

AN ACT

ENTITLED, An Act to repeal certain tax benefits available to railroads, to revise certain provisions regarding the right of eminent domain for railroads, and to revise the formula for assigning assessed railroad valuation to counties.

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

Section 1. That § 10-46-7 be amended to read as follows:

10-46-7. Tangible personal property, the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States of America or under the Constitution of this state, or tangible personal property sold to the United States, the State of South Dakota, or any public or municipal corporation of the state which is for the use, storage, or consumption of such public corporations is hereby specifically exempt from the tax imposed by this chapter.

Section 2. That § 10-28-21.1 be repealed.

Section 3. That § 49-16A-1 be amended to read as follows:

49-16A-1. Terms used in this chapter mean:

- (1) "Common carrier," a carrier which holds itself out to the general public as engaged in the business of transporting freight in intrastate commerce which it is accustomed to and is capable of transporting from place to place in this state, for hire;
- (2) "Department," the Department of Transportation created by chapter 1-44;
- (3) "For hire," the condition of receiving remuneration of any kind, paid or promised, either directly or indirectly, for the transportation of freight;
- (4) "Freight," all property tendered for transportation by a railroad;
- (5) "Railroad," any association or corporation, or other entity, other than a state agency or authority, engaged in operating a common carrier by rail regardless of motive power used, excluding street railroads;

- (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks, interchanges, and all other fixtures and real property owned or operated by a railroad to discharge its obligations as a common carrier by rail;
- (7) "Shipper," a consignor or consignee;
- (8) "Commission," the Transportation Commission created by § 1-44-4;
- (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as compensation for the acquisition of property desired by the applicant for the construction or reconstruction of a road, including the economic costs or diminution associated with or caused by the construction or reconstruction if there is a partial taking of property.

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

49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way as provided by statute, but only upon obtaining authority from the Governor or if directed by the Governor, or the commission, based upon a determination by the Governor or the commission that the railroad's exercise of the right of eminent domain would be for a public use consistent with public necessity. The Governor or the commission shall consider the requirements of sections 5, 6, and 7 of this Act when granting or denying an application for authority to use eminent domain. The decision to grant or deny an application shall be made after reasonable notice and opportunity to be heard, pursuant to chapter 1-26.

Any appeal, pursuant to chapter 1-26, taken from a decision of the Governor or the commission shall be handled as an expedited appeal by the courts of this state.

Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read as follows:

The commission shall in accordance with chapter 1-26, promulgate rules:

- (1) Establishing a form upon which a railroad may apply for authority to exercise the right of eminent domain;

- (2) Specifying the information to be submitted by an applicant; and
- (3) Administering applications for authority to exercise the right of eminent domain.

Section 6. That chapter 49-16A be amended by adding thereto a NEW SECTION to read as follows:

The applicant has the burden of proving by a preponderance of the evidence that the exercise of the right of eminent domain is a public use consistent with public necessity.

Section 7. That chapter 49-16A be amended by adding thereto a NEW SECTION to read as follows:

A railroad's exercise of the right of eminent domain is a public use consistent with public necessity only if the use of eminent domain:

- (1) Has as purpose providing railroad transportation to shippers in South Dakota, for commodities produced, manufactured, mined, grown, used, or consumed in South Dakota;
- (2) Is proposed by an applicant with the financial resources necessary to complete the proposed construction or reconstruction along with any related facilities, construction, or mitigation which are necessary to protect against harm to the public safety, convenience, or other adverse socioeconomic or environmental impact, as evidenced by a financing commitment from a lender or an investor or a combination of each with adequate capitalization and resources to fulfill its commitment to build and complete the project;
- (3) Is proposed by an applicant who has negotiated in good faith to privately acquire sufficient property without the use of eminent domain;
- (4) Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that plat sets forth the route of the road to be constructed or reconstructed, identifies each affected landowner, and specifies the location, along with construction methods and engineering specifications for all main lines, sidings, yards, bridges, crossings, safety devices, switches, signals, and maintenance facilities; and

- (5) Provides that electric utilities, public utilities, telecommunication companies, and rural water systems have the right to the use of the right-of-way for the placement of underground facilities, without fee, subject to reasonable regulation as to location and placement.

Section 8. That § 10-28-16 be amended to read as follows:

10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each year, transmit to the county auditor of each county through which any railroad runs, a statement showing the length of main track, of main line or lines, and the branches thereof and sidetracks within such county, and the assessed value based on a statewide formula that weights traffic (ton miles) thirty-three and one-third percent and miles of track in the county by sixty-six and two-thirds percent. The county auditor shall then distribute the value to each taxing district where the line runs on a per mile basis within the county.

Section 9. The provision of section 8 of this Act take effect upon the expiration of all property tax credits certified pursuant to § 10-28-21.1, which is repealed pursuant to section 2 of this Act.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1106

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1106
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

19____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 19__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State