

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

444P0083

## SENATE BILL NO. 138

Introduced by: Senators Kloucek and Katus and Representatives Nygaard, Engels, Feinstein,  
Gassman, and Thompson

1 FOR AN ACT ENTITLED, An Act to require financial assurances for certain petroleum  
2 pipeline operations for the remediation of potential environmental damage and to declare  
3 an emergency.

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

5 Section 1. This Act applies to any person or entity making application to the Public Utilities  
6 Commission pursuant to chapter 49-41B for a permit to construct or operate a pipeline and  
7 associated facilities, or to expand an existing pipeline and associated facilities, for use as a  
8 transmission facility as defined in subdivision 49-41B-2.1(3), for the transmission liquid  
9 hydrocarbons or liquid hydrocarbon products. Any such person or entity shall, as a condition  
10 of the permit and as provided in this Act, provide financial assurance guaranteeing the  
11 performance of corrective actions to contain, mitigate, and remediate environmental pollution,  
12 contamination, or degradation that may be caused by or result from the construction or operation  
13 of the pipeline and associated facilities. The financial assurance, in a reasonable and proper  
14 amount for the remediation of potential damage to the environment that could be caused by the  
15 activity, shall be in a form and an amount approved by the Public Utilities Commission, and



1 may include insurance, a surety bond, escrow account, letter of credit, trust, guarantee, or cash  
2 deposit.

3 Section 2. All right and title in any bond or other security required under this Act for the  
4 protection of the environment or reclamation of lands or other resources shall be in the state  
5 until the Public Utilities Commission by order releases the security. The bond or other security  
6 may not be released until seven years after operations have ceased and until a state inspection  
7 shows that no environmental pollution, contamination, or degradation related to the activities  
8 described in section 1 of this Act remains. The bond or other security does not constitute an  
9 asset of the person required to provide it, and may not be canceled, assigned, revoked,  
10 disbursed, replaced, or allowed to terminate without approval by the Public Utilities  
11 Commission. Interest earned on any bond or deposit made under this Act in excess of the actual  
12 increase in the cost of remediation shall be returned to the person required to provide the bond  
13 or deposit.

14 Section 3. The state, with such commission, board, department, or court approval, if any,  
15 as is provided in the permit or security instrument required pursuant to this Act, may use the  
16 security as necessary for the cleanup and remediation of environmental problems related to the  
17 activity for which the security was provided. When such cleanup and remediation is complete,  
18 as certified by the Public Utilities Commission, or sufficient funds have been set aside to  
19 achieve complete remediation pursuant to a site-specific remedial action plan approved by the  
20 Public Utilities Commission, the state may proceed against any remaining security for the  
21 purpose of collecting any properly recoverable cost incurred by the state in pursuing the cleanup,  
22 environmental damages, or penalties. Until the environmental cleanup or remediation is  
23 complete; until any state cost, environmental damage and penalty judgments have been satisfied;  
24 and until the security has been released, the security may not be assigned for the benefit of

1 creditors, attached, garnished, levied, or executed on, or subject to process issued from any  
2 court, except for the purpose of enabling the state to effectuate the environmental cleanup or  
3 remediation.

4 Section 4. The Public Utilities Commission shall establish, by rules promulgated pursuant  
5 to chapter 1-26:

6 (1) Criteria to determine the amount of security required and other terms as necessary to  
7 define the respective obligation of the parties pursuant to this Act;

8 (2) The procedure to follow and the circumstances under which the state or applicant  
9 may obtain approval by the commission for the release of the security provided for  
10 in this Act; and

11 (3) Conditions under which the security may be held by the state after the expiration of  
12 the permit or license.

13 Section 5. Whereas, this Act is necessary for the immediate preservation of the public peace,  
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
15 effect from and after its passage and approval.