

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

480I0672

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 187** - 02/20/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Koetzle and Representative Lange

1 FOR AN ACT ENTITLED, An Act to clarify the authority of counties to grant certain utility  
2 easements for the installation of underground cable.

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

4 Section 1. That § 31-26-1 be amended to read as follows:

5 31-26-1. The board of county commissioners, upon written application designating the  
6 particular highway the use of which is desired, may grant to any person engaged in the  
7 manufacture or sale of electric light and power, or any municipality authorized by law to  
8 purchase electric current, or any person authorized by law to purchase such current from such  
9 municipality, or any person engaged in, or about to engage in, the furnishing of telephone  
10 service, the right to erect and maintain poles and wires or to bury underground cable for the  
11 purpose of conducting electricity for lighting, heating, and power purposes, together with stay  
12 wires and braces, and for the purpose of furnishing telephone service, in and along any public  
13 highway in its county for a period not to exceed twenty years, subject to the conditions set forth  
14 in this chapter and such further reasonable regulations as the Legislature may hereafter prescribe.

15 Section 2. That § 31-26-3 be amended to read as follows:



1       31-26-3. The poles and fixtures, guy wires, braces, and stays or underground cable buried  
2 or erected under § 31-26-1 shall be located under the joint field supervision and direction of the  
3 grantee and the governing body charged with the maintenance of the state trunk highway on  
4 which they are placed and constructed consistent with the permit requirements adopted under  
5 § 31-26-22. They shall be so constructed as not to inconvenience the public in the use of any  
6 road or the navigation of any stream. An appeal from the decision of the Department of  
7 Transportation may be taken to the Transportation Commission. An appeal from the decision of  
8 the commission may be taken to the circuit court in the manner provided by law and the rules of  
9 practice and procedure adopted by the Supreme Court.

10       Section 3. That § 31-26-5 be amended to read as follows:

11       31-26-5. The grantee under § 31-26-1 shall construct and maintain said poles, wires, or  
12 underground cable and line in accordance with the National Electrical Safety Code adopted by  
13 the Bureau of Standards of the United States Department of Commerce.

14       Section 4. That § 31-26-9 be amended to read as follows:

15       31-26-9. Any person who, having received a grant as to placing of wires and poles or  
16 underground cable on a highway under this chapter, fails to comply with the provisions of  
17 § 31-26-4, 31-26-5, or 31-26-7 commits a petty offense.

18       Section 5. That § 31-26-11 be amended to read as follows:

19       31-26-11. In the case of either a transmission line application or a telephone line application  
20 under § 31-26-1, the applicant shall state the place where ~~his~~ the applicant's central plant is  
21 located, the point or points to which ~~he~~ the applicant desires to transmit electricity or furnish  
22 telephone service, and the route over which ~~he~~ the applicant desires to construct such lines ~~which~~  
23 or bury underground cable. The application shall state what electric, telegraph, and telephone  
24 lines are, at the time of making the application, occupying a part of the highway or highways

1 which the proposed lines are to occupy. Any applicant who hereafter desires to construct a  
2 telephone line or bury underground cable shall state whether ~~he~~ the applicant has obtained a  
3 certificate of convenience and necessity from the Public Utilities Commission.

4 Section 6. That § 31-26-12 be amended to read as follows:

5 31-26-12. If the applicant in the case of a transmission application, wishes to construct lines  
6 or bury underground cable for rural electrification ~~he~~ the applicant may state that ~~he~~ the applicant  
7 wishes to construct lines for rural electrification throughout the county, in which event ~~he~~ the  
8 applicant need not show the point or points to which ~~he~~ the applicant desires to transmit  
9 electricity nor the route, and if the application is granted to such applicant for rural electrification  
10 county-wide authorization may be given to such applicant but subject to the other provisions of  
11 this chapter. For the purposes of this chapter, a line or underground cable shall be deemed "for  
12 rural electrification" if it carries at least one circuit of such voltage as is practical for and  
13 customarily used in distributing electricity to farms.

14 Section 7. That § 31-26-13 be amended to read as follows:

15 31-26-13. ~~It shall be the duty of the county auditor to~~ The county auditor shall present an  
16 application under § 31-26-1 to the board of county commissioners within thirty days after the  
17 filing of the same, at a regular or special meeting called for that purpose and ~~to~~ shall give ten  
18 days' notice by mail of such application and the time and place when and where such application  
19 will be heard to all persons, firms, or corporations owning or operating electric, telephone, or  
20 telegraph lines or underground cable on any part of the highway or highways which the proposed  
21 lines may occupy.

22 Section 8. That § 31-26-15 be amended to read as follows:

23 31-26-15. If the application for construction or reconstruction of an electric line is granted  
24 by the board of county commissioners, it shall be competent for such board to adjust any

1 differences that may arise between any such applicant and any owner or owners of any electric,  
2 telephone, or telegraph line or underground cable affected by such decision, in the matter of  
3 construction or reconstruction, and such board may adjust and apportion the costs which may  
4 be occasioned in order to carry out the plans, methods, or means approved by the board as  
5 deemed necessary to avoid or minimize interference or hazard; ~~provided, however,~~ However,  
6 if there is a dispute between two telephone companies such dispute shall be adjusted by the  
7 Public Utilities Commission.

8 Section 9. That § 31-26-18 be amended to read as follows:

9 31-26-18. ~~When~~ If the board of county commissioners ~~shall have~~ has granted the right to  
10 any person to construct lines or bury underground cable for the transmission of electricity as  
11 provided in §§ 31-26-1 to 31-26-17, inclusive, and if before constructing such line the applicant  
12 ~~shall desire~~ desires to change the route designated in the grant, the board may change the route  
13 upon application of the person constructing the same subject to the same provisions for placing  
14 poles, fixtures, guy wires, braces, and stays or underground cable, as provided by law on original  
15 construction.

16 Section 10. That § 31-26-21 be amended to read as follows:

17 31-26-21. Nothing contained in § 31-26-19 or 31-26-20 shall be construed to exempt anyone  
18 owning or operating any telephone, telegraph, or electric line or underground cable in this state  
19 from liability for any damage or injury which anyone may sustain by reason of the faulty or  
20 negligent construction or maintenance of such telephone, telegraph, or electric line or  
21 underground cable.