



2024 South Dakota Legislature

Senate Bill 201

Introduced by: **Senator Crabtree**

1 **An Act to provide new statutory requirements for regulating linear transmission**
 2 **facilities and to declare an emergency.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to title 34A:**

5 Terms used in this Act mean:

- 6 (1) "Action notice," the director's communication of a decision on a claim;
 7 (2) "Civil recovery," a fund received by the state or a political subdivision from a third
 8 party, other than a pipeline company, as a result of violations of the law and
 9 transferred to the fund from the riot boosting recovery fund;
 10 (3) "Claim," an invoice submitted to the director of the fund by the state or a political
 11 subdivision for an extraordinary expense;
 12 (4) "Department," the Department of Public Safety;
 13 (5) "Director," the director of the Division of Emergency Services within the
 14 Department of Public Safety;
 15 (6) "Extraordinary expense," a reasonable and legitimate cost incurred by the state or
 16 a political subdivision to prepare for, or respond to, or which arises from, opposition
 17 to a project that would not have been incurred but for pipeline construction, and is
 18 incurred due to the receipt, processing, issuing, or auditing of a pipeline project or
 19 application for a permit for a project, or for emergency response training or
 20 equipment desired or required in connection with a project.

21 The term does not include any expense incurred by a private cooperative or
 22 business entity; workers' compensation or disability benefits for employees of this state
 23 or a political subdivision arising out of injuries incurred in the course of employment; or
 24 litigation expense or costs associated with or resulting from the call to active duty,
 25 mobilization, or service of the National Guard;

1 (7) "Extraordinary expense fund," the state and political subdivision extraordinary
2 expense fund as created under section 2 of this Act;

3 (8) "Pipeline," all parts of physical facilities through which any carbon dioxide product
4 is carried within this state, including pipe, valves, other appurtenances attached to
5 pipe, compressor units, metering stations, regulator stations, delivery stations,
6 holders, and fabricated assemblies;

7 (9) "Pipeline company," a person or entity who is the owner of a project or holds a
8 permit from the Public Utilities Commission for a project;

9 (10) "Pipeline construction," the engagement in any activity following the project
10 commencement date in furtherance of a project by a pipeline company, or those
11 acting on its behalf, within this state;

12 (11) "Political subdivision," a county, municipality, or township of this state;

13 (12) "Project," the planning, construction, installation, and operation of a pipeline six
14 inches or greater in diameter, or the construction of a supporting facility in
15 furtherance of carrying any carbon dioxide product by a pipeline company.

16 (13) "Project commencement date," the date that occurs after:

17 (a) A project receives its regulatory permit;

18 (b) No court-imposed impediments on the project exist; and

19 (c) Preparation of the pipeline right-of-way or the ground for a supporting
20 facility commences.

21 Notwithstanding subsections (a) to (c) of this subdivision, the secretary may issue
22 an administrative notice, which is not reviewable, deeming pipeline construction to have
23 begun for purposes of this chapter;

24 (14) "Project completion date," the date on which pipeline construction concludes so
25 that any oil product carried through a pipeline from an originating station fills the
26 entire length of a completed pipeline and permanent pump stations within this
27 state;

28 (15) "Secretary," the secretary of the Department of Public Safety;

29 (16) "State," this state or any agency of the state that is vested with the authority to
30 exercise any portion of the state's sovereignty or with law enforcement authority;
31 and

32 (17) "Supporting facility," a structure necessary and ancillary to a pipeline, including a
33 pressure pump station, housing facility for project personnel, storage area for
34 tangible property, or other temporary structure of a pipeline company or its agent.

35 **Section 2. That a NEW SECTION be added to title 34A:**

1 There is established in the state treasury the state and political subdivision
2 extraordinary expense fund. Money in the fund may be used to pay administrative costs
3 and extraordinary expenses incurred by the state or a political subdivision, arising out of
4 or in connection with pipeline construction. Any interest earned on money in the fund must
5 be credited to the fund. The fund is continuously appropriated to the department.

6 The department shall administer the fund and maintain separate accounts for each
7 project. The secretary shall approve vouchers and the state auditor shall draw warrants
8 to pay administrative costs and extraordinary expenses in accordance with this chapter.
9 All money received by the department for the fund must be set forth in an informational
10 budget pursuant to § 4-7-7.2 and be annually reviewed by the Legislature.

