

AN ACT

ENTITLED, An Act to authorize the South Dakota Science and Technology Authority to use eminent domain for certain limited purposes.

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

Section 1. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of this Act, the term, subsurface property, means complete fee title to real property located one hundred feet or more below the surface, including the right to use such real property to construct, operate, support and maintain underground facilities, for scientific and technological experimentation and exploration, for the commercial exploitation of the subsurface for purposes other than mineral extraction, and for any other lawful purpose. The term, subsurface property, does not include ownership or the right to occupancy of the surface.

Section 2. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

The authority may condemn private and public subsurface property for public use for the purposes of acquiring, developing, constructing, maintaining, or operating projects. The authority may only condemn subsurface property upon or through which it already owns or controls some, but not all, property rights. If the authority deems it necessary to condemn any subsurface property for such purpose, it shall, by resolution, declare the condemnation necessary, stating the purposes and extent thereof. Thereupon, proceedings for condemnation shall be undertaken in the name of the authority, as provided in chapter 21-35 and this chapter.

Section 3. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

In any proceeding initiated under this chapter and chapter 21-35, the authority may, at any time

before final judicial determination of the rights of the parties, file a declaration of taking, signed by the authority, declaring the extent of the subsurface property interest taken for the use of the authority.

The declaration of taking shall contain:

- (1) A statement of the authority under which and the use for which the subsurface property interest is taken;
- (2) A description of the subsurface property interest taken sufficient for identification thereof;
- (3) A legal description of the subsurface property subject to or affected by the taking;
- (4) The names of the owners of the property or persons in interest in the subsurface property, and a description of the interest claimed by each, as are known;
- (5) A statement of the sum of money estimated by the authority to be just compensation for the subsurface property interest taken and damaged; and
- (6) A detailed appraisal upon which the amount of the authority's estimate is based.

Section 4. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

Title to the subsurface property interest specified in the declaration shall vest in the authority and the subsurface property interest shall be deemed condemned and taken for the use of the authority, and the right to just compensation for the subsurface property interest shall vest in the persons entitled thereto either on the date the decision is rendered pursuant to the hearing provided for in § 21-35-10.1 or the date the hearing is waived, either by consent in writing or by failing to make demand for the hearing within the time allowed.

Section 5. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

Upon filing of a declaration of taking pursuant to section 3 of this Act, the court may fix the time

within which, and the terms upon which, the parties in possession are required to surrender possession to the authority. A notice shall be issued stating that if the defendants do not appear in or respond to the proceedings with thirty days after service of the notice, exclusive of the day of service, the authority shall apply to the court for an order of possession. A notice of hearing shall then be issued by the court and served as provided in section 6 of this Act upon the record owners of all subsurface property sought to be acquired or damaged. The notice shall state a time and place for hearing not less than thirty days from the date of service, unless the waiver of hearing provided by § 21-35-10.1 is filed, in which case the hearing may be held sooner. The court may make such orders in respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as are just and equitable.

Section 6. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

A copy of the declaration of taking filed pursuant to section 2 of this Act and any amendments thereto shall be served with the condemnation petition or by mailing a copy thereof to each of the known defendants by registered mail at the defendant's last known post office address.

Section 7. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

If any person who is a proper party defendant or if any affected subsurface property is omitted from the declaration of taking filed pursuant to section 2 of this Act, the authority may file amendments to include the person or subsurface property. Any amendment from the time of filing has the same force and effect as if it were included in the original proceedings. The misnaming or omission of any defendant's name does not defer the effect of the declaration of taking.

Section 8. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

If the authority elects to utilize the procedures set forth in sections 2 to 7, inclusive, of this Act for possession of subsurface property, the authority shall deposit with the court the money required by § 21-35-11 as a condition to the exercise of such power. In that case, the court and the attorneys shall expedite the proceedings for the distribution of the money deposited and for the ascertainment and payment of just compensation.

Section 9. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

Upon application of the parties in interest, the court may order that all of the money deposited in court pursuant to section 8 of this Act, or any part thereof, be paid for or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded for the subsurface property interest taken, or any part thereof, exceeds the amount of money received by any person so entitled, the court shall enter judgment against the authority for the amount of the deficiency.

Section 10. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as follows:

The provisions of chapters 45-4 and 45-5A do not apply to subsurface property rights taken by the authority pursuant to this Act.

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I certify that the attached Act
originated in the

SENATE as Bill No. 61

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. 61
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