.: We are in opposition to SB 2286. (see Attch#5 and #6). We do not like the bill as is nor do we like the proposed amendment. We believe in consolidated hearings. We do not agree that you should deny the county it's zoning authority.

EXHIBIT 2

Sen. Armstrong: What do you tell a developer who is investing capital, etc. and then they get it approved through the Industrial Commission or PSC, and they end up in front of a local municipality. They are asking them questions about things already approved. That are outside the purview of that local municipality?

Geoff: I think those circumstances should be rare. But may happen. The county is to look out for their constituents. Local control is still important.

Chairwoman Unruh: Further testimony in opposition? Any agency testimony?

Mike Fladeland, Energy Business Development, Dept. of Commerce: (see Atch#7) (19.20-20.40). The chair of Commerce chairs the EmPower ND Commission. I provide staff for this. I am here in favor of this bill. It is part of the 2016 policy upgrade and recommendations. There are 53 counties, 300 communities, and a number of townships. To still afford them the opportunity to make comments to the PSC as it is going through their deliberations on an easement or pipeline route, this bill just helps the PSC, as well as communities, input in the issues. This bill provides clarification. Do pass.

Chairwoman Unruh: Any questions? Seeing none, we will close the hearing on SB2286.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2286
2/10/2017
Job #28200

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Pam Dever

Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Committee work

Chairwoman Unruh: Any discussion on SB 2286?

Sen. Schaible: There are amendments pending on this bill.

Chairwoman Unruh: That was easy.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Fort Lincoln Room, State Capitol

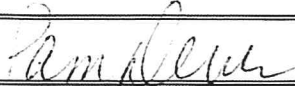
SB2286

2/16/2017

Job #28450

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Committee work , Attch#1=Sen Schaible

Chairwoman Unruh: Called the committee to order. Take up SB2286.

Sen. Schaible: I passed out an amendment. 17.0950.02001. (see Attch#1) This bill is trying to streamline the approval process. So we do not have delays in projects. We do not want to duplicate things.

Chairwoman Unruh: Any questions? What are committee wishes?

Sen. Armstrong: I move a moved a Do Pass on amendment 17.0950.02001.

Sen. Schaible: I second.

Vice Chair Kreun: Originally, on section 2 we changed 'shall' to 'may' in two different areas. Why?

Sen. Schaible: To make sure we do not impede any authority that was given to counties. It was added to insure we do not take power away.

Chairwoman Unruh: Roll call was taken on amendments. YES 7 NO 0 -0- absent
Amendment Passed.

Chairwoman Unruh: We now have Sb 2286 as amended before us.

Sen. Schaible: Moved a Do Pass on SB 2286 as amended. **Vice Chair Kreun:** I second.
Roll call was taken. YES 7 NO 0 -0-absent. **Sen. Schaible** will carry the bill.

February 15, 2017

UL
2/16/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2286

Page 1, line 1, after "reenact" insert "section 49-22-14.1 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies.

The commission ~~may, and is encouraged to,~~ shall cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state, a directly impacted political subdivision, or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein."

Page 1, line 9, after "a" insert "gas or liquid"

Page 1, line 11, overstrike the first comma and insert immediately thereafter "or"

Page 1, line 11, overstrike ", or building rules,"

Page 1, line 11, overstrike ", or ordinances"

Page 1, line 13, after the first overstruck comma insert ". Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the approach or road crossing permits, public right-of-way setbacks, building rules, or physical addressing of the political subdivision. The commission may waive the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances"

Page 1, line 13, remove the overstrike over "~~are unreasonably restrictive in view of existing technology, factors of~~"

Page 1, line 14, remove the overstrike over "~~cost or economics, or needs of consumers regardless of their location~~" and insert immediately thereafter ", or are in direct conflict with state or federal administrative law"

Page 1, line 14, remove the overstrike over the overstruck period

Page 1, line 16, remove "if representatives of the governing"

Page 1, remove lines 17 through 23

Page 2, replace lines 1 and 2 with "The commission shall provide notice to all the appropriate political subdivisions at the time an application for a certificate is made under this section. Upon notice, a political subdivision shall provide a listing to the commission of all local requirements authorized under this section. If the political subdivision does not submit the requirements at least ten days before the commission hearing, all requirements are waived."

