

AN ACT

ENTITLED, An Act to authorize acquisition of utility corridors and to authorize the use of such property to be regulated by administrative rule.

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

Section 1. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as follows:

The Department of Transportation may acquire by gift, devise, purchase, or condemnation, an easement or fee interest in real estate, other than a right-of-way, for the purpose of providing a suitable location for the relocation of utility lines and facilities displaced as a result of a highway construction project. After all displaced utility lines and facilities have been appropriately relocated, the department may allow the use of such property by additional utilities under the terms and conditions established by the department. The South Dakota Transportation Commission may provide, by rules promulgated pursuant to chapter 1-26, for the terms and conditions for use of such property by utilities.

Section 2. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as follows:

No owner or operator of utility lines or facilities displaced as a result of a highway construction project may be compelled to relocate those utility lines or facilities to either an easement or a fee interest acquired pursuant to section 1 of this Act.

Section 3. That § 31-19-2 be amended to read as follows:

31-19-2. Before acquiring land or material by condemnation, the Department of Transportation shall, by resolution, declare the necessity for acquiring the land or material and file a copy of the resolution with the office of right-of-way in the department.

Section 4. That § 31-19-3 be amended to read as follows:

31-19-3. If land or material is to be acquired by condemnation, the Department of Transportation, on behalf of the state and in its name, shall file a petition in the circuit court for the county in which the property to be taken or damaged is situated, praying that the just compensation be made and such property be ascertained by a jury and shall name the Department of Transportation as the department of the state government desiring to take or damage the property on behalf of the state as plaintiff. All persons having an interest in or a lien upon the property affected by the proceedings shall be named as defendants so far as they may be known at the time of the filing of the petition. It shall contain a description of the property to be taken or damaged and shall contain a copy of the related resolution of necessity that was passed by the Transportation Commission. The purpose for which the property is to be taken or damaged shall be clearly set forth in the petition. It is not necessary to specify the interest or claim of the several defendants in the land or property affected by the proceedings. The petition shall be signed and verified in the manner and as provided by § 15-6-11 relating to the signing of pleadings in the circuit courts.

Section 5. That § 31-19-19 be amended to read as follows:

31-19-19. Whenever any land, easement in land or material is necessary for right-of-way in order to make a safe or proper grade, for the relocating of utility facilities, or for widening, changing, relocating, constructing, reconstructing, maintaining, or repairing any portion of the state trunk highway, or if it is necessary for providing cut slopes, borrow pits, channel changes, or to afford unobstructed vision on any state trunk highway and at any point of danger to public travel, for right-of-way and borrow pit, the State of South Dakota, through and by its Department of Transportation, or any county authorized by agreement to acquire on behalf of the state, shall acquire and pay for the same out of state highway funds unless it is otherwise agreed. The cost of the land or material and expense of purchase or condemnation shall be paid as part of the cost of the state trunk highway unless otherwise agreed.

Section 6. That § 31-19-20 be amended to read as follows:

31-19-20. Whenever any land or material, dirt, sand, or gravel is required for the construction, reconstruction, maintaining, or repairing of any portion of the state trunk highway, or for the relocating of utility facilities, and if the land or material, dirt, sand, or gravel lies outside the right-of-way of the highway or adjacent borrow pits, the state shall purchase or condemn the land or material, dirt, sand, or gravel and pay for the same out of the state highway fund. The land or material, dirt, sand, or gravel may be acquired either by purchase or condemnation and any cost or expense of purchase or condemnation shall be paid for in the same manner as material, dirt, sand, or gravel or land is paid for. In case of condemnation, the proceedings provided for condemnation in §§ 31-19-1 to 31-19-19, inclusive, or the provisions of chapter 21-35 are applicable and either proceeding may be used.

Section 7. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as follows:

The acquiring of an easement or fee interest pursuant to section 1 of this Act may not be admitted as evidence in any action under chapter 21-35 brought by any owner or operator of utility lines or facilities displaced as a result of a highway construction project. Any easement or fee interest acquired pursuant to section 1 of this Act may not serve as a basis for a finding of fraud, bad faith, or abuse of discretion under § 21-35-10.1.

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I certify that the attached Act
originated in the

SENATE as Bill No. 43

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 43
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State