

2024 South Dakota Legislature

Senate Bill 201**AMENDMENT 201M
FOR THE HOUSE COMMERCE AND ENERGY ENGROSSED
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 establish a landowner bill of rights.**

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

8 **Section 2. That a NEW SECTION be added to chapter 10-12:**

9 A county may impose a pipeline surcharge up to one dollar per ~~linear~~ foot of ~~linear~~
10 carbon dioxide pipeline installed in the county, during any tax year that the carbon dioxide
11 pipeline company claims a tax credit pursuant to 26 U.S.C. § 45Q (January 1, 2024).

12 For each county where a carbon dioxide pipeline company has installed a pipeline,
13 the company shall report to the county the linear footage of carbon dioxide pipeline
14 installed in the county.

15 A carbon dioxide pipeline company shall remit the pipeline surcharge to each
16 applicable county in the same manner as provided for the payment of property taxes in
17 chapter 10-21. The revenue derived from the pipeline surcharge must be distributed as
18 follows:

19 (1) At least fifty percent as tax relief for property in the county where the carbon
20 dioxide pipeline is located pro rata on a per foot basis to each property in the
21 county upon which the pipeline is installed; and

22 (2) The remaining revenue to be allocated as determined by the county.

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

1 **10-37-3.** Any pipeline company having lines in this state shall annually, on or
 2 before April fifteenth of each year, make out and deliver to the Department of Revenue a
 3 statement, verified by the oath of an officer or agent of such pipeline company making
 4 such statement, showing in detail for the year ended December thirty-first next preceding:

- 5 (1) The name of the company;
- 6 (2) The nature of the company, whether a person or persons, an association,
 7 copartnership, corporation or syndicate, and under the laws of what state
 8 organized;
- 9 (3) The location of its principal office or place of business;
- 10 (4) The name and post office address of the president, secretary, auditor, treasurer,
 11 and superintendent or general manager;
- 12 (5) The name and post office address of the chief officer or managing agent in this
 13 state;
- 14 (6) The whole number of miles of pipeline owned, operated, or leased within the state,
 15 including a classification of the size, kind, and weight thereof, separated, so as to
 16 show the mileage in each county, and each lesser taxing district;
- 17 (7) A full and complete statement of the cost and actual present value of all buildings
 18 of every description owned by said pipeline company within the state and each
 19 lesser taxing district, not otherwise assessed;
- 20 (8) The number, location, size, and cost of each pressure pump or station;
- 21 (9) Any and all other property owned by said pipeline company within the state which
 22 property shall be classified and scheduled in such a manner as the secretary of
 23 revenue may by rule promulgated pursuant to chapter 1-26 require;
- 24 (10) The gross earnings of the entire company, and the gross earnings on business done
 25 within this state;
- 26 (11) The operating expenses of the entire company and the operating expenses within
 27 this state; ~~and~~
- 28 (12) The net earnings of the entire company and the net earnings within this state; and
- 29 (13) Whether or not the pipeline company that installs a pipeline for carbon
 30 sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that
 31 year.

32 **~~Section 4. That § 10-37-9 be AMENDED:~~**

33 ~~**10-37-9.** The Department of Revenue shall on the fifth day of July of each year~~
 34 ~~determine the linear footage of carbon dioxide pipeline installed in each county, if any,~~

1 ~~and determine the true and actual value of pipeline property located in each taxing district~~
2 ~~of the state, and in fixing said value shall take into consideration the structures,~~
3 ~~equipment, pumping stations, etc., located in said taxing district, and shall transmit to the~~
4 ~~county auditor of each such county through and into which any pipeline may extend, a~~
5 ~~statement showing the assessed value of said property in each of the taxing districts of~~
6 ~~said county. The said property shall then be taxed in said county and lesser taxing districts,~~
7 ~~based upon the valuation so certified, in the same manner as other property is taxed. Any~~
8 ~~pipeline surcharge shall be remitted to the county.~~

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

10 ~~**10-37-15.** All laws relating to the enforcement of the payment of delinquent taxes~~
11 ~~or any pipeline surcharge shall be applicable to all taxes levied under the provisions of this~~
12 ~~chapter. When any tax levied under the provisions of this chapter shall become delinquent,~~
13 ~~the county treasurer having control of such delinquent taxes may proceed to collect the~~
14 ~~same in the manner as now provided for the collection of other taxes and with the same~~
15 ~~right and power of the sheriff under execution, except that no process shall be necessary~~
16 ~~to authorize him to sell any property belonging to any pipeline company for the collection~~
17 ~~of such taxes. The additional remedy provided for in § 10-38-10 by action in the circuit~~
18 ~~court shall also be available to the county treasurer.~~

