



## 2023 South Dakota Legislature

# House Bill 1188

Introduced by: **Representative Lems**

1 **An Act to provide for property owner inclusion in the pipeline siting application and**  
 2 **condemnation process.**

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

4 **Section 1. That § 21-35-2 be AMENDED:**

5 **21-35-2.** A petition filed pursuant to § 21-35-1 shall ~~name~~ must:

6 (1) ~~Name~~ Name the person, group, or corporation desiring to take or damage private  
 7 property as plaintiff, and all persons having interest in or liens upon the property  
 8 affected by the proceeding as defendants, so far as they ~~shall be~~ are known at the  
 9 time of the filing ~~the same~~. It shall ~~contain~~;

10 (2) ~~Contain~~ Contain a description of the property to be taken or damaged. ~~The~~;

11 (3) ~~Set forth the~~ Set forth the purpose for which the property is to be taken or damaged ~~shall be~~  
 12 ~~clearly set forth in the petition;~~ and

13 (4) ~~Be accompanied by a verification of consent, if required by section 4 of this Act.~~

14 It ~~shall is~~ is not ~~be~~ necessary to specify the interests or claims of the several  
 15 defendants in the land or property affected by the proceeding.

16 **Section 2. That § 21-35-31 be AMENDED:**

17 **21-35-31.** ~~The provisions of this~~ This section applies only ~~apply~~ to a project which  
 18 that requires a siting permit pursuant to chapter 49-41B.

19 Each person vested with the authority to take private property for public use may  
 20 ~~cause an examination and survey to be made as necessary for its proposed facilities. The~~  
 21 ~~person or the person's agents and officers may,~~ with the written consent of the property  
 22 owner, enter the private property for the purpose of ~~the~~ causing an examination and  
 23 survey.

24 ~~Any person seeking to cause an examination or survey, where~~ If permission to enter  
 25 the private property for an examination ~~or~~ and survey has been denied, ~~shall~~:

1           ~~(1) Have filed a siting permit application with the person seeking to cause an~~  
 2           ~~examination and survey shall notify the Public Utilities Commission pursuant to § 49-41B-~~  
 3           ~~11;~~

4           ~~(2) Give thirty days written notice, including the filing and expected dates of entry, to~~  
 5           ~~the owner and any tenant in possession of the private property; and~~

6           ~~(3) Make a payment to the owner, or provide sufficient security for the payment, for~~  
 7           ~~any actual damage done to the property by the entry.~~

8           ~~This section does not apply to the state or its political subdivisions. This section is~~  
 9           ~~in addition to and not in derogation of other existing law and request that the denial be~~  
 10           ~~noted during the Commission's consideration of the application for a siting permit.~~

11    **Section 3. That § 49-7-13 be AMENDED:**

12           **49-7-13.** ~~Any pipeline companies owning company that owns a pipeline which and~~  
 13           ~~is a common carrier, as defined by § 49-7-11, may exercise the right of eminent domain~~  
 14           ~~in acquiring right-of-way, as prescribed by statute, provided that contact with a property~~  
 15           ~~owner regarding the exercise of eminent domain may not be initiated until a permit is~~  
 16           ~~issued in accordance with chapter 49-41B. However, in~~~~In~~ the case of school and public  
 17           ~~lands, no right-of-way for the purpose of carriage of property by pipeline shall~~~~may~~ exceed  
 18           ~~ten feet in width but the pipeline, except that the company shall~~~~have~~~~has~~ the right to  
 19           ~~secure such land as may be reasonably~~~~that is~~ required for pumps, stations, substations,  
 20           ~~tanks, or buildings necessary for the carriage of the type or kinds of property the pipeline~~  
 21           ~~company intends its pipeline to carry.~~

22    **Section 4. That chapter 49-7 be amended with a NEW SECTION:**

23           A company seeking to exercise the right of eminent domain under this chapter shall  
 24           demonstrate that it has received sufficient consent to proceed with the condemnation from  
 25           the owners of property that the proposed pipeline will cross.

26           To demonstrate consent, the company shall:

27           (1) Calculate the total linear feet of pipeline proposed to cross this state;

28           (2) Allow each property owner one vote per linear foot of pipeline proposed to cross  
 29           the owner's property;

30           (3) Determine that votes representing at least eighty percent of the total linear feet,  
 31           as established under subdivision (1) of this section, are cast in support of the  
 32           eminent domain proceeding; and

1       (4) File verification of the consent with the petition for ascertainment of compensation  
 2       required by § 21-35-1.

3       For purposes of this section, if property being crossed by a pipeline is under the  
 4       ownership of multiple persons, the vote required by this section must be cast by one  
 5       person, with the authority to act on behalf of the multiple owners.

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

7               **49-41B-11.** All applications for a permit ~~shall~~must be filed with the Public Utilities  
 8       Commission, not less than six months prior to the planned date of commencement of  
 9       construction of a facility, in such form as prescribed by rules promulgated in accordance  
 10       with chapter 1-26, and shall contain, but not be limited to, the following information must  
 11       include:

- 12       (1) The name and address of the applicant;
- 13       (2) ~~Description~~ A description of the nature and location of the facility;
- 14       (3) ~~Estimated~~ The estimated date of commencement of on which construction will  
 15       commence and the duration of construction;
- 16       (4) ~~Estimated~~ The estimated number of ~~employees~~ persons employed at the site of the  
 17       facility during the construction phase and during the operating life of the facility;  
 18       ~~Estimates shall,~~ provided the estimates must include the number of employees  
 19       persons who are to be utilized, but who do not currently reside within the area to  
 20       be affected by the facility;
- 21       (5) Future additions and modifications to the facility, which the applicant may wish to  
 22       be approved in the permit;
- 23       (6) A statement of the reasons for the selection of the proposed location;
- 24       (7) A description of each parcel of property likely to be impacted by the proposed  
 25       location and the name of the principal owner;
- 26       (8) Documentation signed by eighty percent of the principal owners listed in  
 27       accordance with subdivision (7) of this section and indicating their support for the  
 28       proposed facility;
- 29       (9) ~~Person~~ The person owning the proposed facility and the person managing the  
 30       proposed facility;
- 31       ~~(8)~~ (10) The purpose of the facility;
- 32       ~~(9)~~ (11) ~~Estimated~~ The estimated consumer demand and the estimated future energy  
 33       needs of those consumers to be directly served by the facility;

1       ~~(10)~~(12) The potential short- and long-range demands on any estimated tax revenues  
 2               generated by the facility for the extension or expansion of public services within  
 3               the affected areas;

4       ~~(11)~~(13) Environmental studies prepared relative to the facility; and

5       ~~(12)~~(14) ~~Estimated construction~~The estimated cost of constructing the facility.

6       **Section 6. That § 49-41B-15 be AMENDED:**

7               **49-41B-15.** Within thirty days following receipt of ~~an~~a permit application for a  
 8       ~~permit~~that includes all requirements set forth in 49-41B-11, the commission shall:

9       (1)     Schedule a public input meeting;

10      (2)     Notify the applicant of the public input meeting; and

11      (3)     Serve notice of the application and public input meeting upon the governing bodies  
 12               of the counties and municipalities totally or partially within the area of the proposed  
 13               facility.