

2026 South Dakota Legislature

House Bill 1173

**AMENDMENT 1173A
FOR THE INTRODUCED BILL**

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,to**
3 **create the environmental impact fund, and to clarify the process for**
4 **appropriation of moneys from the environmental impact statement**
5 **preparation fund.**

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

7 **Section 1. That § 34A-9-4.2 be AMENDED:**

8 **34A-9-4.2.** Any environmental impact statement fee paid pursuant to the
9 provisions of § 34A-9-4 is appropriated continuously to the agency assessing the fee to
10 be deposited in the environmental impact statement preparation fund created by § 34A-
11 9-12.1 and expended for the purposes of § 34A-9-4.

12 **Section 2. That § 34A-9-12.1 be AMENDED:**

13 **34A-9-12.1.** There is hereby established in the state treasury a special revolving
14 fund to be designated as the environmental impact statement preparation fund. This fund
15 shall consist of all moneys from all lawful public and private sources, including
16 legislative appropriations, federal grants, gifts, fees received pursuant to § 34A-9-4
17 chapter 34A-9, and interest on investments made on moneys in the fund. The fund
18 shall be maintained separately for each environmental impact statement and be
19 administered by the agency in order to retain consulting and professional services and to
20 defray such other expenses as are reasonable and necessary in order to prepare the
21 environmental impact statement. All fees assessed by the agency requiring the
22 environmental impact statement under § 34A-9-4 shall be payable to the agency for
23 deposit in the environmental impact statement preparation fund established pursuant to
24 this section. Moneys may be deposited in the fund on an ongoing basis and this fund shall
25 Moneys deposited in the fund must be expended for the purposes of chapter 34A-9 and

1 ~~shall be appropriated by the Legislature through the normal budget process appropriated~~
2 ~~through the general appropriation bill.~~

3 **Section 3. That § 49-41B-12 be AMENDED:**

4 **49-41B-12.** At the time of filing an application as required in § 49-41B-11, an
5 applicant must deposit the minimum fee with the commission. If required by the
6 commission, an applicant must remit an amount to be determined by the commission
7 based upon the actual cost of investigating, reviewing, processing, and serving notice of
8 an application. The amount must be deposited with the state treasurer and credited to ~~a~~
9 ~~subfund within the designated revenue fund the public utilities commission environmental~~
10 ~~impact fund, created in section 6 of this Act,~~ 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.

26 If the commission determines that an environmental impact statement ~~should be~~
27 ~~prepared as provided under chapter 34A-9 is required~~ before taking final action on an
28 application under this chapter, the maximum fee chargeable above may be increased to
29 an amount not to exceed one-half of one percent of the first one hundred million dollars
30 of estimated construction cost plus one-twentieth of one percent of all additional estimated
31 construction costs of the facility. ~~However, the~~ ~~The~~ provisions of this paragraph do not
32 apply ~~in cases in which~~ ~~if~~ a detailed environment impact study ~~has been completed~~
33 ~~pursuant to~~ ~~complying with~~ the requirements of the National Environmental Policy Act of
34 1969 as amended to January 1, 2009, and implementing regulations thereto if such a

1 statement is, 42 U.S.C. § 4321 (January 1, 2025 2026), or an environmental impact
2 statement complying with the requirements of chapter 34A-9, has been completed and
3 made available to the commission at least thirty days prior to the time the commission is
4 required to render a decision under § 49-41B-24 or 49-41B-25.

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

7 **Section 4. That § 49-41B-21 be AMENDED:**

8 **49-41B-21.** Prior to the issuance of a permit for a carbon dioxide transmission
9 facility, as defined in § 49-41B-2, the commission shall prepare or require the preparation
10 of an environmental impact statement that complies with the provisions of chapter 34A-9
11 and is made available to the public on the commission website.

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

14 **Section 5. That § 49-41B-22.1 be AMENDED:**

15 **49-41B-22.1.** Nothing contained herein shall prohibit an An applicant from
16 reapplying may reapply for a permit previously denied pursuant to § 49-41B-24 or 49-
17 41B-25 within three years from the date of the denial of the original permit. Upon Except
18 as otherwise provided, upon the first such reapplication, the applicant shall have has the
19 burden of proof to establish only those criteria upon which the original permit was denied,
20 provided that nothing in the reapplication materially changes the information presented
21 in the original application regarding those criteria upon which the original permit was not
22 denied. However, nothing contained in this provision shall prohibit the Public Utilities
23 Commission from requiring such. The commission may require the applicant to meet its
24 the burden of proof as to any other criteria, upon a specific finding by the commission of
25 a material change in the circumstances regarding those criteria, but the Public Utilities
26 Commission shall commission may not, in any event, prepare or require the preparation
27 of an additional environmental impact statement.

28 **Section 6. That a NEW SECTION be added to chapter 49-41B:**

29 There is created in the state treasury the public utilities commission environmental
30 impact fund. The fund consists of fees collected pursuant to § 49-41B-12 and all other
31 moneys designated for deposit in the fund. The purpose of the fund is to administer the

1 provisions of chapter 49-41B. Expenditures from the fund must be budgeted through the
2 general appropriation bill.

ANNUAL BUDGET