

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

590M0601

## SENATE BILL NO. 157

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.

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

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

5 49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent  
6 with public necessity only if the use of eminent domain:

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

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



- 1           and complete the project;
- 2       ~~(3) — Is is proposed by an applicant who has negotiated in good faith to privately acquire~~
- 3           sufficient property without the use of eminent domain;
- 4       ~~(4) — Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that~~
- 5           plat sets forth the route of the road to be constructed or reconstructed, identifies each
- 6           affected landowner, and specifies the location, along with construction methods and
- 7           engineering specifications for all main lines, sidings, yards, bridges, crossings, safety
- 8           devices, switches, signals, and maintenance facilities; and
- 9       ~~— (5) — Provides that electric utilities, public utilities, telecommunication companies, and~~
- 10           rural water systems have the right to the use of the right-of-way for the placement of
- 11           underground facilities, without fee, subject to reasonable regulation as to location and
- 12           placement.