11 **Section 3. That a NEW SECTION be added to title 34A:**

12 The state or a political subdivision may submit a claim for an extraordinary expense
13 to the director for disbursement from the fund in accordance with this chapter. Each claim
14 under this section must be accompanied by a statement of the basis on which it is made,
15 and true and accurate records and books of account regarding the extraordinary expense
16 claimed, including copies of checks, vouchers, warrants, sales receipts, invoices, billings,
17 payroll records, or similar documents for each extraordinary expense in sufficient detail
18 to allow the director to reasonably review the claim.

19 The state or a political subdivision receiving a disbursement from the fund for an
20 approved claim under this section shall keep and maintain true and accurate records and
21 books of account consistent with government accounting standards and in the same
22 manner and for the same period as required by law and make them available for inspection
23 by the director and a duly authorized representative of the pipeline company.

24 On or before the first of February of each year, the director shall provide
25 statements of claim activities for the preceding calendar year to the secretary, any
26 applicable political subdivision, and the pipeline company.

27 **Section 4. That a NEW SECTION be added to title 34A:**

28 The state or a political subdivision may submit a request for pre-approval of an
29 anticipated claim for extraordinary expense to the fund in accordance with this chapter.
30 Each request for pre-approval submitted under this section must be accompanied by a
31 statement of the basis on which the request is made and a description of the anticipated
32 extraordinary expense in sufficient detail to allow the director to reasonably review the
33 request.

1 If a request submitted under this section is approved, the state or political
2 subdivision must provide the director with the same documentation, as required for a
3 claim submitted under section 3 of this Act, after the extraordinary expense is incurred.
4 The director shall review the documents provided under this section to determine whether
5 the expenditure is consistent with the pre-approval decision and issue an action notice
6 regarding the director's determination.

7 **Section 5. That a NEW SECTION be added to title 34A:**

8 The director shall approve or deny, in whole or in part, any claim submitted under
9 section 3 of this Act or any request submitted under section 4 of this Act. The director
10 may condition any claim for extraordinary expense at the director's discretion.

11 The director shall issue an action notice to the state, political subdivision, and the
12 pipeline company of the approval or denial, in whole or in part, of a claim within ten days
13 of receiving the claim under section 3 of this Act, or of a request within ten days of
14 receiving claim documentation as required under section 4 of this Act. The action notice
15 must include all approved and denied portions of the claim, and the rationale for the
16 approval or denial, in sufficient detail to allow the secretary, political subdivision, and the
17 pipeline company to review the decision. An action notice may be accompanied by the
18 records submitted in accordance with sections 3 and 4 of this Act.

19 A claim submitted by the state or a political subdivision is not payable from the
20 fund until the claim is approved by the director. The director shall authorize disbursements
21 from the fund for payment of an approved claim to the state or a political subdivision
22 within forty-five days from the date of the action notice.

23 **Section 6. That a NEW SECTION be added to title 34A:**

24 A claim under section 3 of this Act may be submitted to the director only after the
25 project commencement date. A request under section 4 of this Act may be submitted on
26 or after April 1, 2024.

27 A claim under section 3 of this Act must be submitted to the director within forty-
28 five days of the date the extraordinary expense is incurred.

29 Notwithstanding any other provision of this chapter, the director may not approve
30 any extraordinary expense claim that is not, or any request for pre-approval that will not
31 be, incurred within one year after the project completion date, subject to section 16 of
32 this Act.

1 **Section 7. That a NEW SECTION be added to title 34A:**

2 The department shall communicate with the pipeline company to review any claim
3 or request for pre-approval made to the fund under sections 3 or 4 of this Act. A pipeline
4 company shall designate in writing three official representatives who are authorized to
5 coordinate with the department. Any official representative's concurrence with the
6 director's action notice approving a claim is a waiver of the right of that pipeline company
7 to contest the action notice and is a waiver of the informal review process by the secretary.

8 **Section 8. That a NEW SECTION be added to title 34A:**

9 If the state or a political subdivision receives payment from the fund for an
10 extraordinary expense, and subsequently receives reimbursement through restitution,
11 judgment, settlement, contribution, or other funding for the expense from any other
12 source, except civil recoveries, the reimbursement must be deposited into the fund. The
13 reimbursement deposited into the fund is a credit to a pipeline company and must be used
14 to offset the next special fee calculated under section 11 of this Act. Any reimbursement
15 from federal sources or civil recoveries must be deposited only as allocated by the
16 secretary.

17 For the purposes of this section, the term "special fee" means a fee billed to and
18 paid by a pipeline company to defray administrative costs and extraordinary expenses.