Renumber accordingly

Date: 2/16/17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES SB 2286
BILL/RESOLUTION NO.

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0950.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Armstrong Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amend. passes

Date: 2/16/17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2286

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0950.02001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Schaible

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2286: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "section 49-22-14.1 and"

Page 1, after line 3, insert:

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Renumber accordingly

2017 HOUSE ENERGY AND NATURAL RESOURCES

SB 2286

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau -A Room, State Capitol

SB 2286
3/9/2017
29005

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting

Minutes:

Attachments #1-5

Chairman Porter: Called the committee to order on SB 2286. Clerk read the short title.

Sen Don Schaible, Dist 31: presented Attachment #1.

Rep. Heinert: Do you know, in reference to your Page 2 Line 7-12, the 10 days for the local commission or political subdivision (to react ? inaudible 3:54) how long before the PSC has the hearing? How long the locals would have?

Sen. Schaible: I'm guessing 30 days, I'm not positive. 30 or 60.

Chairman Porter: We can see if we can get that clarified with more testimony or directly from the PSC.

Rep. Keiser: On line 19, the engrossed bill, we're making a big change there from may to must. Are we taking away local authority?

Sen. Schaible: The hope is not to. The hope is we would streamline the process and they would work together and that the PSC would not overstep the authority of our local entities. It's the idea of trying to do it together, at one time rather than multiple hearings and then trying to determine the overlap. It's the idea to combine it and get it together and get it that way. The hope is not to intercede on the political subdivisions.

Rep. Keiser I know what the intent is but that's not what this says. This doesn't say the 2 entities must cooperate in developing a single, this says you must do it to us at the exclusion of local input.

Sen. Schaible: Yes. What it says I would imagine that's some of the controversy that our political groups. Our stakeholders have been in communication and have worked with some

of that. I don't know if we're at total resolution or not but that's the process we're working through.

Chairman Porter: further testimony in support of SB 2286

6:47

Todd Kranda, Attorney, ND Petroleum Council, in support of engrossed SB 2286. Presented Attachment #2.

23:31

Rep. Lefor: You added a study and put "shall" study in there. Why did you do that instead of "may"?

Kranda: We really want the study. We've talked to our stakeholders and the commissioners and I think that helped bring everybody to the table so we're not here duking it out. I expect that to be a focus of one of the subsequent speakers to make sure that it's studied. There is some communication issues that need to be developed. A process, this is really important for our industry as well as the political subs and I think it's critical and PSC has to be part of that as well.

Rep. Heinert: Original bill, Page 1 line 19, changing MAY to MUST. Can you explain why we went to MUST?

Kranda: Correct. We see that as the streamlining and identifying that the PSC is the appropriate siting entity. You don't impact the site route corridor unless you have one entity saying, "this is what the route and corridor is." We do and what we anticipate happening, those local political subdivisions putting together that checklist and saying, here's all the things we need to have complied with in our county, in our jurisdiction, our city, our township, give that to the PSC. If you look at my handout is a certification by the PSC, deals with the DAPL corridor findings and certification letter. The certification letter says, and the PSC has this for each applicant, says, "company agrees to comply with all rules and regulations of other agencies having jurisdiction, including all city, township and county zoning regulations." So the PSC is the one telling us you MUST comply and the locals aren't losing any control. We're not trying to take away from what they do and what we have to comply with. We're saying it's all done at the PSC level and this one order will define everybody complying with that.

Rep. Heinert: It says they must preempt any local land use or zoning regulations. So if a local county or local city has a zoning ordinance, the pipeline is going through there they have to change their zoning ordinance.

Chairman Porter: Mr. Kranda, I think it would be helpful, because this Sub 2 is broken into 2 things. I think it would be helpful if you broke it down into Step 1, certificate of site capability which may not supersede or preempt, and then Step 2 the permit for construction which has to because all the other stuff has been looked at during the certification process. I think so we keep it straight, what we're performing in each of the processes, even inside of this the

amendment may not be correct. That each of those may need to be broken down into an A-B-C.

28:00

Kranda: I think that helps. I didn't catch that. Yes, so the first sentence, you don't because that site compatibility, the certificate for site compatibility may not supersede. So we are making sure the broader site doesn't preempt, but when you get to the actual permit when they say for construction, the permit that is issued by the PSC is the law of the land. It is what is followed and that's why, when the locals submit their restrictions and requirements or whatever they are required within their local jurisdiction, then it's incorporated within that permit.

