

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2264**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2264  
2/2/2023

A bill relating to notification to landowners.

9:29 AM Chairman Patten opened the meeting.

Present were Chairman Patten and Senators Kessel, Beard, and Kannianen. Senators Boehm and Magrum were absent.

### **Discussion Topics:**

- Filing notice
- Landowners

9:59 AM Senator Kannianen introduced the bill.

9:34 AM Troy Coons, Chairman, Northwest Landowners Association testified in favor of the bill and provided written testimony #18780.

9:40 AM Todd Kranda, Lobbyist, North Dakota Petroleum Council, testified opposed to the bill and provided written testimony #18694.

9:49 AM Chairman Patten closed the public meeting.

### **Additional written testimony:**

Carlee Mcleod provided written testimony #18738

9:49 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2264  
2/9/2023

A bill relating to notification to landowners.

10:29 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Boehm, Beard, Magrum and Kannianen are present.

### Discussion Topics:

- Committee action.

10:29 AM Senators have discussion on proposed amendments from Senator Kannianen #20326.

10:38 AM Senator Kannianen moved to adopt the proposed amendments LC 23.0939.01001, #20326. Motion seconded by Senator Magrum.

10:29 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

10:39 AM Senator Magrum moved to Do Pass the bill as amended. Seconded by Senator Kannianen.

10:39 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	N
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	N

Motion fails 3-3-0.

10:40 AM Senator Magrum moves to Do Not Pass the bill as amended. Senator Beard seconded the motion.

10:40 AM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	N
Senator Jordan L. Kannianen	N
Senator Greg Kessel	Y

Motion fails 3-3-0.

10:42 AM Senator Magrum moves the bill with No Committee Recommendation. Motion seconded by Senator Beard.

10:42 AM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Kannianen will carry the bill.

This bill does not affect workforce development.

10:47 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

AG  
2-9-23  
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2264

Page 1, line 1, after the first comma insert "49-22-08.2,"

Page 1, line 1, after "49-22.1-07" insert ", and 49-22.1-08"

Page 2, after line 29, insert:

**"SECTION 2. AMENDMENT.** Section 49-22-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-08.2. Combining application - Notice of filing.**

A utility may file a separate application for a certificate or a permit, or combined into one application. If a combined application is filed, the applicant shall mail a notice of filing in a single mailing to the owners of record as required under sections 49-22-08 and 49-22-08.1."

Page 6, after line 9, insert:

**"SECTION 5. AMENDMENT.** Section 49-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-08. Combining application - Notice of filing.**

A utility may file a separate application for a certificate or a permit, or combined into one application. If a combined application is filed, the applicant shall mail a notice of filing in a single mailing to the owners of record as required under sections 49-22.1-06 and 49-22.1-07."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2264: Energy and Natural Resources Committee (Sen. Patten, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2264 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after the first comma insert "49-22-08.2,"

Page 1, line 1, after "49-22.1-07" insert ", and 49-22.1-08"

Page 2, after line 29, insert:

**"SECTION 2. AMENDMENT.** Section 49-22-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-08.2. Combining application - Notice of filing.**

A utility may file a separate application for a certificate or a permit, or combined into one application. If a combined application is filed, the applicant shall mail a notice of filing in a single mailing to the owners of record as required under sections 49-22-08 and 49-22-08.1."

Page 6, after line 9, insert:

**"SECTION 5. AMENDMENT.** Section 49-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-08. Combining application - Notice of filing.**

A utility may file a separate application for a certificate or a permit, or combined into one application. If a combined application is filed, the applicant shall mail a notice of filing in a single mailing to the owners of record as required under sections 49-22.1-06 and 49-22.1-07."

Renumber accordingly

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2264**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2264  
3/2/2023

Relating to notification to landowners

9:00 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Rep Kasper.

### **Discussion Topics:**

- Electric, gas and liquid transmission facilities
- Certificates and permits
- Public notification process
- Email and mail notices

Rep Jordan Kannianen, presented SB 2264, oral testimony  
Todd Kranda, Counsel, ND Petroleum Council, Testimony 21706

### **Additional written testimony:**

Troy Coons, Chairman, NW Area Landowners Association, Testimony 21665  
Meghan Estenson, Counsel, ND Farm Bureau, Testimony 21678

9:28 AM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*



# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2264  
3/10/2023

Relating to notification to landowners

10:18 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Representative Ruby.

