

2024 South Dakota Legislature

Senate Bill 201**AMENDMENT 201B
FOR THE INTRODUCED BILL**

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 declare an emergency.**

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 transmissions of carbon dioxide are not subject to any
7 discretionary formulas authorized by this title.

8 **Section 2. That § 10-37-3 be AMENDED:**

9 **10-37-3.** Any pipeline company having lines in this state shall annually, on or
10 before April fifteenth of each year, make out and deliver to the Department of Revenue a
11 statement, verified by the oath of an officer or agent of such pipeline company making
12 such statement, showing in detail for the year ended December thirty-first next preceding:
13 (1) The name of the company;
14 (2) The nature of the company, whether a person or persons, an association,
15 copartnership, corporation or syndicate, and under the laws of what state
16 organized;
17 (3) The location of its principal office or place of business;
18 (4) The name and post office address of the president, secretary, auditor, treasurer,
19 and superintendent or general manager;
20 (5) The name and post office address of the chief officer or managing agent in this
21 state;
22 (6) The whole number of miles of pipeline owned, operated, or leased within the state,
23 including a classification of the size, kind, and weight thereof, separated, so as to
24 show the mileage in each county, and each lesser taxing district;

- 1 (7) A full and complete statement of the cost and actual present value of all buildings
- 2 of every description owned by said pipeline company within the state and each
- 3 lesser taxing district, not otherwise assessed;
- 4 (8) The number, location, size, and cost of each pressure pump or station;
- 5 (9) Any and all other property owned by said pipeline company within the state which
- 6 property shall be classified and scheduled in such a manner as the secretary of
- 7 revenue may by rule promulgated pursuant to chapter 1-26 require;
- 8 (10) The gross earnings of the entire company, and the gross earnings on business done
- 9 within this state;
- 10 (11) The operating expenses of the entire company and the operating expenses within
- 11 this state;~~and~~
- 12 (12) The net earnings of the entire company and the net earnings within this state; and
- 13 (13) Whether or not the pipeline company claims a tax credit under 26 U.S.C 45Q
- 14 (January 1, 2024) in that year.

15 **Section 3. That § 10-37-9 be AMENDED:**

16 **10-37-9.** The Department of Revenue shall on the fifth day of July of each year
17 determine the linear amount of pipeline for carbon dioxide sequestration installed in each
18 county, if any, and determine the true and actual value of pipeline property located in
19 each taxing district of the state, and in fixing said value shall take into consideration the
20 structures, equipment, pumping stations, etc., located in said taxing district, and shall
21 transmit to the county auditor of each such county through and into which any pipeline
22 may extend, a statement showing the assessed value of said property in each of the taxing
23 districts of said county. The said property shall then be taxed in said county and lesser
24 taxing districts, based upon the valuation so certified, in the same manner as other
25 property is taxed. Any pipeline surcharge shall be remitted to the county.

26 **Section 4. That § 10-37-15 be AMENDED:**

27 **10-37-15.** All laws relating to the enforcement of the payment of delinquent taxes
28 or any pipeline surcharge shall be applicable to all taxes levied under the provisions of this
29 chapter. When any tax levied under the provisions of this chapter shall become delinquent,
30 the county treasurer having control of such delinquent taxes may proceed to collect the
31 same in the manner as now provided for the collection of other taxes and with the same
32 right and power of the sheriff under execution, except that no process shall be necessary
33 to authorize him to sell any property belonging to any pipeline company for the collection

1 of such taxes. The additional remedy provided for in § 10-38-10 by action in the circuit
2 court shall also be available to the county treasurer.

3 **Section 5. That a NEW SECTION be added to chapter 10-37:**

4 A county may impose a pipeline surcharge up to one dollar per foot of linear
5 pipeline for carbon dioxide sequestration installed in the county during any tax year that
6 the carbon dioxide pipeline company claims a tax credit pursuant to 26 U.S.C 45Q (January
7 1, 2024).

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

9 Terms used in this Act mean:

- 10 (1) "Action notice," the director's communication of a decision on a claim;
- 11 (2) "Civil recovery," a fund received by the state or a political subdivision from a third
12 party, other than a pipeline company, as a result of violations of the law and
13 transferred to the fund from the riot boosting recovery fund;
- 14 (3) "Claim," an invoice submitted to the director of the fund by the state or a political
15 subdivision for an extraordinary expense;
- 16 (4) "Department," the Department of Public Safety;
- 17 (5) "Director," the director of the Division of Emergency Services within the
18 Department of Public Safety;
- 19 (6) "Extraordinary expense," a reasonable and legitimate cost incurred by the state or
20 a political subdivision to prepare for, or respond to, or which arises from, opposition
21 to a project that would not have been incurred but for pipeline construction, and is
22 incurred due to the receipt, processing, issuing, or auditing of a pipeline project or
23 application for a permit for a project, or for emergency response training or
24 equipment desired or required in connection with a project.
25 The term does not include any expense incurred by a private cooperative or business
26 entity; workers' compensation or disability benefits for employees of this state or
27 a political subdivision arising out of injuries incurred in the course of employment;
28 or litigation expense or costs associated with or resulting from the call to active
29 duty, mobilization, or service of the National Guard;
- 30 (7) "Extraordinary expense fund," the state and political subdivision extraordinary
31 expense fund as created under section 2 of this Act;
- 32 (8) "Pipeline," all parts of physical facilities through which any carbon dioxide product
33 is carried within this state, including pipe, valves, other appurtenances attached to

