

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0358

SENATE BILL NO. 61

Introduced by: The Committee on State Affairs at the request of the Department of Tourism
and State Development

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

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

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

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

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

14 The authority may condemn private and public subsurface property for public use for the
15 purposes of acquiring, developing, constructing, maintaining, or operating projects. The



1 authority may only condemn subsurface property upon or through which it already owns or
2 controls some, but not all, property rights. If the authority deems it necessary to condemn any
3 subsurface property for such purpose, it shall, by resolution, declare the condemnation
4 necessary, stating the purposes and extent thereof. Thereupon, proceedings for condemnation
5 shall be undertaken in the name of the authority, as provided in chapter 21-35 and this chapter.

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

8 In any proceeding initiated under this chapter and chapter 21-35, the authority may, at any
9 time before final judicial determination of the rights of the parties, file a declaration of taking,
10 signed by the authority, declaring the extent of the subsurface property interest taken for the use
11 of the authority.

12 The declaration of taking shall contain:

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

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

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

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

9 Upon filing of a declaration of taking pursuant to section 3 of this Act, the court may fix the
10 time within which, and the terms upon which, the parties in possession are required to surrender
11 possession to the authority. A notice shall be issued stating that if the defendants do not appear
12 in or respond to the proceedings with thirty days after service of the notice, exclusive of the day
13 of service, the authority shall apply to the court for an order of possession. A notice of hearing
14 shall then be issued by the court and served as provided in section 6 of this Act upon the record
15 owners of all subsurface property sought to be acquired or damaged. The notice shall state a
16 time and place for hearing not less than thirty days from the date of service, unless the waiver
17 of hearing provided by § 21-35-10.1 is filed, in which case the hearing may be held sooner. The
18 court may make such orders in respect to encumbrances, liens, rents, taxes, assessments,
19 insurance and other charges, if any, as are just and equitable.

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

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

1 address.

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

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

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

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

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

19 Upon application of the parties in interest, the court may order that all of the money
20 deposited in court pursuant to section 7 of this Act, or any part thereof, be paid for or on account
21 of the just compensation to be awarded in the proceeding. If the compensation finally awarded
22 for the subsurface property interest taken, or any part thereof, exceeds the amount of money
23 received by any person so entitled, the court shall enter judgment against the authority for the
24 amount of the deficiency.

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

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