Rep. Heinert: The locals still have to change their zoning of that parcel of that land. They can turn it in saying, we do not have this land zoned for this appropriate matter, nor do we want to change our zoning. And if the permit's issued the locals have to change their zoning.

Kranda: I don't believe so. It's not our intention that they have to, it's what

Rep. Heinert: It says "must". It used to say "may".

Kranda: But it used to say may with the additional items that are lined out. "Upon a finding that has applied"

Chairman Porter I think, but you're the lawyer, when we flip it, it used to say that on the actual certificate of site compatibility, that's where the "shall" used to be, and that was more onerous than the permit for construction. Now by flipping it, it may not supersede a preempt the local land use, zoning or building rules or facilities, then it flips, once that site compatibility is performed, then it says the permit for construction has to happen. That's where the flip is. You flip the top one also because that one used to be the "may" and you flipped it in order. The site compatibility is the important one. Once that's complete and everybody checks off, then the permit for construction goes forward.

Rep. Heinert: That's where my issue is. What happens if a local entity doesn't check off. If they say this is against what we have decided the land use is for this piece of property and our zoning regulations is contrary to allowing this.

Kranda: It was just brought to my attention, those changes on Line 15, 17 and 19 were LC's changes. But I think they're still consistent. If you look at the end of the changes that we're suggesting. If an applicant must still comply with the requirements that are proved by the commission and submitted by the townships. So what you're saying is, we're going to come in and do our due diligence, file our application, plan it to go through whatever building code requirements, zoning, locations, that are appropriate. Because if we don't, our plans are going to be skewed, someone's going to object and we're not going to be able to build the way we want. PSC will raise an objection, as shown in these certifications or better yet, the DAPL one, not allow us unless you comply. If you look at some of the provisions within the DAPL, there were communications made by outside entities. There was Dunn County Weed Board that submitted information about what you need to comply with. The PSC put that in

their findings and conditions. So when they send their requirements I anticipate the PSC will incorporate those as conditions. What it really does is present it at the initial siting, route, corridor, location hearing, so we can deal with it if the company has an issue with it. Or if the commissioners in their local jurisdictions have an issue with it, it can be addressed there instead of multiple late hearing where we're told we got a permit, you can build, and then all of a sudden, no you can't.

Chairman Porter Further questions? Further testimony in support

33:49

Jeff Simon, Western Dakota Energy Association. We also represent the coal producing counties and covers cities and school districts in the energy producing counties. Mr. Simon presented Attachment #3.

Rep. Keiser: In Subsection 2, the two changes to MAY do not change those lines. Shall not and may not are the same thing. When it's a negative, not, may not, there's no change there. The only thing we're really changing is MUST supersede. So we are superseding the local control.

Jeff Simon: This process will supersede the local zoning decision, that conditional use permit or in some cases the rezoning of the property at the conclusion of this process. As I say we have tried to incorporate those local concerns into the amendments to emphasize notification in the importance of local government participation in the citing process before the PSC.

39:32

Daryl Dukart, Dunn County Commissioner: I'm wearing multi hats. We are now in support of this bill. The reason I want to make clear. I'm chairman of the WDEA, of which Jeff Simon just visited with you. I'm also the past chairman of Vision West ND who worked at the beginning of this bill and since that time I left that. I'm a Dunn County Commissioner and a landowner. The impacts to us are a little different. My message will be a little different. As the statements were made, there were 100's of emails, phone calls, conversations that were share between all of us. The ND Association of Counties, the Petroleum Council, the Industry, and WDEA along with states attorneys from counties that were very concerned what this looked like. Since that time we've come to something that is somewhat palatable. We're ready to move along and we don't think we have relinquished local control with this bill. The big thing that fears me with this at this point is it's a tremendous change on how local planning and zoning boards are going to approach public service commission and approach industry with the planning and zoning CUP's and regulations and ordinances that we now presently have. That change will be made that no longer industry will be sitting at our table and let us hash it over with them. They're going to be coming to the table when PSC is in our county. We're going to have to be prepared and organized. I think in the western side of the state, in the 7 aggressive counties of energy production, are in a situation where we are fairly prepared for this. My concern was, as I represent and sit on the board of ND Association of Counties, is all fellow commissioners across the state of ND. A lot are not prepared. It's a different way of getting our views and points to the PSC. I look for this to be handed down to

other commissions operated in the state in time as well. That said, I've had the discussion with ND Association of Counties, executive Mark Johnson, starting to thinking and the process and to educate how we can better train county commissioners to handle this and their planning and zoning directors, and states attorneys because they're the ones to get in the middle of a lot of this. I have some questions I'd like you to consider.

