

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

590M0601

SENATE ENGROSSED NO. **SB 157** - 02/13/2006

Introduced by: Senators Hansen (Tom), Duenwald, Kelly, Moore, Olson (Ed), and Sutton (Dan) and Representatives Haley, Dennert, Dykstra, Garnos, Hargens, Hennies, Jensen, Rave, and Turbiville

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding the exercise of the
2 right of eminent domain by a railroad and to provide for the use of railroad rights-of-way
3 by utility companies.

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

5 Section 1. That § 49-16A-75.3 be amended to read as follows:

6 49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent
7 with public necessity only if the use of eminent domain:

8 ~~—(1)— Has as its purpose providing railroad transportation to shippers in South Dakota, for~~
9 ~~commodities produced, manufactured, mined, grown, used, or consumed in South~~
10 ~~Dakota;~~

11 ~~—(2)— Is proposed by an applicant with the financial resources necessary to complete the~~
12 ~~proposed construction or reconstruction along with any related facilities,~~
13 ~~construction, or mitigation which are necessary to protect against harm to the public~~
14 ~~safety, convenience, or other adverse socioeconomic or environmental impact, as~~
15 ~~evidenced by a financing commitment from a lender or an investor or a combination~~



1 of each with adequate capitalization and resources to fulfill its commitment to build
2 and complete the project;

3 ~~(3)~~—Is is proposed by an applicant who has negotiated in good faith to privately acquire
4 sufficient property without the use of eminent domain;

5 ~~(4)~~—Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that
6 plat sets forth the route of the road to be constructed or reconstructed, identifies each
7 affected landowner, and specifies the location, along with construction methods and
8 engineering specifications for all main lines, sidings, yards, bridges, crossings, safety
9 devices, switches, signals, and maintenance facilities; and

10 ~~(5)~~—Provides that electric utilities, public utilities, telecommunication companies, and
11 rural water systems have the right to the use of the right-of-way for the placement of
12 underground facilities, without fee, subject to reasonable regulation as to location and
13 placement.

14 Section 2. Each electric utility, public utility, gas utility, municipal utility, municipal power
15 agency, joint action agency, consumers power district, pipeline company, telecommunications
16 company, and rural water system has the right to the use of the railroad right-of-way for the
17 placement of facilities, upon payment of a reasonable fee, subject to reasonable regulation and
18 negotiation in good faith as to location, placement, and compensation, when the placement of
19 facilities is outside the public right-of-way.