

## 2023 South Dakota Legislature

**House Bill 1188****AMENDMENT 1188A  
FOR THE INTRODUCED BILL**

1 **An Act to provide for property owner inclusion in the pipeline siting application and**  
2 **condemnation process.**

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

4  
5 **~~Section 1. That § 21-35-2 be AMENDED:~~**

6 ~~**21-35-2.** A petition filed pursuant to § 21-35-1 shall name must:~~

7 ~~(1) Name the person, group, or corporation desiring to take or damage private property as~~  
8 ~~plaintiff, and all persons having interest in or liens upon the property affected by the~~  
9 ~~proceeding as defendants, so far as they shall be are known at the time of the filing the same.~~  
10 ~~It shall contain:~~

11 ~~(2) Contain a description of the property to be taken or damaged. The;~~

12 ~~(3) Set forth the purpose for which the property is to be taken or damaged shall be clearly~~  
13 ~~set forth in the petition; and~~

14 ~~(4) Be accompanied by a verification of consent, if required by section 4 of this Act.~~

15 ~~It shall is not be necessary to specify the interests or claims of the several defendants in the~~  
16 ~~land or property affected by the proceeding.~~

17 **Section 1. That § 21-35-31 be AMENDED:**

18 ~~**21-35-31.** The provisions of this This section applies only apply to a project which~~  
19 ~~that requires a siting permit pursuant to chapter 49-41B.~~

20 ~~Each person vested with the authority to take private property for public use may~~  
21 ~~cause an examination and survey to be made as necessary for its proposed facilities. The~~

1 ~~person or the person's agents and officers may, with the written consent of the property~~  
 2 ~~owner,~~ enter the private property for the purpose of the ~~causing an~~ examination and  
 3 survey.

4 ~~Any person seeking to cause an examination or survey, where~~ If permission to enter  
 5 the private property for an examination or and survey has been denied, shall:

6 ~~(1) Have filed a siting permit application with the person seeking to cause an~~  
 7 ~~examination and survey shall notify the Public Utilities Commission pursuant to § 49-41B-~~  
 8 ~~11;~~

9 ~~(2) Give thirty days written notice, including the filing and expected dates of entry, to~~  
 10 ~~the owner and any tenant in possession of the private property; and~~

11 ~~(3) Make a payment to the owner, or provide sufficient security for the payment, for~~  
 12 ~~any actual damage done to the property by the entry.~~

13 ~~This section does not apply to the state or its political subdivisions. This section is~~  
 14 ~~in addition to and not in derogation of other existing law and request that the denial be~~  
 15 ~~noted during the Commission's consideration of the application for a siting permit.~~

16 **Section 2. That § 49-7-13 be AMENDED:**

17 **49-7-13.** ~~Any pipeline companies owning company that owns a pipeline which and~~  
 18 ~~is a common carrier, as defined by § 49-7-11, may exercise the right of eminent domain~~  
 19 ~~in acquiring right-of-way, as prescribed by statute, provided that contact with a property~~  
 20 ~~owner regarding the exercise of eminent domain may not be initiated until a permit is~~  
 21 ~~issued in accordance with chapter 49-41B. However, in~~ In the case of school and public  
 22 lands, no right-of-way for the purpose of carriage of property by pipeline ~~shall~~ may exceed  
 23 ten feet in width ~~but the pipeline, except that the company shall have~~ has the right to  
 24 secure ~~such land as may be reasonably~~ that is required for pumps, stations, substations,  
 25 tanks, or buildings necessary for the carriage ~~of the type or kinds of property the pipeline~~  
 26 company intends its pipeline to carry.

27  
 28 **~~Section 4. That chapter 49-7 be amended with a NEW SECTION:~~**

29 ~~A company seeking to exercise the right of eminent domain under this chapter shall~~  
 30 ~~demonstrate that it has received sufficient consent to proceed with the condemnation from~~  
 31 ~~the owners of property that the proposed pipeline will cross.~~

1 ~~To demonstrate consent, the company shall:~~

2 ~~(1) Calculate the total linear feet of pipeline proposed to cross this state;~~

3 ~~(2) Allow each property owner one vote per linear foot of pipeline proposed to cross the~~  
4 ~~owner's property;~~

5 ~~(3) Determine that votes representing at least eighty percent of the total linear feet, as~~  
6 ~~established under subdivision (1) of this section, are cast in support of the eminent domain~~  
7 ~~proceeding; and~~

8 ~~(4) File verification of the consent with the petition for ascertainment of compensation~~  
9 ~~required by § 21-35-1.~~

10 ~~For purposes of this section, if property being crossed by a pipeline is under the ownership of~~  
11 ~~multiple persons, the vote required by this section must be cast by one person, with the~~  
12 ~~authority to act on behalf of the multiple owners.~~

13

14 **Section 5. That § 49-41B-11 be AMENDED:**

15 ~~49-41B-11. All applications for a permit shall must be filed with the Public Utilities~~  
16 ~~Commission, not less than six months prior to the planned date of commencement of~~  
17 ~~construction of a facility, in such form as prescribed by rules promulgated in accordance with~~  
18 ~~chapter 1-26, and shall contain, but not be limited to, the following information must include:~~

19 ~~(1) The name and address of the applicant;~~

20 ~~(2) Description A description of the nature and location of the facility;~~

21 ~~(3) Estimated The estimated date of commencement of on which construction will commence~~  
22 ~~and the duration of construction;~~

23 ~~(4) Estimated The estimated number of employees persons employed at the site of the facility~~  
24 ~~during the construction phase and during the operating life of the facility. Estimates shall,~~  
25 ~~provided the estimates must include the number of employees persons who are to be utilized,~~  
26 ~~but who do not currently reside within the area to be affected by the facility;~~

1 ~~(5) Future additions and modifications to the facility, which the applicant may wish to be~~  
2 ~~approved in the permit;~~

3 ~~(6) A statement of the reasons for the selection of the proposed location;~~

4 ~~(7) A description of each parcel of property likely to be impacted by the proposed location and~~  
5 ~~the name of the principal owner;~~

6 ~~(8) Documentation signed by eighty percent of the principal owners listed in accordance with~~  
7 ~~subdivision (7) of this section and indicating their support for the proposed facility;~~

8 ~~(9) Person The person owning the proposed facility and the person managing the proposed~~  
9 ~~facility;~~

10 ~~(8)(10) The purpose of the facility;~~

11 ~~(9)(11) Estimated The estimated consumer demand and the estimated future energy needs~~  
12 ~~of those consumers to be directly served by the facility;~~

13 ~~(10)(12) The potential short and long range demands on any estimated tax revenues~~  
14 ~~generated by the facility for the extension or expansion of public services within the affected~~  
15 ~~areas;~~

16 ~~(11)(13) Environmental studies prepared relative to the facility; and~~

17 ~~(12)(14) Estimated constructionThe estimated cost of constructing the facility.~~

18

19 **~~Section 6. That § 49-41B-15 be AMENDED:~~**

20 **~~49-41B-15.~~** Within thirty days following receipt of an a permit application for a permit that  
21 includes all requirements set forth in 49-41B-11, the commission shall:

22 ~~(1) Schedule a public input meeting;~~

23 ~~(2) Notify the applicant of the public input meeting; and~~

24 ~~(3) Serve notice of the application and public input meeting upon the governing bodies of the~~  
25 ~~counties and municipalities totally or partially within the area of the proposed facility.~~