(1) when you get into these situations, companies come out and start putting in a pipeline, you have all the stuff that comes along with it; a staging area, place to store trucks, place to house people, etc. I'm hoping that the industry and put in there someplace in regulations with PSC, that anything done outside the corridor still needs planning and zoning regulations from the area they're in. Back in 2004-08, that was a constant. They thought when they got a permit from PSC they could do what they wanted and doesn't work like that.

(2) the responsibility of a poor actor out in the field of the industry. After visiting at meetings and today, it's my understanding PSC is responsible because now it's in their court. Is there enough FTEs to take care of all the problems that could arise. Example, when Dakota Access went through Dunn County, we had several counties from digging to reclamation all within the same county, fencing crews, culverts, extra roads across creeks and rivers, remove, installation all happening at one time. Our road foreman continually watched what was happening and there was damage done to roads no question about it. There were times they unloaded Cats on the side of the road and drove them ¼ mil down the road. We caught that and they came back and fixed it. My worry is will there going to be enough inspectors to take care of that for us. So as we enter into what I would classify what I different water, as a leader in the state of ND and commissioner in a county in western ND, I'm willing to start up, start the educational process, I'll take hits on the head and they'll question me, I'm ready to move forward.

(3) We started with a public safety plan and it got kicked out again today. As I think about this is, Dunn County has locations in it where pipelines could possibly go, that still to this day do not have full cell phone coverage, that you will be able to get on the phone and reach 911. You *may* possible get to do a text message but there could be incidents, where there may be an accidental injury where they cannot get a hold of 911 and not get a message to an area fire department, rescue squad or ambulance. So I ask for that plan to be included, they come to the county and get the emergency cell phone numbers of those individuals, that can help respond to those incidents. Very simple, we have it, it can be provided, it just needs to be requested.

(4) last thing is in present law. If in the amendment, needs a consumers regardless of their location. I would like a good clarification of that. I'm concerned why we in local and planning and zoning should be dealing with issues; when I read that when the consumer we're probably serving is probably in MN, SD, MT or another state. We jumped on board now because once we got through the process to do the study that made me as a commission, and I believe will make my fellow commissioners, very satisfied, to move forward.

Rep. Mitskog: That 10 days, on Line 11, is that time frame, local zoning boards don't meet very often. Do you find that's too tight of a time frame?

Dukart: yes, we're comfortable with that because, it's 10 days to get your information in to the planning and zoning. You're going to know long before that there's going to be a hearing.

Those notices come out in 30 days or earlier. We feel the time frame is comfortable. You're planning and zoning director are going to have to be on the ball but I don't think it's not achievable.

Rep. Mitskog: the word MUST supersede, are you ok with that? I'd like your opinion.

Commission Dukhart: I was not at first, but I'm okay with it now. I think it serves what we want. It's about training and education back to the local level. The cumbersome part of this is your opportunity is that window when the PSC is there holding their hearing, no longer having that opportunity one on one at your board meeting.