### Discussion Topics:

- Committee action

Rep Kasper moved a Do Not Pass on SB 2264, seconded by Rep Bosch.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	AB
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	AB

**11-0-3 Motion carried.** Rep Hagert is carrier.

10:21 AM Meeting adjourned.

*Kathleen Davis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2264, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).** Engrossed SB 2264 was placed on the Fourteenth order on the calendar.

**TESTIMONY**

**SB 2264**

**SENATE BILL 2264**  
**Testimony of Todd D. Kranda**  
**Senate Energy and Natural Resources Committee**

- February 2, 2023 -

Chairman Patten and members of the Senate Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota.

The North Dakota Petroleum Council is in opposition to SB 2264. This Bill attempts to modify the existing laws relating to the energy conversion and transmission facility siting acts for electric, gas and liquid transmission facilities. The changes relate to the notification process for (1) an application for a route permit for an electric transmission facility under North Dakota Century Code (NDCC) § 49-22-08.1; (2) an application for a certificate of corridor compatibility for a gas or liquid transmission facility under NDCC § 49-22.1-06, and (3) an application for a route permit for a gas or liquid transmission facility under NDCC § 49-22.1-07. Specifically, this Bill would require all applicants seeking route permits for an electric, gas or liquid transmission facility to mail notice to all landowners of record within the requested corridor within thirty days after the North Dakota Public Service Commission (“Commission”) determines that an application is complete. This requirement is not only unnecessary given the current notice requirements under the siting acts, but it will also create undue burdens on applicants, such as added costs and expenses, and delay the orderly development of energy infrastructure within the State.

When speaking in terms of electric and gas or liquid transmission facilities, we must recognize that any applicant/utility seeking to construct a transmission facility must obtain easements from the landowners along the proposed route. This process is the most intimate form of notice of the proposed project and typically begins long prior to submission of an application to the Commission.

For example, a utility will need to analyze and determine the most suitable route prior to submission of its application to the Commission. This is accomplished by gaining physical access to the land for surveys to locate cultural and historical resources and any other potential unsuitable conditions for the proposed transmission facility. This is usually the first interaction with landowners and if surveys determine the property to be suitable for the proposed transmission facility, easement negotiations will follow. It should also be noted that both siting acts (Ch. 49-22 and Ch. 49-22.1) require applicants to state in their application the manner in which the applicant will inform affected landowners of easement acquisition and how the applicant will compensate said landowners. *See* NDCC §§ 49-22-08.1 and 49-22.1-07. In order to capture landowners not directly affected by construction of the project, most utilities will also facilitate community open house type meetings with landowners to review and explain a proposed project and its broader impact on the community.

As you can see, both siting acts, as well as the very nature of constructing electric or gas or liquid transmission facilities, require direct, one-on-one communications with all landowners along the proposed route prior to submission of an application to the Commission. This Bill, if enacted, will only require yet another, unnecessary notice to landowners who are already intimately aware of the project and with whom the applicant has likely engaged on several occasions.

To be sure, additional notices are required under both siting acts and the rules of

the Commission in order to ensure all affected landowners and agencies are receiving notice of the application. First, once Commission formally determines that the application is complete, the Commission must serve notice of filing on persons or agencies deemed appropriate and shall publish a notice of filing in the newspaper of each county in which any portion of the facility is proposed to be located. *See* NDCC §§ 49-22-08(2), 49-08.1(2), 49-22.1-06(2) and 49-22.1-07(2). Thereafter, the Commission must also furnish a copy of the application to any person or agency upon request within thirty days of the service or publication. *See* NDCC §§ 49-22-08(3), 49-08.1(3), 49-22.1-06(3) and 49-22.1-07(3). The Commission must provide notice of each public hearing by service on those persons the Commission deems appropriate and *TWICE* by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. *See* §§ 49-22-13 and 49-22.1-10. All such notices are at the expense of the applicant. Additionally, the rules of the Commission set forth in the North Dakota Administrative Code (NDAC) require notice of any hearing to be held on a certificate or permit to be provided at least twenty days prior to the hearing as follows:

