



## 2022 South Dakota Legislature

# Senate Bill 204

Introduced by: **Senator Breitling**

1 **An Act to establish a process for the abandonment of certain pipelines.**

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

3 **Section 1. That chapter 49-41B be amended with a NEW SECTION:**

4 For purposes of sections 1 to 10, inclusive, of this Act, the term, pipeline, includes  
 5 a completed pipeline, a pipeline under construction, or a segment of a pipeline.

6 For purposes of sections 1 to 10, inclusive, of this Act, a pipeline designed for or  
 7 capable of transporting liquid hydrocarbons, liquid hydrocarbon products, or carbon  
 8 dioxide, that is not excluded by subdivision 49-41B-2.1(2), is deemed abandoned if it has  
 9 not transported such materials for a period of five consecutive years. A pipeline may not  
 10 be deemed abandoned for as long as it is actively transporting such materials, or is being  
 11 actively maintained with reasonable anticipation of such future use.

12 **Section 2. That chapter 49-41B be amended with a NEW SECTION:**

13 Within thirty days of abandonment of a pipeline designed for, capable of, or used  
 14 during its operation life to transport liquid hydrocarbons, liquid hydrocarbon products, or  
 15 carbon dioxide, the pipeline owner shall provide written notice of abandonment to all  
 16 owners or holders of real estate in which the pipeline owner owns an easement for the  
 17 abandoned pipeline. The notice must include:

- 18 (1) The name and address of the pipeline owner;  
 19 (2) The name, address, and contact information for the pipeline owner's  
 20 representative;  
 21 (3) The location of the easement;  
 22 (4) The date of pipeline abandonment;  
 23 (5) A description of the right of the real estate owner or holder to reclamation of the  
 24 full use of the real estate following abandonment;

1       (6) A description of the right of the real estate owner or holder to reversion of the  
2       easement following abandonment;

3       (7) A description of reclamation options including, at a minimum, abandonment in  
4       place, pipeline segmentation, pipeline capping and plugging, pipeline grouting and  
5       filling, and complete or partial removal of abandoned pipe and other carrier  
6       equipment; and

7       (8) A description of the owner or holder's right to consult on reclamation options with  
8       an independent engineer paid for by the pipeline carrier and a list of independent  
9       engineers qualified to provide professional advice on reclamation options following  
10       pipeline abandonment.

11       **Section 3. That chapter 49-41B be amended with a NEW SECTION:**

12               The pipeline owner, within one hundred eighty days of abandonment of a pipeline  
13       or a portion of a pipeline, shall execute and record a release to revert all of the owner's  
14       easements for the pipeline to the owners or holders of the real estate subject to the  
15       easements, and provide notice of such recording with each real estate owner or holder.

16       **Section 4. That chapter 49-41B be amended with a NEW SECTION:**

17               The owner or holder of real estate subject to an easement for an abandoned  
18       pipeline for which the pipeline owner fails to complete the requirements of sections 2 and  
19       3 of this Act, or subject to an easement for a proposed pipeline for which construction has  
20       not commenced for a period of five years after the effective date of the easement, may  
21       seek reversion of the easement for nonuse as provided in sections 5 and 6 of this Act.

22       **Section 5. That chapter 49-41B be amended with a NEW SECTION:**

23               To revert a pipeline easement for nonuse, the owner or holder of the real estate  
24       subject to the easement must serve notice of reversion upon the owner of the easement  
25       and upon successors in interest and any party in possession of the real estate. The notice  
26       must be served using one of the methods prescribed in § 15-6-4. The notice of reversion  
27       must accurately describe the real estate and easement in question, set out the facts  
28       concerning ownership of the fee, ownership of the easement, and the period of  
29       abandonment or nonuse, and notify the parties that the reversion is complete and final,  
30       and that the easement or right to use such easement is forfeited, unless the owner of the  
31       easement, within one hundred twenty days after the completed service of notice, files an

1 affidavit with the county register of deeds of the county in which the real estate is located  
2 disputing the facts contained in the notice, including evidence of intended future use of  
3 the easement for transportation of liquid hydrocarbons, liquid hydrocarbon products, or  
4 carbon dioxide, and serves the affidavit on the party that filed written notice. An easement  
5 is not subject to reversion if its owner demonstrates a reasonable anticipation of future  
6 use for transportation of liquid hydrocarbons, liquid hydrocarbon products, or carbon  
7 dioxide.