Lisa Lee, Mountrail Planning and Zoning. We've been going back and forth on drafts of this bill. At first we were very hesitant. We're proponents of local control. However, we can say with confidence the bill has come a long way. We feel confident the local zoning ordinances and our regulations will be factored in through the PSC and intend to be a partner in that process. At first we were concerned that hearings were only going to be in Bismarck and that was a red flag. We want our residents to in the local community to show up and have a voice. We are happy to hear there will be local hearings because we want all our people to attend and may not be able to if it was here in Bismarck. With counties, townships and cities, and changing borders and boundaries with annexation in extra territorial areas. We hope if this bill is enacted, either the PSC or the company is going to have some means of accurately determine the changing boundaries and getting constant communication with the correct zoning authorities. We want some provision for that in the bill. It'll take a lot of communication and collaboration amongst industry, PSC and different zoning authorities. We know some of the townships do their own zoning and are volunteers that do not hold frequent meetings. We just hope their voice is still heard in the bill. The second issue we had was with enforcement and want to make sure and clarify if currently as it stands, as a public planning and zoning administrator, if we have a problem we have a permit that we have issued as a local jurisdiction and the option to rescind that permit and assess fines and take enforcement actions. We want to clarify that if the permit is issued by the PSC, will they be ultimately responsible for all enforcement issues going forward? In the bill they talked about a 3rd party construction inspector which we think is a great thing but also want to know that during post construction if something comes up whether it's road use agreement, zoning agreement, infraction of any sort, we would like clarification at the county, who's handling it, the county or state? Our other question is the appeal process. If the industry did decide for whatever reason that some ordinance that we did submit to the PSC was unreasonable restrictive for whatever reason, that planning representative was not able to make the hearing for whatever reason, would they be notified that the industry is unable to meet this requirement for this reason and is there an appeal process.

16:25

Rep. Mitskog: That local ability to appeal and that process is one of my concerns.

Lisa Lee: If the planning zoning director can attend the hearing, then we'd be able to hear the concerns of the company but there's the option they might not make it to the hearing. In that case there would have to be some kind of notification procedure or process in place.

Rep. Heinert: If Mountrail County were to take 80 acres and identify it as commercial, 3 months later a pipeline asked to come through that property, do you think Mountrail County should have a reasonable expectation they can retain their authority or it should be changed over, mandated to change over.

Lisa Lee: As it stands now we have that right now with oil and gas well sites all over the county. Most of our land is agricultural and we have little pockets of industry. We don't rezone right now for oil and gas well pads or well sites. We have in the past rezoned for compressor stations, but with this bill I would not assume we'd be rezoning the land at that time. We'd be relinquishing that.

Chairman Porter: Further testimony in support?

56:54

Mike Fladeland, manager of Energy Business Development for ND Dept. of Commerce (Empower) presented Attachment #4.

59:51

Rep. Keiser: a certificate of site compatibility is issued by the PSC and a permit for construction is issued by the PSC, and those are 2 different events, is that correct?

Fladeland: I suspect that's accurate but I'm not sure.

Rep. Keiser: I ask because I'm looking at the SB 2286 with the proposed amendments added because hopefully that's what we would do. In Section 2 it says the commission "may" and in fact is encouraged to cooperative with and receive information. That's the cooperative part. I question what that shouldn't absolutely be a "shall" because when we go down to the new Subsection 2, this is for the certificate of site compatibility for an energy conversion, "may not supersede or preempt any local land use, zoning or building rules. They need to find this out before this happens. But that the commission may, and is encouraged to check into it but they don't have to. Then they're going to issue a certificate of site compatibility that says you have to meet them all. I understand later once you've done the permit, the work is done and the permits going to be issued. It seems those 2 sections are inconsistent with each other.

Fladeland: Yes as far as I know both would be issued by the PSC. Under this bill the PSC would have to consider local zoning and regulations and as was mentioned earlier, 80 acres is zoned in whatever county for a certain purpose, the PSC would have to take that into consideration. Before that

Rep. Keiser: they can't issue that permit without it doing it, which I support. The language up above, says we MAY, it would be convenient, we do recommend it. But now we're saying, why do we even have that section. Or we need to change it to they shall. Consider all those things, issue the certificate, once we're through that process the permits a done deal.

Fladeland: yes that makes sense.

Chairman Porter: further testimony in support? Opposition?

1:03:45

Natalie Pierce, ND Planning Association presented Attachment #5 in opposition.

Chairman Porter Questions?

1:07:00

Rep. Mitskog: The 10 days have been a concern to me since in rural areas they don't meet that often. To your knowledge, do most townships have some zoning authority or do they rely on the county for that?

Pierce: It's really a mixed across the state. There's townships, there's auditor, planning zoning board may meet very seldom or as needed and some township and cities do rely on the county to give them planning advise. Some may have larger and more thorough planning and zoning ordinances. Some may not. PSC already goes through their own process. We want to make sure that in the cases where there is a very robust planning and zoning ordinance to be able to have that be in effect.