19 **Section 9. That a NEW SECTION be added to title 34A:**

20 A pipeline company that disputes the approval or denial, in whole or in part, of a
21 claim under section 5 of this Act may, within ten days of the date of the action notice,
22 submit its objection in good faith, together with a statement of the basis for the objection,
23 and request a review from the secretary. The secretary shall make an expeditious review
24 of the director's action notice and may approve, modify, condition, or deny the claim, in
25 whole or in part. The secretary's review must be exhausted before any appeal to the Office
26 of Hearing Examiners.

27 A pipeline company may appeal the secretary's decision, if the pipeline company
28 has properly preserved its appeal, by giving written notice to the secretary within ten days
29 of the date of the secretary's decision.

30 The pipeline company may commence one administrative appeal annually arising
31 out of all decisions, joined for judicial efficiency, dated during the preceding calendar year
32 from which the pipeline company wishes to appeal. The pipeline company shall file a

1 written notice of appeal with the Office of Hearing Examiners. Copies of the written notice
2 must be served on the secretary and any other interested party no later than the first of
3 March or the appeal is barred. A written notice of appeal must identify each disputed and
4 properly preserved claim with a decision in the prior calendar year.

5 An appeal under this section must be conducted by a hearing examiner in
6 accordance with chapter 1-26D. The hearing examiner, after hearing the evidence, shall
7 make proposed findings of fact and conclusions of law, and issue a proposed decision. The
8 secretary shall accept, reject, or modify the hearing examiner's findings, conclusions, and
9 decision, which then constitutes the final agency decision. Alternatively, the secretary may
10 appoint the hearing examiner to make the final agency decision. The secretary may
11 arrange for assistance from private counsel throughout the administrative appeal process.
12 The final agency decision may be appealed to circuit court in accordance with chapter 1-
13 26. A pipeline company has standing to appeal under this section.

14 The appeal under this section is the exclusive remedy of a pipeline company
15 regarding the disbursement of a claim of extraordinary expense and constitutes a limited
16 express waiver of sovereign immunity only to the extent necessary under this section. The
17 venue for any disputed claim and appeal under this section is in state circuit court in
18 Hughes County. Pre-judgment interest shall accrue from the date of the secretary's final
19 decision on all disputed claims at the Category B rate of interest specified in § 54-3-16.

20 **Section 10. That a NEW SECTION be added to title 34A:**

21 Within twenty days of a project commencement date, the pipeline company shall
22 make a deposit to the fund of four million dollars. The project account and fund may only
23 be used in accordance with this chapter, and any remaining balance must be remitted to
24 the pipeline company no later than eighteen months after the project completion date less
25 the amount equal to unresolved disputed claims under section 9 of this Act.

26 **Section 11. That a NEW SECTION be added to title 34A:**

27 The secretary may instruct the director to:
28 (1) Withhold, delay, suspend, or reduce any monthly billing to a pipeline company, if
29 the secretary has cause to anticipate the receipt of an additional deposit from a
30 source other than a pipeline company; or
31 (2) For good cause shown, review any claim that is submitted to the director more
32 than forty-five days from the date the extraordinary expense was incurred.

1 **Section 12. That a NEW SECTION be added to title 34A:**

2 Nothing in this Act prevents the state and a pipeline company from entering into
3 any contract or other agreement, provided the terms of the contract or agreement are not
4 inconsistent with this chapter.

5 **Section 13. That a NEW SECTION be added to title 34A:**

6 The secretary may promulgate rules in accordance with chapter 1-26 to implement
7 the provisions of sections 1 to 14, inclusive, of this Act.

8 **Section 14. That a NEW SECTION be added to title 34A:**

9 Sections 1 to 14, inclusive, of this Act are to be repealed October 1, 2026. All claims
10 must be submitted by that date. All claims must be adjudicated by December 31, 2026.

11 **Section 15. That a NEW SECTION be added to chapter 49-41B:**

12 A county, city, or other governmental unit, including governmental units chartered
13 under S.D. Const., Art. IX, § 2, may not enact or increase, in any form a tax, fee, or
14 charge that is related to a gas or liquid transmission line or an electric transmission line
15 which requires or holds a permit under chapter 49-41B. The provisions of this section do
16 not prohibit:

- 17 (1) Real property taxes pursuant to title 10;
18 (2) County road construction, maintenance, and improvement agreements pursuant
19 to either title 7 or title 31; and
20 (3) The application of county zoning ordinance building permit fees related to any
21 building, structure, or other above ground appurtenance related to a gas or liquid
22 transmission line or an electric transmission line which requires or holds a permit
23 under chapter 49-41B.