- (a) by publication in the official newspaper of each county in which any part of the proposed site, corridor or route is located; and
- (b) by mail or electronic mail to the following persons in each county in which any part of the site, corridor or route is proposed to be located:
  - i. the chairman of the board of county commissioners;
  - ii. the county auditor;
  - iii. the chief executive officer of each city in the county on an application for a certificate for an energy conversion facility;
  - iv. the chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility;

- (c) by mail or electronic mail to any state or federal agency listed in NDCC Section 69-06-01-05;
- (d) by mail or electronic mail to all parties; and
- (e) by mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

*See* NDAC §§ 69-06-01-02(3), 69-06-04-01(4) and 69-06-05-01(5). Finally, an applicant for a transmission facility is required to serve one copy of a complete application of the county auditor in each county in which any part of the designated corridor is located. See NDAC § 69-06-05-01(4).

These multiple, and sometimes duplicative, notice procedures are meant to capture a wide range of interested persons and agencies for the purpose of soliciting public feedback on the application and the proposed facility. All such notices must be properly and timely made in order for a public hearing to proceed. The additional notice required by SB 2264 will unnecessarily increase costs incurred in connection with the preparation and filing of applications with the Commission and will further delay public hearings on such applications, especially in the context of larger projects which span multiple counties or states.

The additional notice requirements proposed under SB 2264 are a duplication and completely unnecessary for the siting process for either an electric energy facility or a gas or liquid energy facility under the existing siting acts. For these reasons, the North Dakota Petroleum Council strongly opposes SB 2264 and urges a **Do Not Pass Recommendation**.

Thank you for the opportunity to provide this information. I would be happy to answer any questions.



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**Senate Bill 2264 Testimony in Opposition**

Senate Energy and Natural Resources Committee, Senator Patten, Chair

February 2, 2023

Chairman Patten, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose SB 2264.

This bill imposes landowner notice requirements at various stages of the siting process. The language requiring notice to any landowner within a corridor is too broad. Often, a corridor is considered for a project, and as the project develops, that corridor is narrowed to a route. This language would require giving notice to landowners who would not be impacted by the project being sited. A more narrow application would be more appropriate. The PSC already publishes notice pursuant to century code requirements. Requiring an applicant to send that notice again to individuals is duplicative and unnecessary.

We urge the committee to reject this bill.

Thank you.





Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2264  
Senate Energy and Natural Resources Committee  
February 2, 2023

Chairman Patten 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 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2264 because it requires notice of PSC siting and routing proceedings be given to landowners whose property will host a project under review. In 2021, we worked with legislators to pass SB 2263 (2021). This prior bill added the notice language you see in SB 2264, but it was added to North Dakota Century Code section 49-22-08 which is titled “Application for a certificate — Notice of filing — Amendment — Designation of a site or corridor.” There are three other sections of the Century Code which relate to and form the basis for the PSC’s siting authority, as follows:

- 49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.
- 49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.
- 49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a route.

It was an oversight on our part not to request to add the same language to all four provisions of the PSC siting chapters. In our view, it should not matter if it is a wind farm or a pipeline, or a route permit versus a corridor permit – the notice to the impacted landowners should exist, and should be the same. This bill simply adds the same language from the prior legislation to the other three sections listed above. This legislation merely requires notice to be provided to landowners when the PSC is considering issuing a permit for a facility on their property. We feel this should be the law and ask that you vote do pass on SB 2264.

Thank you,

Troy Coons  
*Northwest Landowners Association*

23.0939.01001

Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2264**

Introduced by

Senators Kannianen, Boehm, Rust

Representatives B. Anderson, Fegley, Longmuir

1 A BILL for an Act to amend and reenact sections 49-22-08.1, [49-22-08.2](#), 49-22.1-06, and  
2 49-22.1-07, [and 49-22.1-08](#) of the North Dakota Century Code, relating to notification to  
3 landowners.

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

5 **SECTION 1. AMENDMENT.** Section 49-22-08.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a**  
8 **route.**

9 1. An application for a route permit for an electric transmission facility within a designated  
10 corridor must be filed no later than two years after the issuance of the certificate and  
11 must be in such form as the commission may prescribe, containing the following  
12 information:

13 a. A description of the type, size, and design of the proposed facility.

