



## 2026 South Dakota Legislature

# House Bill 1173

Introduced by: **Representative Hughes**

1 **An Act to require an environmental impact statement when certain applicants seek**  
 2 **a permit from the Public Utilities Commission of the State of South Dakota.**

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

4 **Section 1. That § 49-41B-12 be AMENDED:**

5 **49-41B-12.** At the time of filing an application as required in § 49-41B-11, an  
 6 applicant must deposit the minimum fee with the commission. If required by the  
 7 commission, an applicant must remit an amount to be determined by the commission  
 8 based upon the actual cost of investigating, reviewing, processing, and serving notice of  
 9 an application. The amount must be deposited with the state treasurer and credited to a  
 10 subfund within the designated revenue fund and may only be ~~disbursed on vouchers~~  
 11 approved by the commission for the actual cost of investigating, reviewing, processing,  
 12 and serving notice of the application. Expenditures from the revenue fund must be  
 13 budgeted in the general appropriation bill. Except as otherwise provided in this section or  
 14 agreed to by an applicant, the maximum fee chargeable may not exceed one-quarter of  
 15 one percent of the first one hundred million dollars of estimated construction cost plus  
 16 one-twentieth of one percent of all additional estimated construction costs of the facility.  
 17 To exceed the maximum fee when the applicant has not agreed to a fee higher than the  
 18 maximum amount, the commission must make a finding upon a motion from the  
 19 commission staff that all costs incurred were reasonably necessary to investigate, review,  
 20 process, and serve notice of the application. The minimum total fee chargeable may not  
 21 be less than twenty thousand dollars. The minimum fee is nonrefundable unless ordered  
 22 by the commission.

23 Moneys from the South Dakota public utilities commission gross receipts tax fund,  
 24 as established in § 49-1A-2, may not be used to reimburse the commission for any  
 25 additional costs incurred.

1           If the commission determines that an environmental impact statement ~~should be~~  
2 ~~prepared as provided~~ under chapter 34A-9 is required before taking final action on an  
3 application under this chapter, the maximum fee chargeable above may be increased to  
4 an amount not to exceed one-half of one percent of the first one hundred million dollars  
5 of estimated construction cost plus one-twentieth of one percent of all additional estimated  
6 construction costs of the facility. ~~However, the~~ The provisions of this paragraph do not  
7 apply ~~in cases in which~~ if a detailed environment impact study ~~has been completed~~  
8 ~~pursuant to complying with~~ the requirements of the National Environmental Policy Act of  
9 1969 ~~as amended to January 1, 2009, and implementing regulations thereto if such a~~  
10 ~~statement is,~~ 42 U.S.C. § 4321 (January 1, 2025), or an environmental impact statement  
11 complying with the requirements of chapter 34A-9, has been completed and made  
12 available to the commission at least thirty days prior to the time the commission is  
13 required to render a decision under § 49-41B-24 or 49-41B-25.

14           The provisions of this section apply to all pending permit applications and future  
15 permit applications before the commission.

16 **Section 2. That § 49-41B-21 be AMENDED:**

17           **49-41B-21.** Prior to the issuance of a permit for a carbon dioxide transmission  
18 facility, as defined in § 49-41B-2, the commission shall prepare or require the preparation  
19 of an environmental impact statement that complies with the provisions of chapter 34A-9  
20 and is made available to the public on the commission website.

21           In all other cases, the commission may prepare or require the preparation of an  
22 environmental impact statement that complies with the provisions of chapter 34A-9.

23 **Section 3. That § 49-41B-22.1 be AMENDED:**

24           **49-41B-22.1.** ~~Nothing contained herein shall prohibit an~~ An applicant ~~from~~  
25 ~~reapplying may reapply~~ for a permit previously denied pursuant to § 49-41B-24 or 49-  
26 41B-25 within three years from the date of the denial of the original permit. ~~Upon~~ Except  
27 as otherwise provided, upon the first ~~such~~ reapplication, the applicant ~~shall have~~ has the  
28 burden of proof to establish only those criteria upon which the original permit was denied,  
29 ~~provided that nothing in the reapplication materially changes the information presented~~  
30 ~~in the original application regarding those criteria upon which the original permit was not~~  
31 ~~denied. However, nothing contained in this provision shall prohibit the Public Utilities~~  
32 ~~Commission from requiring such.~~ The commission may require the applicant to meet its  
33 the burden of proof as to any other criteria, upon a specific finding by the commission of

1 a material change in the circumstances regarding those criteria, but the ~~Public Utilities~~  
2 ~~Commission shall~~ commission may not, ~~in any event,~~ prepare or require the preparation  
3 of an additional environmental impact statement.