Rep. Mitskog: the appeal process? Do you have any thoughts on that?

Pierce: yes, what would the appeal process would look like if what the PSC does make a determination that doesn't sit well with the local jurisdiction.

Rep. Keiser: 10 days, typically we say 10 business days. That's not a long time. Would you support the addition of 10 business days or would you want it longer?

Pierce: We would strongly recommend more than 10 days at least for the receipt of notice, but to get notices in the local newspaper. Often times notices from the PSC is just printed in a paper who many people don't subscribe to anymore. To get a letter at your residence so you know what's going on, I think does reduce the amount of back feeding into the process and people complain after the fact maybe because they just found out about it after it passed.

Chairman Porter Further opposition? Closed the hearing on SB 2286

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau -A Room, State Capitol

SB 2286
3/23/2017
29634

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting

Minutes:

Attachments 1-2-3-4

Chairman Porter:

Todd Kranda, Kelsh Law Firm, represent the Petroleum Council: presented Attachments 1-4.

Rep. Heinert: Speaking of the 35 days for county and townships, how did we arrive at the 35 days?

17:42

Kranda: the 35 days is because we've established a 45 minimum the PSC cannot have a hearing prior to 45 days from the date notification is sent by mail or electronic mail. That's in the bill itself Page 6 Lines 29-30-31. We know that 10 days before that the local political subs have to have it filed. That's the next sentence. So then I just backed up to 35. Now 45 days is plus whatever days it takes for them to Notice it, plus 45 days doesn't mean they'll do it on the 45th day. It will most likely be out longer than that.

Rep. Heinert: The counties and townships aren't going to know when the PSC is going to schedule it. They're going to be stuck in the 35 days.

Kranda: I don't agree. They will know. They won't know when the first Notice is filed. They know the rules, regs and ordinances are when they go with a project like this. They will know because of all the notices that are required once the application is deemed complete, they're part of that notification process and part of those notices is scheduling a hearing.

Rep. Heinert: I don't think 35 days is enough. If a township's involved and they want to get together with a commission, you'll probably have one meeting that could possibly happen at. If we get within the 10 days, then the counties and townships are automatically not heard

from. We got 3-6 months beyond this. They're probably not going to schedule this for the 45th day. I don't understand how the county will hear when they're going to schedule it in that time frame is so the know when their 10th day is up. So I'm wondering if it can't be 60 days and the you got 55 days. It would give the county commission and townships 3 meetings to work with.

Kranda:

Rep. Heinert: County commissions meet 2xs month.

Kranda: We're trying to streamline this. We think they need to get their punch list ready, they have until August if this bill passes. We have some concerns as a company there's certain projects that could go faster. Because we're limited to 45 days, they're delaying those projects that are smaller. We don't believe the officials need to meet as often as you're suggesting before they submit. They should have a plan in place, just like they develop their ordinances now. We hope and encourage the commission and whoever it is, participates in these hearings held on this process. The organizations, WDEA, ND Association of Counties, and the townships who work with us would be emphasizing to members they have to get prepared for this and have everything ready in advance. They'll know in advance.

Rep. Heinert: County Commission meets twice a month. Let's look at this time frame as you're looking. The county gets notified, it comes up on the agenda for the first meeting, the checklist is in process, come back to the next meeting. But at the 2nd meeting the township officials have a checklist as well and want to confer with county commissioners prior to finalizing that. Then the county commissioners can't finalize until the third meeting which puts them outside the parameters of 35 days.

Kranda: I don't agree they can't have that all prepared in advance. The timeline and streamline, I'm not sure why the 45 days isn't a workable solution. We do have a study and if we find this is a problem and August 1 when the bill goes into effect come 2019, that can be resolved. That study is critical. The communication and cooperation that is impacted. It talks about efficiency, time lines, we are looking at that. Right now we think 45 is reasonable.

Rep. Keiser: Was there ever any discussion regarding business days? Did you ever think of converting it to business days?

Kranda: As an attorney we a rule that talks about that but it's if it's less than 10 days. They may have changed it to 14. If your deadline is less than 14 days, then it doesn't count holidays and weekends. 45 days is far enough out we've set it out 45 calendar days and feel that's adequate. Not business days.

Aaron Birst: We feel the 45 days is something we can work with.

