

STATE OF SOUTH DAKOTA



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July 8, 2024

Honorable Monae L. Johnson
Secretary of State
500 E. Capitol
Pierre, SD 57501
sdsos@state.sd.us

VIA MAIL & EMAIL

RE: Attorney General's Statement Referred Law SB 201

Dear Secretary Johnson,

Senate Bill 201, as passed by the South Dakota Legislation is being considered for referral to a vote of the people at the 2024 General Election. By operation of SDCL § 12-13-9, the Attorney General's Office has a duty to file the Attorney General's Title, Explanation, and Recitations for that referral "before the second Tuesday in July." Enclosed is the Attorney General's Statement for the referral of SB 201.

By copy of this letter, I am providing a copy of the final Statement to the Legislative Research Council.

Very truly yours,

A handwritten signature in blue ink, appearing to read "S. Blair".

Steven R. Blair
Deputy Attorney General

Enclosures.

Cc/encl: John McCullough Legislative Research Council (via email only)
Rachel Soulek, Sec. of State's Office – Div. of Elections (via email only)

REFERRED LAW _____

ATTORNEY GENERAL'S STATEMENT

Title: A Referred Act to Provide New Statutory Requirements for Regulating Linear Transmission Facilities, to Allow Counties to Impose a Surcharge on Certain Pipeline Companies, and to Establish a Landowner Bill of Rights.

Explanation:

The Act authorizes counties to impose, for any tax year in which the pipeline operator receives a tax credit, a \$1.00 per foot surcharge on carbon dioxide pipelines. Revenue from the surcharge must be distributed as tax relief to each property owner in the county where the pipeline is installed. Any remaining revenue can be allocated at each county's discretion. No other fee may be imposed except property taxes, or fees associated with road agreements.

The Act also imposes certain requirements on carbon dioxide pipelines: pipelines must be installed to a minimum depth; each pipeline operator is responsible for damages to drain tile, and to the surface owner, caused by the pipeline; each operator is also responsible for leaks or failures of the pipeline; and any land agent acting on behalf of the pipeline must be a pipeline employee, State resident, or State licensed real estate agent. The Act also includes requirements that carbon pipeline easements be in writing, and only enforceable for a specified period of time; pipeline operators must initiate business operations within five years of the easement; and each easement is void after five years of nonuse.

Vote "Yes" to allow the Act of the Legislature to become law.

Vote "No" to reject the Act of the Legislature.



2024 South Dakota Legislature
Senate Bill 201
ENROLLED

AN ACT

ENTITLED An Act to provide new statutory requirements for regulating linear transmission facilities, to allow counties to impose a surcharge on certain pipeline companies, and to establish a landowner bill of rights.

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

Section 1. That a NEW SECTION be added to chapter 10-4:

Pipelines for the transmission of carbon dioxide are not subject to any discretionary formulas authorized by this title.

Section 2. That a NEW SECTION be added to chapter 10-12:

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

For each county where a carbon dioxide pipeline company has installed a pipeline, the company shall report to the county the linear footage of carbon dioxide pipeline installed in the county.

A carbon dioxide pipeline company shall remit the pipeline surcharge to each applicable county in the same manner as provided for the payment of property taxes in chapter 10-21. The revenue derived from the pipeline surcharge must be distributed as follows:

- (1) At least fifty percent as tax relief for property in the county where the carbon dioxide pipeline is located pro rata on a per foot basis to each property in the county upon which the pipeline is installed; and
- (2) The remaining revenue to be allocated as determined by the county.

Section 3. That § 10-37-3 be AMENDED:

10-37-3. Any pipeline company having lines in this state shall annually, on or before April fifteenth of each year, make out and deliver to the Department of Revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December thirty-first next preceding:

- (1) The name of the company;
- (2) The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized;
- (3) The location of its principal office or place of business;
- (4) The name and post office address of the president, secretary, auditor, treasurer, and superintendent or general manager;
- (5) The name and post office address of the chief officer or managing agent in this state;
- (6) The whole number of miles of pipeline owned, operated, or leased within the state, including a classification of the size, kind, and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district;
- (7) A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed;
- (8) The number, location, size, and cost of each pressure pump or station;
- (9) Any and all other property owned by said pipeline company within the state which property shall be classified and scheduled in such a manner as the secretary of revenue may by rule promulgated pursuant to chapter 1-26 require;
- (10) The gross earnings of the entire company, and the gross earnings on business done within this state;
- (11) The operating expenses of the entire company and the operating expenses within this state;
- (12) The net earnings of the entire company and the net earnings within this state; and
- (13) Whether or not the pipeline company that installs a pipeline for carbon sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that year.

