



Policy Update

March 22, 2024

Legislature to Meet in Pierre for Veto Day

The South Dakota Legislature will convene at 11:00 a.m. CT on Monday, March 25, 2024, to consider a rarity in the South Dakota Legislature: No gubernatorial vetoes. Only two other times in South Dakota history have no vetoes occurred. This was in 1933 with Governor Tom Berry and 1955 with Governor Joe Foss.

In addition to the consideration of no vetoes, the Legislative Executive Board will meet. The Executive Board will discuss meeting dates for the 2024 interim, the vacant LRC Director position, proposed interim study topics and the process for selecting interim committee members, and appointments to the South Dakota-Ireland Trade Commission. Proposed interim study topics include property taxes, eminent domain, water quality, regenerative grasslands, school funding, regulation of artificial intelligence, prison construction costs, Ellsworth planning and more. The Executive Board will ultimately decide what topics will be studied and appoint legislators to the appropriate committees.

For a list of proposed studies, please click [here](#).

SD Supreme Court Hears Case on Surveying

On Tuesday, the South Dakota Supreme Court heard the case of Helfenstein v. SCS Carbon Transport. This case stemmed from an appeal to a circuit court decision that upheld the constitutionality of granting entry to private property for examination and survey. Specifically, the Third Circuit Court concluded that South Dakota Codified Law 21-35-31, which allows for such surveys, did not result in an unconstitutional taking. The circuit court also ruled that as a common carrier pipeline, Summit Carbon had the right to conduct surveys under this statute.

The appellants in Helfenstein v. SCS Carbon Transport argued before the Supreme Court that the existing survey statute should be struck down as unconstitutional, claiming that conducting surveys amounted to a taking of their property rights. They also contended that Summit Carbon Solutions did not qualify as a common carrier because carbon dioxide transported for permanent sequestration was not a commodity.

In response, Summit Carbon Solutions argued that they were indeed a common carrier because the carbon dioxide they transport retains value even after sequestration, through tax and carbon credits. They further argued that the fees paid by ethanol plants for transportation of the carbon dioxide bolstered their status as a common carrier. Summit also countered the challenge to the constitutionality of the surveying law by asserting that the appellants' claim was a facial challenge, which fails if there are circumstances where a survey is constitutional and not a taking.

If the Supreme Court rules against Summit's common carrier status, the company will lose its ability to use eminent domain. Moreover, if the Court deems the existing surveying statute unconstitutional, legislative action may be necessary. However, it's worth noting that the law in question underwent an amendment during the 2024 Legislative Session through House Bill 1185.

To learn listen to the hearing and to learn more about the case, click [here](#).

New Group Forms to Place Senate Bill 201 on the Fall Ballot

A group has formed to refer Senate Bill 201 to the voters this November. South Dakota Property Rights and Local Control Alliance are required to gather 17,508 signatures from registered South Dakota voters by May 7, 2024. Senate Bill 201 has been signed by Governor Kristi Noem and was supported by agricultural organizations such as SD Farm Bureau, SD Corn Growers and SD Soybean Growers. Below is a quick summary of Senate Bill 201.

Senate Bill 201 was one of three bills designed to increase protections and benefits for landowners compared to South Dakota's previous requirements. Senate Bill 201 allows for counties to impose a \$1 per linear foot annual surcharge on carbon pipelines with 50 percent going to affected landowners in the form of property tax relief. The remaining funds can be utilized at the county's discretion. The bill also allows for a pipeline permit, if approved by the Public Utilities Commission, to supersede local county or municipal zoning, building and safety ordinances, unless a specific ordinance is a condition of the permit.

Farm Bureau has long advocated for local regulation that is responsible, fair and based on sound data and legal jurisdiction. We believe this process-based framework respects local governments that have reasonable and valid regulations.

To read SB 201, please click [here](#).

Contact for Questions

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