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

20 ~~**49-41B-1.** The Legislature finds that energy development ~~and material~~~~
21 ~~~~transmission~~ in South Dakota and ~~the Northern Great Plains significantly surrounding~~~~
22 ~~~~states~~ affects the welfare of the population, the environmental quality, the location and~~
23 ~~growth of industry, and the use of ~~the agricultural and~~ natural resources of the state. The~~
24 ~~Legislature also finds that by assuming permit authority, that the state must also ensure~~
25 ~~that ~~these permitted~~ facilities are permitted and constructed in an orderly and timely~~
26 ~~manner so that the energy, commerce, and transmission requirements of the people of~~
27 ~~the state are fulfilled. Therefore, it is necessary to ensure that the location, construction,~~
28 ~~and operation of facilities will produce minimal adverse effects on the environment and~~
29 ~~upon the citizens of this state by providing that the permitting or siting of a facility is~~
30 ~~determined by the commission and a facility may not be constructed or operated in this~~
31 ~~state without first obtaining a permit from the commission.~~

32 **Section 5. That § 49-41B-19 be AMENDED:**

1 **49-41B-19.** The Public Utilities Commission shall also hear and receive evidence
 2 presented by any state department, agency, or units of local government relative to the
 3 environmental, social, and economic conditions and projected changes therein elements
 4 in § 49-41B-22, and any applicable ordinance, resolution, or building code.

5 **Section 6. That § 49-41B-28 be AMENDED:**

6 **49-41B-28.** A permit for the construction of a transmission facility within a
 7 designated area ~~may~~ must supersede or preempt ~~supersedes and preempts~~ any county,
 8 township, or municipal, or any other governmental unit land use, zoning, or building rules,
 9 or safety standards, regulations rule, regulation, or ordinance. Any local land use, zoning,
 10 or building rule, regulation, or ordinance preempted or superseded under this section is
 11 not an applicable rule or law under subdivision 49-41B-22(1). A route or transmission
 12 facility permitted by the commission under this chapter is not subject to any local land
 13 use, zoning, or building rule, regulation, or ordinance, unless the commission requires
 14 compliance with any generally applicable rule, regulation, or ordinance as a condition of
 15 the permit issued. The enforcement of any county, municipal, township, or other
 16 governmental unit rule, regulation, or ordinance for a transmission facility permitted under
 17 this chapter must be done pursuant to the order of the commission granting the permit.

18 ~~ordinances upon a finding by the Public Utilities Commission that such rules, or~~
 19 ~~regulation, or ordinances, as applied to the proposed route, are unreasonably restrictive~~
 20 ~~in view of existing technology, factors of cost, or economics, or needs of parties where~~
 21 ~~located in or out of the county or municipality or such regulations or ordinances are~~
 22 ~~preempted by federal law. Without such a finding by the commission, no route shall be~~
 23 ~~designated which violates local land use zoning, or building rules, or regulations, or~~
 24 ~~ordinances~~

25 An ordinance or regulation is preempted by federal law if:

26 (1) The ordinance or regulation directly conflicts with any federal statute,
 27 regulation, standard, or common law pertaining to the same subject matter;

28 (2) Any applicable federal statute expressly prohibits a state or political subdivision
 29 from enacting any ordinance, regulation, or standard pertaining to the same subject
 30 matter; or

31 (3) Any applicable federal statute delegates to a federal agency sole authority to
 32 enact any regulation or standard pertaining to the same subject matter.

33 **Section 7. That a NEW SECTION be added to chapter 49-41B:**

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

6 (1) Real property taxes pursuant to title 10;

7 (2) Road use, construction, maintenance, and improvement agreements pursuant to
8 titles 7, 8, 9, or 31; and

9 (3) The surcharge created by section ~~5 2~~ of this Act.

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

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

16 If after ninety days the applicant cannot come to terms with a county, municipality
17 township, or other governmental unit, including governmental units chartered under S.D.
18 Const., Art. IX, § 2, on a road use and maintenance agreement, the applicant may apply
19 to the commission for an order in place of the agreement, specific to that unit of
20 government and after notice and hearing the commission must grant an order determining
21 the applicant's use and restoration of the units, roads, bridges, and rights of way.

22 **Section 8. That a NEW SECTION be added to chapter 49-41B:**

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

28 **Section 9. That a NEW SECTION be added to chapter 49-41B:**

29 An operator of a pipeline facility carrying carbon dioxide is liable for repairs of drain
30 tile, which was installed prior to the installation of the pipeline facility, where the
31 installation, construction, operation, maintenance, or repair of the pipeline facility is the
32 proximate cause of the damage to the drain tile. The operator's liability pursuant to this
33 section shall:

- 1 (1) Continue for the life of the pipeline facility;
- 2 (2) Cover full replacement costs including without limitation material, labor, and
- 3 equipment; and
- 4 (3) Include the reclamation and restoration of topsoil as part of any drain tile repair.