14 b. A description of the location of the proposed facility.

15 c. An evaluation of the proposed route with regard to the applicable considerations  
16 set out in section 49-22-09 and the criteria established pursuant to section  
17 49-22-05.1.

18 d. A description of mitigative measures that will be taken to minimize all foreseen  
19 adverse impacts resulting from the location, construction, and operation of the  
20 proposed facility.

21 e. A description of the right-of-way preparation and construction and reclamation  
22 procedures.

23 f. A statement setting forth the manner in which:

- 1                   (1) The utility will inform affected landowners of easement acquisition, and  
2                   necessary easement conditions and restrictions.
- 3                   (2) The utility will compensate landowners for easements, without reference to  
4                   the actual consideration to be paid.
- 5           g. Such other information as the utility may consider relevant or the commission  
6           may require.
- 7           2. After determining that the application is complete, the commission shall serve a notice  
8           of filing of the application on such persons and agencies that the commission may  
9           deem appropriate and shall publish a notice of filing of the application in the official  
10          newspaper of each county in which any portion of the designated corridor is 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 corridor. For purposes of this subsection, the owner of record means the  
17          owner identified by the county treasurer to receive the real estate tax statement.
- 18          5. An application for an amendment of a permit shall be in such form and contain such  
19          information as the commission shall prescribe.
- 20          5-6. The commission shall designate a route for the construction of an electric transmission  
21          facility following the study and hearings provided for in this chapter. This designation  
22          shall be made in accordance with the evidence presented at the hearings, an  
23          evaluation of the information provided in the application, the criteria established  
24          pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a  
25          finding with reasons for the designation, and shall be made in a timely manner no later  
26          than six months after the filing of a completed application. The time for designation of  
27          a route may be extended by the commission for just cause. The failure of the  
28          commission to act within the time limit provided in this section shall not operate to  
29          divest the commission of jurisdiction in any permit proceeding. Upon designation of a  
30          route the commission shall issue a permit to the applicant with such terms, conditions,  
31          or modifications deemed necessary.

1 | **SECTION 2. AMENDMENT.** Section 49-22-08.2 of the North Dakota Century Code is  
2 | amended and reenacted as follows:

3 | **49-22-08.2. Combining application - Notice of filing.**

4 | A utility may file a separate application for a certificate or a permit, or combined into one  
5 | application. If a combined application is filed, the applicant shall mail a notice of filing in a single  
6 | mailing to the owners of record as required under sections 49-22-08 and 49-22-08.1.

7 | **SECTION 3. AMENDMENT.** Section 49-22.1-06 of the North Dakota Century Code is  
8 | amended and reenacted as follows:

9 | **49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of**  
10 | **a site or corridor.**

- 11 | 1. An application for a certificate must be in the form prescribed by the commission  
12 | containing the following information:
- 13 | a. A description of the size and type of facility.
  - 14 | b. A summary of any studies that have been made of the environmental impact of  
15 | the facility.
  - 16 | c. A statement explaining the need for the facility.
  - 17 | d. An identification of the location of the preferred site for any gas or liquid energy  
18 | conversion facility.
  - 19 | e. An identification of the location of the preferred corridor for any gas or liquid  
20 | transmission facility.
  - 21 | f. A description of the merits and detriments of any location identified and a  
22 | comprehensive analysis with supporting data showing the reasons why the  
23 | preferred location is best suited for the facility.
  - 24 | g. A description of mitigative measures that will be taken to minimize all foreseen  
25 | adverse impacts resulting from the location, construction, and operation of the  
26 | proposed facility.
  - 27 | h. An evaluation of the proposed site or corridor with regard to the applicable  
28 | considerations set out in section 49-22.1-09 and the criteria established pursuant  
29 | to section 49-22.1-03.
  - 30 | i. Any other information as the applicant considers relevant or the commission may  
31 | require.

