

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

853Q0524

HOUSE BILL NO. 1165

Introduced by: Representatives Russell, Kopp, Lucas, Nygaard, Olson (Betty), Schrempp,
and Verchio and Senators Howie, Bradford, Maher, Rhoden, and Schmidt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the exercise of
2 eminent domain by railroads.

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

4 Section 1. That § 49-16A-75 be amended to read as follows:

5 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way
6 as provided by statute, but only upon obtaining authority from the Governor or if directed by the
7 Governor, or the commission, based upon a determination by the Governor or the commission
8 that the railroad's exercise of the right of eminent domain would be for a public use consistent
9 with public necessity. The Governor or the commission shall consider the requirements of
10 §§ 49-16A-75.1 to 49-16A-75.3, inclusive, when granting or denying an application for
11 authority to use eminent domain. The decision to grant or deny an application shall be made
12 after reasonable notice and opportunity to be heard, pursuant to chapter 1-26. However, an
13 impartial hearing examiner may be appointed by the Governor or the commission to administer
14 the proceedings or make recommendations. Any parties who are united in interest or
15 representation shall unite in the filing of an affidavit for change of hearing examiner under the



1 provisions of § 1-26D-10. The filing of such affidavit by one party is deemed to be filed by all
2 of the parties. No more than one change of hearing examiner may be granted on request or
3 affidavit made by or on behalf of the same party or parties united in interest under the provisions
4 of § 1-26D-10. However, the filing of an affidavit and the first change of hearing examiner does
5 not prevent any other party to the action or any party's attorney from obtaining a change in
6 hearing examiner upon a showing of an unacceptable risk of actual bias or prejudice concerning
7 a party. The Governor or the chair of the commission shall replace the hearing examiner within
8 five business days upon any recusal. ~~A hearing shall be held and a decision rendered on any~~
9 ~~application within ninety days following the receipt of a new application and upon any~~
10 ~~application pending before the Governor or the commission on July 1, 2008.~~

11 The denial or withdrawal of an application does not prejudice the ability of a railroad to
12 resubmit an application. Any appeal, pursuant to chapter 1-26, taken from a decision of the
13 Governor or the commission shall be handled as an expedited appeal by the courts of this state.

14 Section 2. That § 49-16A-75.3 be amended to read as follows:

15 49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent
16 with public necessity only if the use of eminent domain is proposed by an applicant who has
17 negotiated in good faith to privately acquire sufficient property without the use of eminent
18 domain. No determination of public use or necessity or any other issue properly decided by the
19 Governor or the commission may be addressed by the circuit court in an action for
20 condemnation. Such a determination may only be challenged upon direct appeal of that
21 determination. ~~Notwithstanding appeal of such determination, the railroad may proceed at any~~
22 ~~time by action in circuit court for possession and determination of compensation for any real~~
23 ~~property taken or damaged.~~

24 Section 3. That § 49-16A-75.4 be amended to read as follows:

1 49-16A-75.4. Upon a failure to reach agreement on compensation following a determination
2 pursuant to § 49-16A-75.3, either party may bring a proceeding in state court to establish
3 compensation to be paid for the property taken or damaged. The court shall expedite the
4 proceedings. A railroad is not entitled to physical possession of the property to be taken
5 pursuant to the exercise of eminent domain except upon the earlier to occur of either:

6 (1) Execution of a written agreement between the parties as to fair market value of
7 compensation; or

8 (2) Entry of a judgment of condemnation in the circuit court; ~~or~~

9 ~~(3) Upon posting by the railroad of a bond to be established by the court as soon as~~
10 ~~possible but no later than one hundred twenty days following petition by the railroad~~
11 ~~for possession. The bond shall be in an amount the court determines to be a~~
12 ~~preliminary estimate of compensation based on the best information available, but~~
13 ~~is not determinative of final compensation or admissible as evidence thereon.~~