1 pipe, compressor units, metering stations, regulator stations, delivery stations,
2 holders, and fabricated assemblies;

3 ~~(9)(2)~~ "Pipeline company," a person or entity who is the owner of a project or holds a
4 permit from the Public Utilities Commission for a project;

5 ~~(10)(3)~~ "Pipeline construction," the engagement in any activity following the project
6 commencement date in furtherance of a project by a pipeline company, or those
7 acting on its behalf, within this state;

8 ~~(11)(4)~~ "Political subdivision," a county, municipality, or township of this state;

9 ~~(12)(5)~~ "Project," the planning, construction, installation, and operation of a pipeline
10 six inches or greater in diameter, or the construction of a supporting facility in
11 furtherance of carrying any carbon dioxide product by a pipeline company.

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

13 ~~(a)~~ A project receives its regulatory permit;

14 ~~(b)~~ No court imposed impediments on the project exist; and

15 ~~(c)~~ Preparation of the pipeline right of way or the ground for a supporting facility
16 commences.

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

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

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

25 ~~(16)(6)~~ "State," this state or any agency of the state that is vested with the authority
26 to exercise any portion of the state's sovereignty or with law enforcement
27 authority; and

28 ~~(17)(7)~~ "Supporting facility," a structure necessary and ancillary to a pipeline, including
29 a pressure pump station, housing facility for project personnel, storage area for
30 tangible property, or other temporary structure of a pipeline company or its agent.

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

32 ~~There is established in the state treasury the state and political subdivision~~
33 ~~extraordinary expense fund. Money in the fund may be used to pay administrative costs~~
34 ~~and extraordinary expenses incurred by the state or a political subdivision, arising out of~~

~~or in connection with pipeline construction. Any interest earned on money in the fund must be credited to the fund. The fund is continuously appropriated to the department.~~

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

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

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

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

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

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

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

~~If a request submitted under this section is approved, the state or political subdivision must provide the director with the same documentation, as required for a claim submitted under section 3 of this Act, after the extraordinary expense is incurred.~~

1 ~~The director shall review the documents provided under this section to determine whether~~
2 ~~the expenditure is consistent with the pre approval decision and issue an action notice~~
3 ~~regarding the director's determination.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~The pipeline company may commence one administrative appeal annually arising out of all decisions, joined for judicial efficiency, dated during the preceding calendar year from which the pipeline company wishes to appeal. The pipeline company shall file a written notice of appeal with the Office of Hearing Examiners. Copies of the written notice must be served on the secretary and any other interested party no later than the first of~~

~~March or the appeal is barred. A written notice of appeal must identify each disputed and properly preserved claim with a decision in the prior calendar year.~~

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

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

Section 15. That a NEW SECTION be added to title 34A:

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

Section 16. That a NEW SECTION be added to title 34A:

~~The secretary may instruct the director to:~~

~~(1) Withhold, delay, suspend, or reduce any monthly billing to a pipeline company, if the secretary has cause to anticipate the receipt of an additional deposit from a source other than a pipeline company; or~~

~~(2) For good cause shown, review any claim that is submitted to the director more than forty five days from the date the extraordinary expense was incurred.~~

Section 17. That a NEW SECTION be added to title 34A:

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

4 **Section 18. That a NEW SECTION be added to title 34A:**

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

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

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

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

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

- 16 (1) Real property taxes pursuant to title 10;
 17 (2) ~~County road~~ Road use, construction, maintenance, and improvement agreements
 18 pursuant to ~~either~~ titles 7, 8, 9, or title 31; and
 19 (3) ~~The application of county zoning ordinance building permit fees related to any~~
 20 ~~building, structure, or other above ground appurtenance related to a gas or liquid~~
 21 ~~transmission line or an electric transmission line which requires or holds a permit~~
 22 ~~under chapter 49-41B. The surcharge created by section 5 of this Act.~~

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

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

29 If after ninety days the applicant cannot come to terms with a county, municipality
 30 township, or ~~road district~~ other governmental unit, including governmental units chartered
 31 under S.D. Const., Art. IX, § 2, on a road use and maintenance agreement, the applicant

1 may apply to the commission for an order in place of the agreement, specific to that unit
2 of government and after notice and hearing the commission must grant an order
3 determining the applicants use and restoration of the units, roads, bridges, and rights of
4 way.

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

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

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

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

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

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

30 **Section 23. 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 24. 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 25. 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 26. 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 model into evidence before the commission. The commission may enter an order declaring
28 such dispersion model confidential. Any order declaring a dispersion model as confidential
29 shall be justified in specific findings, in writing or on the record.

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

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

3 **Section 28.** Whereas, this Act is necessary for the immediate preservation of the public
4 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in
5 full force and effect from and after its passage and approval.

AMENDED