- 1           2. After determining the application is complete, the commission shall serve a notice of  
2           filing of the application on those persons and agencies the commission deems  
3           appropriate and shall publish a notice of filing of the application in the official  
4           newspaper of each county in which any portion of the site or corridor is proposed to be  
5           located.
- 6           3. A copy of the application must be furnished to any person or agency, upon request to  
7           the commission within thirty days of either service or publication of the notice of filing.
- 8           4. Within thirty days following service of the notice of filing of a complete application by  
9           the commission, the applicant shall provide a copy of the commission's notice of filing  
10           of the application by first-class mail to the owner of record of any land located within  
11           the requested corridor. For purposes of this subsection, the owner of record means the  
12           owner identified by the county treasurer to receive the real estate tax statement.
- 13           5. An application for an amendment of a certificate must be in the form and contain the  
14           information as the commission prescribes.
- 15           ~~5-6.~~ The commission may designate a site or corridor for a proposed facility following the  
16           study and hearings provided for in this chapter. Any designation must be made in  
17           accordance with the evidence presented at the hearings, an evaluation of the  
18           information provided in the application, the criteria established pursuant to section  
19           49-22.1-03, and the considerations set out in section 49-22.1-09 in a finding with  
20           reasons for the designation, and must be made in a timely manner no later than six  
21           months after the filing of a completed application for a certificate of site compatibility or  
22           no later than three months after the filing of a completed application for a certificate of  
23           corridor compatibility. The time for designation of a site or corridor may be extended by  
24           the commission for just cause. The failure of the commission to act within the time  
25           limits provided in this section does not operate to divest the commission of jurisdiction  
26           in any certification proceeding. The commission shall indicate the reasons for any  
27           refusal of designation. Upon designation of a site or corridor, the commission shall  
28           issue a certificate of site compatibility or a certificate of corridor compatibility with the  
29           terms, conditions, or modifications deemed necessary.

30           **SECTION 4. AMENDMENT.** Section 49-22.1-07 of the North Dakota Century Code is  
31           amended and reenacted as follows:

1           **49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a**  
2 **route.**

3           1. An application for a route permit for a gas or liquid transmission facility within a  
4 designated corridor must be filed no later than two years after the issuance of the  
5 certificate and must be in the form the commission prescribes, containing the following  
6 information:

7           a. A description of the type, size, and design of the proposed facility.

8           b. A description of the location of the proposed facility.

9           c. An evaluation of the proposed route with regard to the applicable considerations  
10 set out in section 49-22.1-09 and the criteria established pursuant to section  
11 49-22.1-03.

12           d. A description of mitigative measures that will be taken to minimize all foreseen  
13 adverse impacts resulting from the location, construction, and operation of the  
14 proposed facility.

15           e. A description of the right-of-way preparation and construction and reclamation  
16 procedures.

17           f. A statement setting forth the manner in which:

18                 (1) The utility will inform affected landowners of easement acquisition, and  
19 necessary easement conditions and restrictions.

20                 (2) The utility will compensate landowners for easements, without reference to  
21 the actual consideration to be paid.

22           g. Any other information the utility considers relevant or the commission requires.

23           2. After determining the application is complete, the commission shall serve a notice of  
24 filing of the application on those persons and agencies the commission deems  
25 appropriate and shall publish a notice of filing of the application in the official  
26 newspaper of each county in which any portion of the designated corridor is located.

27           3. A copy of the application must be furnished to any person or agency, upon request to  
28 the commission within thirty days of either service or publication of the notice of filing.

29           4. Within thirty days following service of the notice of filing of a complete application by  
30 the commission, the applicant shall provide a copy of the commission's notice of filing  
31 of the application by first-class mail to the owner of record of any land located within

1           the requested corridor. For purposes of this subsection, the owner of record means the  
2           owner identified by the county treasurer to receive the real estate tax statement.

3           5. An application for an amendment of a permit must be in the form and contain the  
4           information the commission prescribes.

5           5-6. The commission shall designate a route for the construction of a gas or liquid  
6           transmission facility following the study and hearings provided for in this chapter. This  
7           designation must be made in accordance with the evidence presented at the hearings,  
8           an evaluation of the information provided in the application, the criteria established  
9           pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-06 in  
10          a finding with reasons for the designation, and must be made in a timely manner no  
11          later than six months after the filing of a completed application. The time for  
12          designation of a route may be extended by the commission for just cause. The failure  
13          of the commission to act within the time limit provided in this section does not operate  
14          to divest the commission of jurisdiction in any permit proceeding. Upon designation of  
15          a route the commission shall issue a permit to the applicant with the terms, conditions,  
16          or modifications deemed necessary.

