



2024 South Dakota Legislature

Senate Bill 201

CONFERENCE COMMITTEE ENGROSSED

Introduced by: **Senator Crabtree**

1 **An Act to provide new statutory requirements for regulating linear transmission**
 2 **facilities, to allow counties to impose a surcharge on certain pipeline**
 3 **companies, and to establish a landowner bill of rights.**

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

5 **Section 1. That a NEW SECTION be added to chapter 10-4:**

6 Pipelines for the transmission of carbon dioxide are not subject to any discretionary
 7 formulas authorized by this title.

8 **Section 2. That a NEW SECTION be added to chapter 10-12:**

9 A county may impose a pipeline surcharge up to one dollar per linear foot of carbon
 10 dioxide pipeline installed in the county, during any tax year that the carbon dioxide
 11 pipeline company claims a tax credit pursuant to 26 U.S.C. § 45Q (January 1, 2024).

12 For each county where a carbon dioxide pipeline company has installed a pipeline,
 13 the company shall report to the county the linear footage of carbon dioxide pipeline
 14 installed in the county.

15 A carbon dioxide pipeline company shall remit the pipeline surcharge to each
 16 applicable county in the same manner as provided for the payment of property taxes in
 17 chapter 10-21. The revenue derived from the pipeline surcharge must be distributed as
 18 follows:

19 (1) At least fifty percent as tax relief for property in the county where the carbon
 20 dioxide pipeline is located pro rata on a per foot basis to each property in the
 21 county upon which the pipeline is installed; and

22 (2) The remaining revenue to be allocated as determined by the county.

23 **Section 3. That § 10-37-3 be AMENDED:**

1 **10-37-3.** Any pipeline company having lines in this state shall annually, on or
 2 before April fifteenth of each year, make out and deliver to the Department of Revenue a
 3 statement, verified by the oath of an officer or agent of such pipeline company making
 4 such statement, showing in detail for the year ended December thirty-first next preceding:

- 5 (1) The name of the company;
- 6 (2) The nature of the company, whether a person or persons, an association,
 7 copartnership, corporation or syndicate, and under the laws of what state
 8 organized;
- 9 (3) The location of its principal office or place of business;
- 10 (4) The name and post office address of the president, secretary, auditor, treasurer,
 11 and superintendent or general manager;
- 12 (5) The name and post office address of the chief officer or managing agent in this
 13 state;
- 14 (6) The whole number of miles of pipeline owned, operated, or leased within the state,
 15 including a classification of the size, kind, and weight thereof, separated, so as to
 16 show the mileage in each county, and each lesser taxing district;
- 17 (7) A full and complete statement of the cost and actual present value of all buildings
 18 of every description owned by said pipeline company within the state and each
 19 lesser taxing district, not otherwise assessed;
- 20 (8) The number, location, size, and cost of each pressure pump or station;
- 21 (9) Any and all other property owned by said pipeline company within the state which
 22 property shall be classified and scheduled in such a manner as the secretary of
 23 revenue may by rule promulgated pursuant to chapter 1-26 require;
- 24 (10) The gross earnings of the entire company, and the gross earnings on business done
 25 within this state;
- 26 (11) The operating expenses of the entire company and the operating expenses within
 27 this state;~~and~~
- 28 (12) The net earnings of the entire company and the net earnings within this state; and
 29 (13) Whether or not the pipeline company that installs a pipeline for carbon
 30 sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that
 31 year.

32 **Section 4. That § 49-41B-1 be AMENDED:**

33 **49-41B-1.** The Legislature finds that energy development in South Dakota and
 34 ~~the Northern Great Plains significantly~~ surrounding states affects the welfare of the

1 population, the environmental quality, the location and growth of industry, and the use of
 2 ~~the agricultural and~~ natural resources of the state. The Legislature also finds that by
 3 assuming permit authority, that the state must also ensure that ~~these~~ facilities are
 4 permitted and constructed in an orderly and timely manner so that the energy, commerce,
 5 and transmission requirements of the people of the state are fulfilled. Therefore, it is
 6 necessary to ensure that the location, construction, and operation of facilities will produce
 7 minimal adverse effects on the environment and upon the citizens of this state by
 8 providing that the permitting or siting of a facility is determined by the commission and a
 9 facility may not be constructed or operated in this state without first obtaining a permit
 10 from the commission.

11 **Section 5. That § 49-41B-19 be AMENDED:**

12 **49-41B-19.** The Public Utilities Commission shall also hear and receive evidence
 13 presented by any state department, agency, or units of local government relative to the
 14 ~~environmental, social, and economic conditions and projected changes therein~~ elements
 15 in § 49-41B-22, and any applicable ordinance, resolution, or building code.

16 **Section 6. That § 49-41B-28 be AMENDED:**

17 **49-41B-28.** A permit for the construction of a transmission facility within a
 18 designated area ~~may supersede or preempt~~ supersedes and preempts any county,
 19 ~~township, or municipal, or any other governmental unit~~ land use, zoning, or building ~~rules,~~
 20 ~~regulations~~ rule, regulation, or ordinance. Any local land use, zoning, or building rule,
 21 regulation, or ordinance preempted or superseded under this section is not an applicable
 22 rule or law under subdivision 49-41B-22(1). A route or transmission facility permitted by
 23 the commission under this chapter is not subject to any local land use, zoning, or building
 24 rule, regulation, or ordinance, unless the commission requires compliance with any
 25 generally applicable rule, regulation, or ordinance as a condition of the permit issued. The
 26 enforcement of any county, municipal, township, or other governmental unit rule,
 27 regulation, or ordinance for a transmission facility permitted under this chapter must be
 28 done pursuant to the order of the commission granting the permit.

