



2025 South Dakota Legislature

Senate Bill 49

Introduced by: **Senator Carley**

1 **An Act to prohibit the exercise of the right of eminent domain for the construction**
 2 **of certain facilities.**

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

4 **Section 1. That § 21-35-1.1 be AMENDED:**

5 **21-35-1.1.** A utility constructing a transmission line in this state ~~that has obtained,~~
 6 not including a pipeline used for the transportation of carbon dioxide or hydrogen, which
 7 obtains a permit pursuant to chapter 49-41B and approval by legislative enactment as
 8 required pursuant to § 49-41B-4.1, is entitled to ~~the power of exercise~~ eminent domain,
 9 as provided ~~by for in~~ this chapter. ~~However, such action shall~~ The exercise of eminent
 10 domain pursuant to this chapter may not be construed to constitute approval of the use
 11 of federal eminent domain.

12 **Section 2. That § 49-7-13 be AMENDED:**

13 **49-7-13.** ~~Any pipeline companies owning a pipeline which is a common carrier as~~
 14 ~~defined by § 49-7-11A~~ pipeline company may exercise the right of eminent domain in
 15 acquiring right-of-way for a pipeline that is a common carrier, as prescribed by statute.
 16 ~~However, in,~~ but not for a pipeline used for the transportation of carbon dioxide or
 17 hydrogen. In the case of school and public lands, ~~no~~ a right-of-way for the purpose of
 18 carriage of property by pipeline ~~shall~~ may not exceed ten feet in width, ~~but~~ the pipeline
 19 company ~~shall have~~ has the right to secure ~~such~~ the land as may be reasonably required
 20 for buildings, pumps, stations, substations, or tanks, ~~or buildings~~ necessary for the
 21 carriage of the type or kinds of property the pipeline company intends its pipeline to carry.

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

23 Notwithstanding any other provision of law, a person may not exercise the right of
 24 eminent domain to construct:

- 1 (1) A pipeline designed to transport carbon dioxide;
- 2 (2) A pipeline designed to transport hydrogen; or
- 3 (3) Any facility that qualifies for a tax credit pursuant to 26 U.S.C. § 45Q (August 16,
- 4 2022).

5 **Section 4. That § 49-41B-28 be AMENDED:**

6 **49-41B-28.** A permit for the construction of a transmission facility within a
 7 designated area may supersede or preempt any county or municipal ~~land use, zoning, or~~
 8 ~~building rules, regulations, or ordinances~~ building, land use, or zoning ordinance,
 9 regulation, or rule, upon a finding by the ~~Public Utilities Commission~~ commission that ~~such~~
 10 ~~rules, or regulation, or ordinances~~ the ordinance, regulation, or rule, as applied to the
 11 proposed route, ~~are~~ is ~~unreasonably restrictive in view of existing technology, or~~ unreasonably
 12 ~~of cost, or economics, or needs of parties where~~ whether ~~located in or out~~ located within or outside
 13 of the county or municipality. ~~Without such a finding by the commission, no route shall be~~
 14 ~~designated which violates local land use zoning, or building rules, or regulations, or~~
 15 ~~ordinances~~ A permit for the construction of a transmission facility designed for transporting
 16 carbon dioxide or hydrogen does not supersede or preempt any county or municipal
 17 building, land use, or zoning ordinance, regulation or rule.

18 **Section 5. That a NEW SECTION be added to chapter 49-41B:**

19 Notwithstanding any other provision of law, a person may not exercise the right of
 20 eminent domain to construct a solar energy facility, wind energy facility, or any facility
 21 that qualifies for a tax credit pursuant to 26 U.S.C. § 45 (August 16, 2022) or 26 U.S.C.
 22 § 48 (January 1, 2023).