Section 4. That § 49-41B-1 be AMENDED:

49-41B-1. The Legislature finds that energy development in South Dakota and surrounding states affects the welfare of the population, the environmental quality, the

location and growth of industry, and the use of agricultural and natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that facilities are permitted and constructed in an orderly and timely manner so that the energy, commerce, and transmission requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that the permitting or siting of a facility is determined by the commission and a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

Section 5. That § 49-41B-19 be AMENDED:

49-41B-19. The Public Utilities Commission shall also hear and receive evidence presented by any state department, agency, or units of local government relative to the elements in § 49-41B-22, and any applicable ordinance, resolution, or building code.

Section 6. That § 49-41B-28 be AMENDED:

49-41B-28. A permit for the construction of a transmission facility within a designated area supersedes and preempts any county, township, municipal, or any other governmental unit land use, zoning, or building rule, regulation, or ordinance. Any local land use, zoning, or building rule, regulation, or ordinance preempted or superseded under this section is not an applicable rule or law under subdivision 49-41B-22(1). A route or transmission facility permitted by the commission under this chapter is not subject to any local land use, zoning, or building rule, regulation, or ordinance, unless the commission requires compliance with any generally applicable rule, regulation, or ordinance as a condition of the permit issued. The enforcement of any county, municipal, township, or other governmental unit rule, regulation, or ordinance for a transmission facility permitted under this chapter must be done pursuant to the order of the commission granting the permit.

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

A county, municipality, township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, may not enact or increase, in any form, a tax, fee, or charge that is related to a gas or liquid transmission line or an

electric transmission line which requires or holds a permit under chapter 49-41B. The provisions of this section do not prohibit:

- (1) Real property taxes pursuant to title 10;
- (2) Road use, construction, maintenance, and improvement agreements pursuant to titles 7, 8, 9, or 31; and
- (3) The surcharge created by section 2 of this Act.

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

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

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

Section 8. 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 9. 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 10. 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 failures of the pipeline facility, other than for gross negligence or willful misconduct of the surface owner.

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

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

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

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

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

The commission must make the dispersion analysis available, in relevant part, to each applicable county, emergency manager, and law enforcement agency. The commission shall make available a dispersion analysis report to the public.

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

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

Section 14. That a NEW SECTION be added to title 43:

Sections 14 to 15, inclusively, of this Act may be cited as the Landowner Bill of Rights.

Section 15. That a NEW SECTION be added to title 43:

Any landowner granting a carbon pipeline easement has the following rights:

- (1) Each pipeline placed in a carbon pipeline easement must meet the minimum depth requirement in section 8 of this Act;
- (2) The entity holding rights in the carbon pipeline easement must repair any damage to drain tile as set forth in section 9 of this Act;
- (3) An operator of a pipeline facility carrying carbon dioxide is liable to a landowner for any leaks or repairs as provided in section 9 of this Act;
- (4) An operator of a pipeline facility carrying carbon dioxide must indemnify the owner as provided in section 10 of this Act;
- (5) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file the plan as provided in section 11 of this Act;
- (6) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file a disclosure of the dispersion analysis as provided in section 12 of this Act;
- (7) Any applicant desiring to obtain a permit to operate a carbon dioxide pipeline facility must engage a landowner as required by section 13 of this Act;
- (8) Each carbon pipeline easement agreement must include a statement disclosing the information in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (9) If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the carbon pipeline easement, the mortgage or encumbrance is enforceable only as permitted in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (10) A carbon pipeline easement is not enforceable after the period of time set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (11) An operator of a pipeline facility holding the right in the carbon pipeline easement must initiate business operations within the time period set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (12) A carbon pipeline easement expires after the passing of a period of nonuse as set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

- (13) A carbon pipeline easement must be in writing as required by HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (14) A landowner granting a carbon pipeline easement has the examination and survey protection rights as set forth in § 21-35-31; and
- (15) To receive the one-time payment as provided in HB 1185, § 1, if enacted by the Ninety-Ninth Legislature.

An Act to provide new statutory requirements for regulating linear transmission facilities, to allow counties to impose a surcharge on certain pipeline companies, and to establish a landowner bill of rights.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 201

2024 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2024

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2024
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 201
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State