17          **SECTION 5. AMENDMENT.** Section 49-22.1-08 of the North Dakota Century Code is  
18          amended and reenacted as follows:

19          **49-22.1-08. Combining application - Notice of filing.**

20          A utility may file a separate application for a certificate or a permit, or combined into one  
21          application. If a combined application is filed, the applicant shall mail a notice of filing in a single  
22          mailing to the owners of record as required under sections 49-22.1-06 and 49-22.1-07.

Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2264  
House Energy and Natural Resources Committee  
March 2, 2023

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 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2264 because it requires notice of PSC siting and routing proceedings be given to landowners whose property will host a project under review. In 2021, we worked with legislators to pass SB 2263 (2021). This prior bill added the notice language you see in SB 2264, but it was added to North Dakota Century Code section 49-22-08 which is titled “Application for a certificate — Notice of filing — Amendment — Designation of a site or corridor.” There are three other sections of the Century Code which relate to and form the basis for the PSC’s siting authority, as follows:

- 49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.
- 49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.
- 49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a route.

It was an oversight on our part not to request to add the same language to all four provisions of the PSC siting chapters. In our view, it should not matter if it is a wind farm or a pipeline, or a route permit versus a corridor permit – the notice to the impacted landowners should exist, and should be the same. This bill simply adds the same language from the prior legislation to the other three sections listed above. This legislation merely requires notice to be provided to landowners when the PSC is considering issuing a permit for a facility on their property. An amendment was offered to only require a single notice when corridor and route permits are sought in the same proceeding and we also supported that amendment.

We have heard some criticism from the other side that they already have to send a lot of notices but it is critical that landowners get notice specifically of these PSC siting proceedings



because it is often a way for them to address their concerns without needing to hire attorneys. We are simply asking to have notice of legal proceedings for permits that affect our land. We feel this should be the law and ask that you vote do pass on SB 2264.

Thank you,

Troy Coons

*Northwest Landowners Association*



**House Energy and Natural Resources – SB 2264**

**Pete Hanebutt, NDFB Public Policy Director**

**Meghan Estenson, NDFB Legislative Counsel**

**March 2, 2023**

North Dakota Farm Bureau supports SB 2264.

NDFB truly is a grassroots organization. Our members bring issues to their county Farm Bureaus, then to their district meetings, and finally to the NDFB Annual Meeting to be voted on by fellow Farm Bureau members. These issues then are compiled to make up our member driven Farm Bureau Policy Book. Individual private property rights are one of the most addressed issues by our policies.

One of the Farm Bureau's core beliefs is that property rights are among the human rights essential to the preservation of individual freedom. We believe one of the duties of the government is to protect private property; and we strongly advocate for notice to be given regarding projects.

One of the biggest complaints of our landowner members is that they are not provided enough notice of a project. We think this bill is a step in the right direction, and for that reason NDFB support SB 2264.

We respectfully request the committee to give a Do Pass recommendation.

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**ENGROSSED SENATE BILL 2264**  
**Testimony of Todd D. Kranda**  
**House Energy and Natural Resources Committee**

- March 2, 2023 -

Chairman Porter and members of the House Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota.

The North Dakota Petroleum Council is in opposition to Engrossed SB 2264. This Bill attempts to modify the existing laws relating to the energy conversion and transmission facility siting acts for electric, gas and liquid transmission facilities. The changes relate to the notification process for (1) an application for a route permit for an electric transmission facility under North Dakota Century Code (NDCC) § 49-22-08.1; (2) an application for a certificate of corridor compatibility for a gas or liquid transmission facility under NDCC § 49-22.1-06, and (3) an application for a route permit for a gas or liquid transmission facility under NDCC § 49-22.1-07. Specifically, this Bill would require all applicants seeking route permits for an electric, gas or liquid transmission facility to mail notice to all landowners of record within the requested corridor within thirty days after the North Dakota Public Service Commission (“Commission”) determines that an application is complete. According to ND Administrative Code § 69-06-05-01(f) the width of a corridor is not less than 1 mile nor greater than 6 miles. The notice requirement in SB 2264 is not only unnecessary given the current notice requirements under the siting acts, but

it will also create undue burdens on applicants, such as added costs and expenses, and delay the orderly development of energy infrastructure within the State.

