

## 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~~ consists 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 ~~money~~ moneys in the fund. The fund  
18 ~~shall~~ must 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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is created in the state treasury the public utilities commission environmental impact fund. The fund consists of fees collected pursuant to § 49-41B-12 and all other 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.

AMENDED