

2024 South Dakota Legislature
Senate Bill 201

**AMENDMENT 201J
FOR THE SENATE 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.**

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 § 10-37-3 be AMENDED:**

9 **10-37-3.** Any pipeline company having lines in this state shall annually, on or
10 before April fifteenth of each year, make out and deliver to the Department of Revenue a
11 statement, verified by the oath of an officer or agent of such pipeline company making
12 such statement, showing in detail for the year ended December thirty-first next preceding:
13 (1) The name of the company;
14 (2) The nature of the company, whether a person or persons, an association,
15 copartnership, corporation or syndicate, and under the laws of what state
16 organized;
17 (3) The location of its principal office or place of business;
18 (4) The name and post office address of the president, secretary, auditor, treasurer,
19 and superintendent or general manager;
20 (5) The name and post office address of the chief officer or managing agent in this
21 state;
22 (6) The whole number of miles of pipeline owned, operated, or leased within the state,
23 including a classification of the size, kind, and weight thereof, separated, so as to
24 show the mileage in each county, and each lesser taxing district;

- 1 (7) A full and complete statement of the cost and actual present value of all buildings
- 2 of every description owned by said pipeline company within the state and each
- 3 lesser taxing district, not otherwise assessed;
- 4 (8) The number, location, size, and cost of each pressure pump or station;
- 5 (9) Any and all other property owned by said pipeline company within the state which
- 6 property shall be classified and scheduled in such a manner as the secretary of
- 7 revenue may by rule promulgated pursuant to chapter 1-26 require;
- 8 (10) The gross earnings of the entire company, and the gross earnings on business done
- 9 within this state;
- 10 (11) The operating expenses of the entire company and the operating expenses within
- 11 this state;~~and~~
- 12 (12) The net earnings of the entire company and the net earnings within this state; and
- 13 (13) Whether or not the pipeline company that installs a pipeline for carbon
- 14 sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that
- 15 year.

16 **Section 3. That § 10-37-9 be AMENDED:**

17 **10-37-9.** The Department of Revenue shall on the fifth day of July of each year
 18 determine the linear footage of carbon dioxide pipeline installed in each county, if any,
 19 and determine the true and actual value of pipeline property located in each taxing district
 20 of the state, and in fixing said value shall take into consideration the structures,
 21 equipment, pumping stations, etc., located in said taxing district, and shall transmit to the
 22 county auditor of each such county through and into which any pipeline may extend, a
 23 statement showing the assessed value of said property in each of the taxing districts of
 24 said county. The said property shall then be taxed in said county and lesser taxing districts,
 25 based upon the valuation so certified, in the same manner as other property is taxed. Any
 26 pipeline surcharge shall be remitted to the county.

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

28 **10-37-15.** All laws relating to the enforcement of the payment of delinquent taxes
 29 or any pipeline surcharge shall be applicable to all taxes levied under the provisions of this
 30 chapter. When any tax levied under the provisions of this chapter shall become delinquent,
 31 the county treasurer having control of such delinquent taxes may proceed to collect the
 32 same in the manner as now provided for the collection of other taxes and with the same
 33 right and power of the sheriff under execution, except that no process shall be necessary

1 to authorize him to sell any property belonging to any pipeline company for the collection
 2 of such taxes. The additional remedy provided for in § 10-38-10 by action in the circuit
 3 court shall also be available to the county treasurer.

4 **Section 5. That a NEW SECTION be added to chapter 10-37:**

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

8 **Section 6. That § 49-41B-1 be AMENDED:**

9 **49-41B-1.** The Legislature finds that energy development and material
 10 transmission in South Dakota and the Northern Great Plains significantly affects the
 11 welfare of the population, the environmental quality, the location and growth of industry,
 12 and the use of the natural resources of the state. The Legislature also finds that by
 13 assuming permit authority, that the state must also ensure that ~~these permitted~~ facilities
 14 are constructed in an orderly and timely manner ~~so that the energy requirements of the~~
 15 ~~people of the state are fulfilled~~. Therefore, it is necessary to ensure that the location,
 16 construction, and operation of facilities will produce minimal adverse effects on the
 17 environment and upon the citizens of this state by providing that a facility may not be
 18 constructed or operated in this state without first obtaining a permit from the commission.
 19

20 **Section 7. That § 49-41B-28 be AMENDED:**

21 **49-41B-28.** A permit for the construction of a transmission facility within a
 22 designated area ~~may~~ must supersede or preempt any county or municipal land use,
 23 zoning, ~~or building rules, or safety standards,~~ regulations, or ordinances upon a finding
 24 by the Public Utilities Commission that such rules, or regulation, or ordinances, as applied
 25 to the proposed route, are unreasonably restrictive in view of existing technology, factors
 26 of cost, or economics, or needs of parties where located in or out of the county or
 27 municipality or such regulations or ordinances are preempted by federal law. ~~Without such~~
 28 ~~a finding by the commission, no route shall be designated which violates local land use~~
 29 ~~zoning, or building rules, or regulations, or ordinances~~

30 An ordinance or regulation is preempted by federal law if:
 31 (1) The ordinance or regulation directly conflicts with any federal statute, regulation,
 32 standard, or common law pertaining to the same subject matter;

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

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

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

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

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

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

15 (3) The surcharge created by section 5 of this Act.

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

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

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

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

29 ~~A county, municipality, township, or other governmental unit, including~~
 30 ~~governmental units chartered under S.D. Const., Art. IX, § 2, may not pass or enforce an~~
 31 ~~ordinance that regulates, restricts, or prohibits a gas or liquid transmission line or an~~
 32 ~~electric transmission line which requires or holds a permit under chapter 49-41B, including~~
 33 ~~without limitation any requirement or restrictions as to routing, setback, construction,~~

~~operation, maintenance, and zoning permits. Nothing herein restricts the ability of the commission to establish setbacks, or to require the compliance of above-ground structures with generally applicable zoning ordinances, building, and fire codes.~~

~~This Act preempts any local law, ordinance, or regulation that conflicts with any provision of this chapter or any policy of the state implemented in accordance with this chapter and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law, or regulation conflicting with or preempted by this chapter.~~

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

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

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

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

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

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

An operator of a pipeline facility carrying carbon dioxide shall be liable for all damages resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other failures of the pipeline facility. The operator shall indemnify and hold the surface owner harmless from any loss, claim, or damage resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other

1 failures of the pipeline facility, other than for gross negligence or willful misconduct of the
2 surface owner.

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

7 **Section 13. That a NEW SECTION be added to chapter 49-41B:**

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

10 **Section 14. That a NEW SECTION be added to chapter 49-41B:**

11 An operator of a pipeline facility carrying carbon dioxide must offer a dispersion
12 model into evidence before the commission. The commission may enter an order declaring
13 such dispersion model confidential. Any order declaring a dispersion model as confidential
14 shall be justified in specific findings, in writing or on the record.

15 **Section 15. That a NEW SECTION be added to chapter 49-41B:**

16 A land agent acting on behalf of a pipeline facility carrying carbon dioxide must be
17 either a resident of the state or a real estate agent licensed in the state.