When speaking in terms of electric and gas or liquid transmission facilities, we must recognize that any applicant/utility seeking to construct a transmission facility must obtain easements from the landowners along the proposed route. This process is the most intimate form of notice of the proposed project and typically begins long prior to submission of an application to the Commission.

For example, a utility will need to analyze and determine the most suitable route prior to submission of its application to the Commission. This is accomplished by gaining physical access to the land for surveys to locate cultural and historical resources and any other potential unsuitable conditions for the proposed transmission facility. This is usually the first interaction with landowners and if surveys determine the property to be suitable for the proposed transmission facility, easement negotiations will follow. It should also be noted that both siting acts (Ch. 49-22 and Ch. 49-22.1) require applicants to state in their application the manner in which the applicant will inform affected landowners of easement acquisition and how the applicant will compensate said landowners. *See* NDCC §§ 49-22-08.1 and 49-22.1-07. In order to capture landowners not directly affected by construction of the project, most utilities will also facilitate community open house type meetings with landowners to review and explain a proposed project and its broader impact on the community.

As you can see, both siting acts, as well as the very nature of constructing electric or gas or liquid transmission facilities, require direct, one-on-one communications with all landowners along the proposed route prior to submission of an application to the Commission. This Bill, if enacted, will only require yet another, unnecessary notice to landowners who are already intimately aware of the

project and with whom the applicant has likely engaged on several occasions.

To be sure, additional notices are required under both siting acts and the rules of the Commission in order to ensure all affected landowners and agencies are receiving notice of the application. First, once the Commission formally determines that the application is complete, the Commission must serve notice of filing on persons or agencies deemed appropriate and shall publish a notice of filing in the newspaper of each county in which any portion of the facility is proposed to be located. *See* NDCC §§ 49-22-08(2), 49-08.1(2), 49-22.1-06(2) and 49-22.1-07(2). Thereafter, the Commission must also furnish a copy of the application to any person or agency upon request within thirty days of the service or publication. *See* NDCC §§ 49-22-08(3), 49-08.1(3), 49-22.1-06(3) and 49-22.1-07(3). The Commission must provide notice of each public hearing by service on those persons the Commission deems appropriate and *TWICE* by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. *See* §§ 49-22-13 and 49-22.1-10. All such notices are at the expense of the applicant. Additionally, the rules of the Commission set forth in the North Dakota Administrative Code (NDAC) require notice of any hearing to be held on a certificate or permit to be provided at least twenty days prior to the hearing as follows:

- (a) by publication in the official newspaper of each county in which any part of the proposed site, corridor or route is located; and
- (b) by mail or electronic mail to the following persons in each county in which any part of the site, corridor or route is proposed to be located:
  - i. the chairman of the board of county commissioners;
  - ii. the county auditor;
  - iii. the chief executive officer of each city in the county on an

- application for a certificate for an energy conversion facility;
- iv. the chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility;
- (c) by mail or electronic mail to any state or federal agency listed in NDCC Section 69-06-01-05;
- (d) by mail or electronic mail to all parties; and
- (e) by mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

*See* NDAC §§ 69-06-01-02(3), 69-06-04-01(4) and 69-06-05-01(5). Finally, an applicant for a transmission facility is required to serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located. *See* NDAC § 69-06-05-01(4).

These multiple, and sometimes duplicative, notice procedures are meant to capture a wide range of interested persons and agencies for the purpose of soliciting public feedback on the application and the proposed facility. All such notices must be properly and timely made in order for a public hearing to proceed. The additional notice required by SB 2264 will unnecessarily increase costs incurred in connection with the preparation and filing of applications with the Commission and will further delay public hearings on such applications, especially in the context of larger projects which span multiple counties or states.

The additional notice requirements proposed under Engrossed SB 2264 are a duplication and completely unnecessary for the siting process for either an electric energy facility or a gas or liquid energy facility under the existing siting acts. For these reasons, the North Dakota Petroleum Council strongly opposes Engrossed SB 2264 and urges a **Do Not Pass Recommendation**. Thank you for the opportunity to

provide this information. I would be happy to answer any questions.