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

6 An operator of a pipeline facility carrying carbon dioxide shall be liable for all
7 damages resulting from the installation, construction, operation, maintenance, repair,
8 leaks, ruptures, and other failures of the pipeline facility. The operator shall indemnify and
9 hold the surface owner harmless from any loss, claim, or damage resulting from the
10 installation, construction, operation, maintenance, repair, leaks, ruptures, and other
11 failures of the pipeline facility, other than for gross negligence or willful misconduct of the
12 surface owner.

13 In the event that the surface owner is a county, city, or other governmental unit,
14 including governmental units chartered under S.D. Const., Art. IX, § 2, the operator's
15 liability and indemnification requirements shall include without limitation the
16 governmental unit's road, bridge, and other infrastructure damages.

17 **Section 11. That a NEW SECTION be added to chapter 49-41B:**

18 An operator of a pipeline facility carrying carbon dioxide must include an
19 agricultural impact mitigation plan in its application for a permit under this chapter.

20 **Section 12. That a NEW SECTION be added to chapter 49-41B:**

21 An operator of a pipeline facility carrying carbon dioxide must offer a dispersion
22 ~~model analysis~~ into evidence before the commission. The commission may enter an order
23 declaring such dispersion ~~model analysis, or a portion of the dispersion analysis,~~
24 confidential. Any order declaring a dispersion ~~model analysis, or a portion of the dispersion~~
25 ~~analysis,~~ as confidential ~~shall must~~ be justified in specific findings, in writing or on the
26 record.

27 The commission must make the dispersion analysis available, in relevant part, to
28 each applicable county, emergency manager, and law enforcement agency. The
29 commission shall make available a dispersion analysis report to the public.

30 **Section 13. 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 pipeline facility employee, a resident of the state, or a real estate agent licensed
3 in the state.

4 **Section 14. That a NEW SECTION be added to title 43:**

5 Sections 14 to 15, inclusively, of this Act may be cited as the Landowner Bill of
6 Rights.

7 **Section 15. That a NEW SECTION be added to title 43:**

8 Any landowner granting a carbon pipeline easement has the following rights:

- 9 (1) Each pipeline placed in a carbon pipeline easement must meet the minimum depth
10 requirement in section 8 of this Act;
- 11 (2) The entity holding rights in the carbon pipeline easement must repair any damage
12 to drain tile as set forth in section 9 of this Act;
- 13 (3) An operator of a pipeline facility carrying carbon dioxide is liable to a landowner for
14 any leaks or repairs as provided in section 9 of this Act;
- 15 (4) An operator of a pipeline facility carrying carbon dioxide must indemnify the owner
16 as provided in section 10 of this Act;
- 17 (5) Any applicant desiring to obtain a permit to operate a pipeline facility carrying
18 carbon dioxide must file the plan as provided in section 11 of this Act;
- 19 (6) Any applicant desiring to obtain a permit to operate a pipeline facility carrying
20 carbon dioxide must file a disclosure of the dispersion analysis as provided in
21 section 12 of this Act;
- 22 (7) Any applicant desiring to obtain a permit to operate a carbon dioxide pipeline
23 facility must engage a landowner as required by section 13 of this Act;
- 24 (8) Each carbon pipeline easement agreement must include a statement disclosing the
25 information in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- 26 (9) If the easement holder mortgages or otherwise encumbers to any party any part
27 of the easement holder's rights and interests under the carbon pipeline easement,
28 the mortgage or encumbrance is enforceable only as permitted in HB 1186, § 2, if
29 enacted by the Ninety-Ninth Legislature;
- 30 (10) A carbon pipeline easement is not enforceable after the period of time set forth in
31 HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

- 1 (11) An operator of a pipeline facility holding the right in the carbon pipeline easement
2 must initiate business operations within the time period set forth in HB 1186, § 2,
3 if enacted by the Ninety-Ninth Legislature;
- 4 (12) A carbon pipeline easement expires after the passing of a period of nonuse as set
5 forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- 6 (13) A carbon pipeline easement must be in writing as required by HB 1186, § 2, if
7 enacted by the Ninety-Ninth Legislature;
- 8 (14) A landowner granting a carbon pipeline easement has the examination and survey
9 protection rights as set forth in § 21-35-31; and
- 10 (15) To receive the one-time payment as provided in HB 1185, § 1, if enacted by the
11 Ninety-Ninth Legislature.