8 **Section 6. That chapter 49-41B be amended with a NEW SECTION:**

9 The owner or holder of the real estate subject to the pipeline easement may initiate  
10 an action in circuit court in the county in which the contested easement is located to  
11 contest the affidavit and quiet title. If an affidavit disputing the facts contained in the  
12 notice, as provided in section 5 of this Act, is not filed within one hundred twenty days,  
13 the party serving the notice may file for record in the office of the county register of deeds  
14 a copy of the notice with proofs of service attached and endorsed, and when so recorded,  
15 the record is constructive notice to all persons of the abandonment, reversion, and  
16 forfeiture of the easement.

17 **Section 7. That chapter 49-41B be amended with a NEW SECTION:**

18 Upon abandonment of a pipeline, the owner or holder of land on which the  
19 abandoned pipeline is located may require the pipeline owner to remove or otherwise  
20 reasonably mitigate the potential impacts of any pipe, equipment, or facility of the pipeline  
21 owner at the pipeline owner's expense as follows:

- 22 (1) Remove any pipe, equipment, or buildings or other structures or appurtenances;  
23 (2) Conduct investigations to determine the presence of hazardous materials;  
24 (3) Decontaminate buildings or other structures or other appurtenances, or land or  
25 water;  
26 (4) Stabilize, contour, maintain the conditioning of, or reconstruct the land surface;  
27 (5) Segment and cap or plug to prevent drainage of water;  
28 (6) Fill a pipe with cement to prevent land subsidence under roadways; or  
29 (7) Any other action necessary to return the land to its condition prior to the easement.

30 **Section 8. That chapter 49-41B be amended with a NEW SECTION:**

1           To ensure adequate financial resources are available to complete mitigation of  
2 properties impacted by abandonment of a pipeline, within three years of the effective date  
3 of this Act or three years following the start of commercial operation of a given pipeline,  
4 whichever is later, the pipeline company shall prepare and submit for approval by the  
5 Public Utilities Commission an abandonment plan containing the following:

6 (1) A review of regulatory requirements applicable to construction related to  
7 abandonment;

8 (2) A compilation of all relevant information on the pipeline system, including  
9 easement agreements;

10 (3) A specific abandonment plan for each parcel on which the abandoned pipe, pipeline  
11 equipment, or pipeline facilities are located, with the plan prepared in consultation  
12 with a parcel's owner and other impacted government authorities and other directly  
13 impacted owners of real estate and parties with property interests, taking into  
14 account:

15 (a) Real estate owner mitigation requirements;

16 (b) Land use management requirements;

17 (c) Ground subsidence risks;

18 (d) Soil and groundwater contamination;

19 (e) Pipe cleanliness;

20 (f) Water crossings;

21 (g) Erosion;

22 (h) Utility and pipeline crossings;

23 (i) Tiling;

24 (j) Water conduit risks;

25 (k) The sizes and types of pipe, equipment or buildings or other structures or  
26 appurtenances; and

27 (l) Post-abandonment responsibilities including monitoring the easement  
28 location for problems resulting from abandonment, maintaining the right-  
29 of-way, maintaining records related to abandonment mitigation, and  
30 recording the location of remaining pipe with the one-call program and in  
31 county land records.

32 (4) An estimate of the total cost of abandonment activities on all affected land; and

33 (5) The establishment of an abandonment trust fund and payment plan sufficient to  
34 ensure that funds will be available to accomplish the mitigation activities contained  
35 in the abandonment plan.

1 **Section 9. That chapter 49-41B be amended with a NEW SECTION:**

2 The Public Utilities Commission shall review and approve the abandonment plan  
3 upon terms, conditions, and restrictions it determines to be just and proper, except that  
4 the Public Utilities Commission shall include in the abandonment plan reasonable  
5 mitigation activities requested by each owner or holder of real estate for that owner's or  
6 holder's land to the maximum extent practical, taking into account impacts to adjoining  
7 properties, county land use requirements, and other state and federal right-of-way and  
8 regulatory requirements.

9 **Section 10. That chapter 49-41B be amended with a NEW SECTION:**

10 Upon approval of an abandonment plan, the pipeline company shall provide a  
11 financial assurance instrument sufficient to ensure the pipeline company's financial  
12 capability to fund the abandonment plan, subject to approval by the Public Utilities  
13 Commission as to the financial instrument's amount, terms, and conditions. The  
14 instrument may provide for the establishment of a secured trust fund, the use of a cash  
15 or surety bond, or other instrument that assures reclamation funding in the event of the  
16 pipeline owner's bankruptcy, dissolution, or incapacity to pay for reclamation. The financial  
17 assurance instrument may be used by the pipeline owner to fund mitigation activities  
18 required by the abandonment plan, or if the pipeline owner fails to undertake mitigation,  
19 by owners or holders of real estate impacted by the pipeline and the state.