



2025 South Dakota Legislature

House Bill 1228

Introduced by: **Representative Hughes**

1 **An Act to require an environmental impact statement from applicants seeking a**
 2 **carbon dioxide transmission facility permit from the Public Utilities**
 3 **Commission of the State of South Dakota.**

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~~ shall 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 fund and may only be disbursed on vouchers
 12 approved by the commission for the actual cost of investigating, reviewing, processing,
 13 and serving notice of the application. Except as otherwise provided in this section or
 14 agreed to by an applicant, the maximum fee chargeable may not exceed ~~one-quarter~~ one-
 15 half of one percent of the first one hundred million dollars of estimated construction cost
 16 plus one-twentieth of one percent of all additional estimated construction costs of the
 17 facility. To exceed the maximum fee when the applicant has not agreed to a fee higher
 18 than the maximum amount, the commission ~~must~~ shall make a finding upon a motion
 19 from the commission staff that all costs incurred were reasonably necessary to investigate,
 20 review, process, and serve notice of the application. In these circumstances, the
 21 commission ~~must~~ shall seek reimbursement for those costs, during the next regular
 22 legislative session. However, the minimum total fee chargeable may not be less than
 23 twenty thousand dollars. The minimum fee is nonrefundable unless ordered by the
 24 commission.

25 ~~If the commission determines that an environmental impact statement should be~~
 26 ~~prepared as provided under chapter 34A-9 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 provisions of this paragraph do not apply in cases in which a~~ 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 if:

(1) A detailed environment impact study has been completed pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2009, 42 U.S.C. § 4321 et seq. (January 1, 2025), and implementing regulations thereto if such a; or

(2) An environmental impact statement that complies with the provisions of chapter 34A-9 is 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 2. 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 must 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.

For purposes of this chapter, the provisions of 34A-9 apply to any permit application by a public or private applicant for issuance of a permit for a carbon dioxide transmission facility.

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

49-41B-22.1. ~~Nothing contained herein shall prohibit~~ in this section prohibits an applicant from reapplying 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 the first ~~such~~ reapplication, the applicant shall have 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

1 regarding those criteria upon which the original permit was not denied. ~~However, nothing~~
2 ~~contained in this provision shall prohibit the Public Utilities Commission.~~ Nothing in this
3 section prohibits the commission from requiring ~~such the~~ applicant to meet ~~its the~~ burden
4 of proof as to any criteria, upon a specific finding by the commission of a material change
5 in the circumstances regarding those criteria, but the ~~Public Utilities Commission shall~~
6 commission may not, in any event, prepare or require the preparation of ~~an a new~~
7 environmental impact statement.