24 A county, municipality or township may require a gas, liquid, or electrical
25 transmission project to enter into a road use maintenance agreement prior to construction.

26 Any fee or tax permitted under this section must be uniform and apply to all classes
27 of facilities.

28 If after ninety days the applicant cannot come to terms with a county, municipality
29 township, or road district on a road use and maintenance agreement, the applicant may
30 apply to the commission for an order in place of the agreement, specific to that unit of

1 government and after notice and hearing the commission must grant an order determining
2 the applicants use and restoration of the units roads bridges and rights of way.

3 **Section 16. That a NEW SECTION be added to chapter 49-41B:**

4 A county, city, or other governmental unit, including governmental units chartered
5 under S.D. Const., Art. IX, § 2, may not pass or enforce an ordinance that regulates,
6 restricts, or prohibits a gas or liquid transmission line or an electric transmission line which
7 requires or holds a permit under chapter 49-41BA, including without limitation any
8 requirement or restrictions as to routing, setback, construction, operation, maintenance,
9 and zoning permits. Nothing herein restricts the ability of the commission to establish
10 setbacks.

11 The provisions of this section do not prohibit a county, city, or other governmental
12 unit, including governmental units chartered under S.D. Const., Art. IX, § 2, from passing
13 and enforcing a zoning ordinance regulating the location of any building, structure, or
14 other above ground appurtenance related to a gas or liquid transmission line or an electric
15 transmission line which requires or holds a permit under chapter 49-41B, including without
16 limitation any building permit fees.

17 This Act preempts any local law, ordinance, or regulation that conflicts with any
18 provision of this chapter or any policy of the state implemented in accordance with this
19 chapter and, notwithstanding any other provision of law, a governmental unit of this state
20 may not enact or enforce an ordinance, local law, or regulation conflicting with or
21 preempted by this chapter.

22 **Section 17. That a NEW SECTION be added to chapter 49-41B:**

23 All pipelines carrying carbon dioxide must be installed so that the cover between
24 the top of the pipe and the ground level, road bed, river bottom, or underwater natural
25 bottom, as determined by recognized and generally accepted practices, must be a
26 minimum of forty-eight inches in thickness and must be buried so that it is below the level
27 of cultivation.

28 **Section 18. That a NEW SECTION be added to chapter 49-41B:**

29 An operator of a pipeline facility carrying carbon dioxide is liable for repairs of drain
30 tile, which was installed prior to the installation of the pipeline facility, where the
31 installation, construction, operation, maintenance, or repair of the pipeline facility is the

1 proximate cause of the damage to the drain tile. The operator's liability pursuant to this
2 section shall:

3 (1) Continue for the life of the pipeline facility;

4 (2) Cover full replacement costs including without limitation material, labor, and
5 equipment; and

6 (3) Include the reclamation and restoration of topsoil as part of any drain tile repair.

7 **Section 19. That a NEW SECTION be added to chapter 49-41B:**

8 An operator of a pipeline facility carrying carbon dioxide shall be liable for all
9 damages resulting from the installation, construction, operation, maintenance, repair,
10 leaks, ruptures, and other failures of the pipeline facility. The operator shall indemnify and
11 hold the surface owner harmless from any loss, claim, or damage resulting from the
12 installation, construction, operation, maintenance, repair, leaks, ruptures, and other
13 failures of the pipeline facility, other than for gross negligence or willful misconduct of the
14 surface owner.

15 In the event that the surface owner is a county, city, or other governmental unit,
16 including governmental units chartered under S.D. Const., Art. IX, § 2, the operator's
17 liability and indemnification requirements shall include without limitation the
18 governmental unit's road, bridge and other infrastructure damages.

19 **Section 20. That a NEW SECTION be added to chapter 49-41B:**

20 An operator of a pipeline facility carrying carbon dioxide must include an
21 agricultural impact mitigation plan in its application for a permit under this chapter.

22 **Section 21. That a NEW SECTION be added to chapter 49-41B:**

23 An operator of a pipeline facility carrying carbon dioxide must offer a dispersion
24 model into evidence before the commission. The commission may enter an order declaring
25 such dispersion model confidential. Any order declaring a dispersion model as confidential
26 shall be justified in specific findings, in writing or on the record.

27 **Section 22. That a NEW SECTION be added to chapter 49-41B:**

28 A land agent acting on behalf of a pipeline facility carrying carbon dioxide must be
29 either a resident of the state or a real agent licensed in the state.

- 1 **Section 23.** Whereas, this Act is necessary for the immediate preservation of the public
- 2 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in
- 3 full force and effect from and after its passage and approval.