

## 2025 South Dakota Legislature

**House Bill 1228****AMENDMENT 1228A  
FOR THE INTRODUCED BILL**

1 An Act to ~~require~~address the need for environmental impact~~statement~~  
2 statements from certain applicants seeking a ~~carbon dioxide transmission~~  
3 facility permit from the Public Utilities Commission of the State of South  
4 Dakota.

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

6 **Section 1. That § 49-41B-12 be AMENDED:**

7 **49-41B-12.** At the time of filing an application as required in § 49-41B-11, an  
8 applicant ~~must~~shall deposit the minimum fee with the commission. If required by the  
9 commission, an applicant must remit an amount to be determined by the commission  
10 based upon the actual cost of investigating, reviewing, processing, and serving notice of  
11 an application. The amount must be deposited with the state treasurer and credited to a  
12 subfund within the designated revenue fund and may only be disbursed on vouchers  
13 approved by the commission for the actual cost of investigating, reviewing, processing,  
14 and serving notice of the application. Except as otherwise provided in this section or  
15 agreed to by an applicant, the maximum fee chargeable may not exceed ~~one quarter~~ one-  
16 half of one percent of the first one hundred million dollars of estimated construction cost  
17 plus one-twentieth of one percent of all additional estimated construction costs of the  
18 facility. To exceed the maximum fee when the applicant has not agreed to a fee higher  
19 than the maximum amount, the commission ~~must~~shall make a finding upon a motion  
20 from the commission staff that all costs incurred were reasonably necessary to investigate,  
21 review, process, and serve notice of the application. In these circumstances, the  
22 commission ~~must~~shall seek reimbursement for those costs, during the next regular  
23 legislative session. However, the minimum total fee chargeable may not be less than  
24 twenty thousand dollars. The minimum fee is nonrefundable unless ordered by the  
25 commission.

1           ~~If the commission determines that an environmental impact statement should be~~  
2 ~~prepared as provided under chapter 34A-9 before taking final action on an application~~  
3 ~~under this chapter, the maximum fee chargeable above may be increased to an amount~~  
4 ~~not to exceed one-half of one percent of the first one hundred million dollars of estimated~~  
5 ~~construction cost plus one-twentieth of one percent of all additional estimated construction~~  
6 ~~costs of the facility. However, the provisions of this paragraph do not apply in cases in~~  
7 ~~which a~~ The maximum fee chargeable may not exceed one-quarter of one percent of the  
8 first one hundred million dollars of estimated construction cost plus one-twentieth of one  
9 percent of all additional estimated construction costs of the facility if:

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

14 (2) An environmental impact statement that complies with the provisions of chapter  
15 34A-9 is available to the commission, at least thirty days prior to the time the  
16 commission is required to render a decision under § 49-41B-24 or 49-41B-25; ~~or~~

17 (3) In cases in which an environmental impact statement is permissive, pursuant to §  
18 49-41B-21, the commission elects not to prepare or require the preparation of an  
19 environmental impact statement.

20           The provisions of this section apply to all pending permit applications and future  
21 permit applications before the commission.

22 **Section 2. That § 49-41B-21 be AMENDED:**

23           **49-41B-21.** Prior to the issuance of a permit for a carbon dioxide transmission  
24 facility as defined in § 49-41B-2, the commission must prepare or require the preparation  
25 of an environmental impact statement that complies with the provisions of chapter 34A-9  
26 and is made available to the public on the commission website. In all other cases, the  
27 commission may prepare or require the preparation of an environmental impact statement  
28 that complies with the provisions of chapter 34A-9.

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

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

1           **49-41B-22.1.** ~~Nothing contained herein shall prohibit in this section prohibits~~ an  
2 applicant from reapplying for a permit previously denied pursuant to § 49-41B-24 or 49-  
3 41B-25 within three years from the date of the denial of the original permit. Upon the first  
4 ~~such~~ reapplication, the applicant shall have the burden of proof to establish only those  
5 criteria upon which the original permit was denied, provided that nothing in the  
6 reapplication materially changes the information presented in the original application  
7 regarding those criteria upon which the original permit was not denied. ~~However, nothing~~  
8 ~~contained in this provision shall prohibit the Public Utilities Commission.~~ Nothing in this  
9 section prohibits the commission from requiring such the applicant to meet its the burden  
10 of proof as to any criteria, upon a specific finding by the commission of a material change  
11 in the circumstances regarding those criteria, but the ~~Public Utilities Commission shall~~  
12 commission may not, in any event, prepare or require the preparation of ~~an~~ a new  
13 environmental impact statement.