Rep. Heinert: I have a huge concern possibly 2 meetings instead of 3 meetings.

Aaron Birst: We support the amendments to 2286. We agreed to the 45 days. Next session we come back and say that didn't quite work right, let's move it a little bit. We feel they brought forward a good bill. I'll make note for gathering lines, counties, townships have zero control.

So when we looked at this, we sat down with industry, worked through it and they've been fantastic. Commissions

Rep. Heinert: going back to my question. I have a huge concern allowing the County Commission possibly 2 meetings and not 3 meetings to make sure between the county and townships, they get their ducks in a row. As long as we're doing the study wouldn't it be easier to give the time now and cut it back after the study?

Birst: The 45 days we agreed to. I think on these zoning bills you're going to have to look at special meetings. Most meet 2xs a month. From our training we'd be suggesting if you're uncomfortable using 2 meetings, call special meeting.

Jeff Simon: Western Dakota Energy Association. We represent cities, counties, school districts in the oil producing counties. This is an administrative thing. I don't know that it requires a lot in front of the commission, much is done behind the scenes. We support this.

Chairman Porter: discussion? On the study, Commission Dukart was here, the condition of their support was the study. Language was changed from shall consider to shall study.

Rep. Seibel: Do we run the risk of losing this entire bill because of a shall study? I'm personally fine with it.

Chairman Porter: I think our persuasiveness on the agreement has streamlined the process is a selling point. A lot of the times the studies that are put in aren't part of the agreement and the streamlining of local units of government and the moving of power between them and the siting process and the approval process. I don't see it as an issue.

Rep. Mock: Is there any indication if this were a shall consider studying, that it wouldn't be chosen by legislative management?

Chairman Porter: if it were a shall consider study, because of the work that the Western Area Oil and Gas producing counties went through with the industry, they would pull their support of the entire agreement.

Rep. Devlin: I share Rep. Heinert concerns. I come from an area where they meet once a month, townships probably meet quarterly. It's a valid point they can have special meetings. I'd like to know if all the counties in the state other than one are members of the association now?

Birst: I'm happy to report all 53 counties are paying loving dues paying members!

Chairman Porter: committee we have an amendment in front of us.

Rep. Keiser: move adoption of the amendment.

Rep. Mitskog: second

Chairman Porter: we have a motion from Rep. Keiser, second from Rep. Mitskog to adopt amendment 03003. Discussion?

Rep. Heinert: I just have to say, we're streamlining this immensely. We still got a six month project moving from 45-60 days and allowing the commissioners 50 days backing this up the way Mr. Kranda did is going to make it any significant difference other than to county commissioners allowing them to at least think about it before they sign off.

Chairman Porter: further discussion? All those in favor? Aye, opposed. Voice vote, Motion carries. We have an amended bill in front of us.

Rep. Anderson: I move a Do Pass as Amended on SB 2286

Rep. Keiser: second

Chairman Porter: we have a motion for a Do Pass as Amended on SB 2286 from Rep. Anderson, and a second from Rep. Keiser. Discussion?

Roll call vote: 13 yes, 0 no, 1 absent. Motion carried. Rep. Lefor is carrier.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION
OF SCS CARBON TRANSPORT LLC FOR
A CERTIFICATE OF CORRIDOR
COMPATIBILITY AND ROUTE PERMIT
FOR THE MIDWEST CARBON EXPRESS
PROJECT IN BURLEIGH, CASS, DICKEY,
EMMONS, LOGAN, MCINTOSH,
MORTON, OLIVER, RICHLAND AND
SARGENT COUNTIES, NORTH DAKOTA

Case No. PU-22-391

DECLARATION OF SERVICE

[1] Charlene Smith declares that I am of legal age and not a party to this action, and that I served the following document(s):

- 1. Response to Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted;**
- 2. Exhibits 1 and 2; and**
- 3. Declaration of Service.**

[2] On June 23, 2023, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

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[3] and by sending the originals and seven (7) copies of said documents via U.S. Mail, at Bismarck, North Dakota with postage prepaid, to the following:

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

[4] The addresses of each party served are the last reasonably ascertainable e-mail address and post office address of such party.

[5] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 23rd day of June 2023 at Bismarck, North Dakota.


Charlene Smith