29 ~~ordinances upon a finding by the Public Utilities Commission that such rules, or~~
 30 ~~regulation, or ordinances, as applied to the proposed route, are unreasonably restrictive~~
 31 ~~in view of existing technology, factors of cost, or economics, or needs of parties where~~
 32 ~~located in or out of the county or municipality. Without such a finding by the commission,~~

1 ~~no route shall be designated which violates local land use zoning, or building rules, or~~
2 ~~regulations, or ordinances.~~

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

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

- 9 (1) Real property taxes pursuant to title 10;
- 10 (2) Road use, construction, maintenance, and improvement agreements pursuant to
11 titles 7, 8, 9, or 31; and
- 12 (3) The surcharge created by section 2 of this Act.

13 A county, municipality, township, or other governmental unit, including
14 governmental units chartered under S.D. Const., Art. IX, § 2, may require a gas, liquid,
15 or electrical transmission project to enter into a road use, construction, maintenance, and
16 improvement agreement prior to construction.

17 Any fee or tax permitted under this section must be uniform and apply to all classes
18 of facilities, except the surcharge listed under subdivision 3 of this section.

19 If after ninety days the applicant cannot come to terms with a county, municipality
20 township, or other governmental unit, including governmental units chartered under S.D.
21 Const., Art. IX, § 2, on a road use and maintenance agreement, the applicant may apply
22 to the commission for an order in place of the agreement, specific to that unit of
23 government and after notice and hearing the commission must grant an order determining
24 the applicant's use and restoration of the units, roads, bridges, and rights of way.

25 **Section 8. That a NEW SECTION be added to chapter 49-41B:**

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

31 **Section 9. That a NEW SECTION be added to chapter 49-41B:**

1 An operator of a pipeline facility carrying carbon dioxide is liable for repairs of drain
2 tile, which was installed prior to the installation of the pipeline facility, where the
3 installation, construction, operation, maintenance, or repair of the pipeline facility is the
4 proximate cause of the damage to the drain tile. The operator's liability pursuant to this
5 section shall:

- 6 (1) Continue for the life of the pipeline facility;
7 (2) Cover full replacement costs including without limitation material, labor, and
8 equipment; and
9 (3) Include the reclamation and restoration of topsoil as part of any drain tile repair.

10 **Section 10. That a NEW SECTION be added to chapter 49-41B:**

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

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

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

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

25 **Section 12. That a NEW SECTION be added to chapter 49-41B:**

26 An operator of a pipeline facility carrying carbon dioxide must offer a dispersion
27 analysis into evidence before the commission. The commission may enter an order
28 declaring such dispersion analysis, or a portion of the dispersion analysis, confidential.
29 Any order declaring a dispersion analysis, or a portion of the dispersion analysis, as
30 confidential must be justified in specific findings, in writing or on the record.

1 The commission must make the dispersion analysis available, in relevant part, to
2 each applicable county, emergency manager, and law enforcement agency. The
3 commission shall make available a dispersion analysis report to the public.

4 **Section 13. That a NEW SECTION be added to chapter 49-41B:**

5 A land agent acting on behalf of a pipeline facility carrying carbon dioxide must be
6 a pipeline facility employee, a resident of the state, or a real estate agent licensed in the
7 state.

8 **Section 14. That a NEW SECTION be added to title 43:**

9 Sections 14 to 15, inclusively, of this Act may be cited as the Landowner Bill of
10 Rights.

11 **Section 15. That a NEW SECTION be added to title 43:**

12 Any landowner granting a carbon pipeline easement has the following rights:
13 (1) Each pipeline placed in a carbon pipeline easement must meet the minimum depth
14 requirement in section 8 of this Act;
15 (2) The entity holding rights in the carbon pipeline easement must repair any damage
16 to drain tile as set forth in section 9 of this Act;
17 (3) An operator of a pipeline facility carrying carbon dioxide is liable to a landowner for
18 any leaks or repairs as provided in section 9 of this Act;
19 (4) An operator of a pipeline facility carrying carbon dioxide must indemnify the owner
20 as provided in section 10 of this Act;
21 (5) Any applicant desiring to obtain a permit to operate a pipeline facility carrying
22 carbon dioxide must file the plan as provided in section 11 of this Act;
23 (6) Any applicant desiring to obtain a permit to operate a pipeline facility carrying
24 carbon dioxide must file a disclosure of the dispersion analysis as provided in
25 section 12 of this Act;
26 (7) Any applicant desiring to obtain a permit to operate a carbon dioxide pipeline
27 facility must engage a landowner as required by section 13 of this Act;
28 (8) Each carbon pipeline easement agreement must include a statement disclosing the
29 information in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
30 (9) If the easement holder mortgages or otherwise encumbers to any party any part
31 of the easement holder's rights and interests under the carbon pipeline easement,

- 1 the mortgage or encumbrance is enforceable only as permitted in HB 1186, § 2, if
2 enacted by the Ninety-Ninth Legislature;
- 3 (10) A carbon pipeline easement is not enforceable after the period of time set forth in
4 HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- 5 (11) An operator of a pipeline facility holding the right in the carbon pipeline easement
6 must initiate business operations within the time period set forth in HB 1186, § 2,
7 if enacted by the Ninety-Ninth Legislature;
- 8 (12) A carbon pipeline easement expires after the passing of a period of nonuse as set
9 forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- 10 (13) A carbon pipeline easement must be in writing as required by HB 1186, § 2, if
11 enacted by the Ninety-Ninth Legislature;
- 12 (14) A landowner granting a carbon pipeline easement has the examination and survey
13 protection rights as set forth in § 21-35-31; and
- 14 (15) To receive the one-time payment as provided in HB 1185, § 1, if enacted by the
15 Ninety-Ninth Legislature.