



## 2026 South Dakota Legislature

# House Bill 1173

HOUSE COMMERCE AND ENERGY ENGROSSED

Introduced by: **Representative Hughes**

1 **An Act to require certain applicants that seek a permit from the Public Utilities**  
 2 **Commission of the State of South Dakota to prepare and pay for an**  
 3 **environmental impact statement.**

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

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

6 **49-41B-12.** At the time of filing an application as required in § 49-41B-11, an  
 7 applicant must deposit the minimum fee with the commission. If required by the  
 8 commission, an applicant must remit an amount to be determined by the commission  
 9 based upon the actual cost of investigating, reviewing, processing, and serving notice of  
 10 an application. The amount must be deposited with the state treasurer and credited to a  
 11 subfund within the ~~designated revenue~~ regulatory assessment fee fund and may only be  
 12 ~~disbursed on vouchers~~ approved by the commission for the actual cost of investigating,  
 13 reviewing, processing, and serving notice of the application. Except as otherwise agreed  
 14 to by an applicant, the maximum fee chargeable may not exceed one-quarter of one  
 15 percent of the first one hundred million dollars of estimated construction cost plus one-  
 16 twentieth of one percent of all additional estimated construction costs of the facility. To  
 17 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 before taking final action on an application~~  
3 ~~under this chapter, the maximum fee chargeable above may be increased to an amount~~  
4 ~~not to exceed one-half of one percent of the first one hundred million dollars of estimated~~  
5 ~~construction cost plus one-twentieth of one percent of all additional estimated construction~~  
6 ~~costs of the facility. However, the provisions of this paragraph do not apply in cases in~~  
7 ~~which a detailed environment impact study has been completed pursuant to the~~  
8 ~~requirements of the National Environmental Policy Act of 1969 as amended to January 1,~~  
9 ~~2009, and implementing regulations thereto if such a statement is available to the~~  
10 ~~commission at least thirty days prior to the time the commission is required to render a~~  
11 ~~decision under § 49-41B-24 or 49-41B-25.~~

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

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

15           ~~**49-41B-21.** Prior to the issuance of a permit, the commission may prepare or~~  
16 ~~require the preparation of an environmental impact statement that complies with the~~  
17 ~~provisions of chapter 34A-9.~~

18           Except as otherwise provided in this section, an applicant seeking a permit under  
19 this chapter for a carbon dioxide transmission facility, as described in § 49-41B-2.1, shall  
20 prepare an environmental impact statement. In all other cases, the commission may  
21 require an applicant to prepare an environmental impact statement.

22           The environmental impact statement must:

23           (1) Be paid for by the applicant;

24           (2) Include the contents required in subdivisions 34A-9-7(1) to (7), inclusive;

25           (3) Be submitted to the commission at least thirty days prior to the time the  
26 commission is required to render a decision pursuant § 49-41B-24 or 49-41B-25;

27           and

28           (4) Be published on the commission website.

29           The commission may not require an environmental impact statement if a detailed  
30 environmental impact study complying with the requirements of the National  
31 Environmental Policy Act of 1969, 42 U.S.C. § 4321 (January 1, 2026), has been  
32 completed and made available to the commission at least thirty days prior to the time the  
33 commission is required to render a decision under § 49-41B-24 or 49-41B-25.

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

2 **49-41B-22.1.** ~~Nothing contained herein shall prohibit an~~ An applicant ~~from~~  
3 ~~reapplying~~ may reapply for a permit previously denied pursuant to § 49-41B-24 or 49-  
4 41B-25 within three years from the date of the denial of the original permit. ~~Upon~~ Except  
5 as otherwise provided, upon the first ~~such~~ reapplication, the applicant ~~shall have~~ has the  
6 burden of proof to establish only those criteria upon which the original permit was denied,  
7 ~~provided that nothing in the reapplication materially changes the information presented~~  
8 ~~in the original application regarding those criteria upon which the original permit was not~~  
9 ~~denied. However, nothing contained in this provision shall prohibit the Public Utilities~~  
10 ~~Commission from requiring such.~~ The commission may require the applicant to meet ~~its~~  
11 the burden of proof as to any other criteria, upon a specific finding by the commission of  
12 a material change in the circumstances regarding those criteria, but the ~~Public Utilities~~  
13 ~~Commission shall~~ commission may not, ~~in any event, prepare or~~ require the preparation  
14 of an additional environmental impact statement.