

2025 South Dakota Legislature

Senate Bill 49**AMENDMENT 49B
FOR THE INTRODUCED BILL**

1 **An Act to prohibit the exercise of the right of eminent domain for the construction**
2 **of certain facilities and address the preemption of zoning requirements.**

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

4 **Section 1. That § 21-35-1.1 be AMENDED:**

5 **21-35-1.1.** A utility constructing a transmission line in this state ~~that has obtained,~~
6 not including a pipeline used for the transportation of carbon dioxide or hydrogen, which
7 obtains a permit pursuant to chapter 49-41B and approval by legislative enactment as
8 required pursuant to § 49-41B-4.1, is entitled to ~~the power of~~ exercise eminent domain,
9 as provided ~~by for in~~ this chapter. ~~However, such action shall~~ The exercise of eminent
10 domain pursuant to this chapter may not be construed to constitute approval of the use
11 of federal eminent domain.

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

13 **49-7-13.** Any ~~pipeline companies owning a pipeline which is a common carrier as~~
14 ~~defined by § 49-7-11A~~ pipeline company may exercise the right of eminent domain in
15 acquiring right-of-way for a pipeline that is a common carrier, as prescribed by statute.
16 ~~However, in,~~ but not for a pipeline used for the transportation of carbon dioxide or
17 hydrogen. In the case of school and public lands, ~~no~~ a right-of-way for the purpose of
18 carriage of property by pipeline ~~shall~~ may not exceed ten feet in width, ~~but~~ the pipeline
19 company ~~shall have~~ has the right to secure ~~such the~~ land as may be reasonably required
20 for buildings, pumps, stations, substations, or tanks, ~~or buildings~~ necessary for the
21 carriage of the type or kinds of property the pipeline company intends its pipeline to carry.

22 **Section 3. That a NEW SECTION be added to chapter 49-7:**

23 Notwithstanding any other provision of law, a person may not exercise the right of
24 eminent domain to construct:

- 1 (1) A pipeline designed to transport carbon dioxide;
2 (2) A pipeline designed to transport hydrogen; or
3 (3) Any facility that qualifies for a tax credit pursuant to 26 U.S.C. § 45Q (~~August 16,~~
4 ~~2022~~January 1, 2025).

5 **Section 4. That § 49-41B-28 be AMENDED:**

6 **49-41B-28.** ~~A~~Except as otherwise provided in this section, a permit for the
7 construction of a transmission facility within a designated area may supersede or preempt
8 any ~~county or municipal~~ land use, zoning, or building rules, regulations, or ordinances
9 building, land use, or zoning ordinance, regulation, or rule of a county, municipality, or
10 other political subdivision, upon a finding by the ~~Public Utilities Commission~~ commission
11 ~~that such rules, or regulation, or ordinances~~ the ordinance, regulation, or rule, as applied
12 ~~to the proposed route, are~~ is unreasonably restrictive in view of existing technology, ~~or~~
13 factors of cost, ~~or~~ economics, or needs of parties ~~where~~ whether located ~~in or out~~ within
14 or outside of the county ~~or,~~ municipality, or other political subdivision. ~~Without such a~~
15 ~~finding by the commission, no route shall be designated which violates local land use~~
16 ~~zoning, or building rules, or regulations, or ordinances~~ A permit for the construction of a
17 transmission facility designed for transporting carbon dioxide or hydrogen does not
18 supersede or preempt any ~~county or municipal~~ building, land use, or zoning ordinance,
19 regulation or rule of a county, municipality, or other political subdivision.

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

21 Notwithstanding any other provision of law, a person may not exercise the right of
22 eminent domain to construct a solar energy facility, wind energy facility, or any facility
23 that qualifies for a tax credit pursuant to 26 U.S.C. § 45Q (~~August 16, 2022~~January 1,
24 ~~2025~~) or 26 U.S.C. § 48 (January 1, ~~2023~~ 2025).