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MEMORANDUM

To: Chairman Hedke and members of the House Energy and Environment Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 15, 2013
Subject: House Bill 2101

HB 2101 would create an electric transmission siting compact which would become effective and binding upon enactment of the compact by at least three states. Any state would be eligible to become a member state. The stated purpose of the compact is to create a structure under which states may cooperate on a regional basis in order to facilitate siting of interstate electric transmission lines.

Organizational Structure

The compact would create: An Interstate Compact Commission, which would provide administrative support and rulemaking capability; a state project review panel (SPRP) within each member state and consisting of at least three members, to coordinate the views of different agencies and interests within the state; and a combined multi-state siting authority (CMSSA), consisting of the states affected by a particular transmission line siting project proposal, which would be authorized to make siting decisions for that project.

The Interstate Commission would be created for the purpose of administering the compact. The Interstate Commission would be a joint agency of the member states consisting of one voting representative from each member state, who serves as a compact commissioner and is appointed by the governor. The powers of the commission would include the ability to: Provide for dispute resolution among member states; promulgate rules; issue advisory opinions concerning the interpretation of the compact, its bylaws, rules and actions; enforce compliance with the compact, rules, and bylaws; establish a budget and make expenditures; and report annually to the state legislatures and governors of the member states concerning the activities of the Interstate Commission during the preceding year.

Application and Review Process

Under the compact, an electric transmission line project sponsor could choose to use the procedures of the compact or to apply to each affected state under current state procedures. A request for siting authority under the compact would begin with the filing of an application in any one of the states in which the project would be sited. That state would convene a CMSSA to make an early determination, within 90 days of filing, to accept or reject the application and set a procedural schedule for a hearing on the project.

The CMSSA would then conduct a complete evidentiary hearing on the proposed project and make a final determination within 270 days of the filing of the application unless the applicant and the CMSSA agreed to a different timeline. All decisions of the CMSSA would be based on majority vote, with each involved state having one vote. A state, based upon the rules of the involved states, could alter the route for the transmission line within its boundaries by assuming incremental costs. The applicant would be responsible for all reasonable costs associated with the review of the application.

Administrative and Judicial Review

Any action taken by the CMSSA could be challenged by an aggrieved party before the Interstate Commission. After exhaustion of administrative remedies provided by the Interstate Commission and within 90 days of a final action, the party would have the right to judicial review before a three judge panel of the U.S. District Court for the District of Columbia or the District Court in which the Interstate Commission had offices. The Interstate Commission could initiate actions in federal court to compel compliance with the provisions of the compact and bylaws. Each involved state could issue orders within its jurisdiction and could compel compliance with the provisions of its statutes and regulations adopted to implement the authorities of the compact.

Any aggrieved person, involved state or the Interstate Commission could commence a civil action to compel any person or involved state to comply with the compact should any such person undertake a prohibited or unapproved siting project. Member states would be able to adopt provisions providing for additional enforcement mechanisms and remedies.

Oversight, Enforcement, and Dispute Resolution

The executive, legislative, and judicial branches of state government in each member state would be required to enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent including enforcement of any orders. All courts would be required to take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the compact.

The Interstate Commission would be tasked with enforcing the provisions and rules of the compact. If the Interstate Commission determined that a member state had defaulted in the performance of its obligations or responsibilities, the Interstate Commission would be required to provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, any action taken by the Interstate Commission, and provide remedial training and specific technical assistance regarding the default. The Interstate Commission, by a majority vote of the members, could assess fines, fees, and costs for a defaulting state.

Any state that was suspended or terminated would be responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination. The Interstate Commission would not bear any costs relating to any state that has been found to be in default or which had been suspended or terminated from the compact. A defaulting state could appeal an action of the Interstate

Commission in federal court and the prevailing party would be awarded all costs of the litigation including reasonable attorney's fees.

Finance and Administration

Management and administration of the Interstate Commission would be delegated to employees, contractors or donated staff. To fund the cost of initial operations, the Interstate Commission would be permitted to accept contributions and other funding from federal agencies, compacting states, and other sources. The Interstate Commission would collect a filing fee from applicants to cover the cost of operations and activities of the Interstate Commission and its staff. The Interstate Commission would be required to adopt an annual budget to provide for the payment of the expenses of its establishment, organization, and ongoing activities, and must be fully funded by the member states. The Interstate Commission would be exempt from all taxation in and by the member states.

Amendments, Withdrawal, Dissolution, and Binding Effect of Compact

The Interstate Commission could propose amendments to the compact for enactment by the member states. An amendment would not be effective until it was enacted into law by unanimous consent of the member states.

A member state could withdraw from the compact by specifically repealing the statutes that enacted the compact. Withdrawal from the compact could not take effect until the later of either the final determination of a pending application involving that state or one year after the effective date of the repeal of such statutes. A state could be reinstated if the withdrawing state reenacted the compact. The compact could be dissolved effective upon the date of the withdrawal or default of the member state which reduced the membership in the compact to one member state.

All member states' laws conflicting with the compact would be superseded to the extent of the conflict. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, would be binding upon the member states.