

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

391J0662

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 175 - 02/04/2004

Introduced by: Senators Kelly, Abdallah, and Sutton (Dan) and Representatives Weems, Miles, and Pederson (Gordon)

1 FOR AN ACT ENTITLED, An Act to provide for the synchronization of condemnation
2 authority between public and private entities.

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

4 Section 1. That § 21-35-24 be amended to read as follows:

5 21-35-24. In proceedings initiated under this chapter ~~against~~ by corporations, associations,
6 or other entities engaged in the operation of electric utilities, gas utilities, ~~or railroads and when~~
7 ~~those proceedings are for the purpose of constructing pipelines designed to carry water for the~~
8 ~~transportation of coal~~ water services, and communications services, the petitioner may file any
9 time before final judicial determination of the rights of the parties, a declaration of taking,
10 ~~signed by the petitioner~~, declaring the extent of the property interest taken for the use of the
11 petitioner. The declaration of taking shall contain:

12 (1) A statement of the authority under which and the use for which the property interest
13 is taken;

14 (2) A description of the property interest taken sufficient for identification thereof;

15 (3) A legal description of the lands subject to the taking;



- 1 (4) The name of all persons or entities ~~claiming holding, or known to the petitioner upon~~
2 the exercise of due diligence to be holding, an interest in the ~~said~~ lands subject to the
3 taking, and a description of the interest claimed by each;
- 4 (5) A statement of the sum of money estimated by the acquiring authority to be just
5 compensation for the property interest taken and damaged; and
- 6 (6) A detailed appraisal upon which the amount of the petitioner's deposit is based.

7 Section 2. That § 21-35-25 be amended to read as follows:

8 21-35-25. Title to the property interest specified in the declaration filed pursuant to § 21-35-
9 24 shall vest in the petitioner and the property interest shall be deemed condemned and taken
10 for the use of the petitioner. ~~The, and the~~ right to just compensation for the property interest
11 shall vest in the persons entitled thereto either on the date the decision is rendered at the hearing
12 provided in § 21-35-10.1 or the date the hearing is waived.

13 Section 3. That § 21-35-26 be amended to read as follows:

14 21-35-26. Upon filing of a declaration of taking pursuant to § 21-35-24, the court ~~has power~~
15 ~~to~~ shall fix the time within which and the terms upon which ~~the~~ any parties in possession are
16 required to surrender possession to the petitioner. ~~A notice shall be issued stating that if the~~
17 ~~defendants do not appear in or respond to the proceedings within thirty days after service of the~~
18 ~~notice, exclusive of the day of service, the petitioner shall apply to the court for an order of~~
19 ~~possession.~~ A notice of hearing shall then be issued by the court and served as provided in
20 § 21-35-27 upon the recorded owners of all lands sought to be acquired or damaged. The notice
21 shall state a time and place for hearing not less than thirty days from the date of service, unless
22 the waiver of hearing provided by § 21-35-10.1 is filed, in which case the hearing may be held
23 sooner. The court may make orders in respect to encumbrances, liens, rents, taxes, assessments,
24 insurance, and other charges, if any, as are just and equitable.

1 Section 4. That § 21-35-27 be amended to read as follows:

2 21-35-27. A copy of the declaration of taking filed pursuant to § 21-35-24 and any
3 amendments thereto shall be served with the condemnation petition or by mailing a copy thereof
4 to each of the known ~~defendants~~ respondents by registered or certified mail at ~~his~~ the
5 respondent's last known post office address.

6 Section 5. That § 21-35-28 be amended to read as follows:

7 21-35-28. If any person who is a proper party ~~defendant~~ or any affected property is omitted
8 from the declaration of taking filed pursuant to § 21-35-24, the ~~plaintiff~~ petitioner may file
9 amendments to include them. The amendments from the time of filing have the same force and
10 effect as if they were included in the original proceedings. The naming or omission of
11 ~~defendants'~~ respondents' names does not ~~defer~~ delay the effect of the declaration of taking.

12 Section 6. That § 21-35-29 be amended to read as follows:

13 21-35-29. If the petitioner elects to utilize the procedures set forth in §§ 21-35-24 to
14 21-35-28, inclusive, for possession of property, the petitioner shall deposit with the court the
15 money required by § 21-35-25 as a condition to the exercise of such power. In that case, the
16 court and the attorneys shall expedite the proceedings for the distribution of the money so
17 deposited and for the ascertainment and payment of just compensation. However, the ~~defendant~~
18 respondent may demand a hearing on the petitioner's right to take as provided in § 21-35-10.1.

19 Section 7. That chapter 21-35 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 After the right to compensation has vested pursuant to § 21-35-25, the condemnation action
22 in which the declaration of taking has been filed shall proceed to trial and just compensation
23 shall be ascertained and awarded in the proceeding and be established by judgment. The
24 judgment shall include interest at the Category A rate of interest as established in § 54-3-16 on

- 1 the amount finally awarded as the value of the property as of the date of the court deposit.
- 2 Interest shall accumulate from that date to the date of payment, but no interest may be allowed
- 3 on money which has been paid to the court.