



## 2024 South Dakota Legislature

# House Bill 1190

Introduced by: **Representative** Odenbach

1 **An Act to establish public use criteria for purposes of condemnation proceedings.**

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

3 **Section 1. That § 21-35-1 be AMENDED:**

4 **21-35-1.** ~~In all cases where any~~Any person, ~~group, or corporation, public or~~  
 5 ~~private, including the owners of water rights, ditches, flumes, reservoirs, and mining~~  
 6 ~~property under the provisions of the laws of Congress, invested with the privilege of taking~~  
 7 ~~or damaging private property for public use, in making, constructing, repairing, or using~~  
 8 ~~any work or improvement~~ as allowed by law, ~~shall determine~~ must, in order to exercise  
 9 ~~such~~ that privilege, ~~it shall~~ file a petition in the circuit court for the county in which the  
 10 property to be taken or damaged is situated, praying that the just compensation to be  
 11 made for ~~such~~ the property may be ascertained by a jury.

12 **Section 2. That § 21-35-2 be AMENDED:**

13 **21-35-2.** A petition filed pursuant to § 21-35-1 ~~shall name~~ must:  
 14 (1) Name the person, ~~group, or corporation~~ desiring to take or damage private  
 15 property as plaintiff, ~~and;~~  
 16 (2) Name all persons having interest in or liens upon the property affected by the  
 17 proceeding as defendants, so far as they ~~shall be~~ are known at the time of filing  
 18 the same. ~~It shall contain;~~  
 19 (3) Include a description of the property to be taken or damaged. ~~The purpose for;~~  
 20 (4) Include a description of the good faith efforts put forth by the condemnor to  
 21 negotiate with the landowner and purchase the property prior to filing the petition;  
 22 (5) Set forth the statutory authorization under which the property is to be taken or  
 23 damaged ~~shall be clearly set forth in the petition; and~~  
 24 (6) Include a detailed description of the public use, as defined in section 5 of this Act,  
 25 that necessitates the taking or damaging of the property.

1           It ~~shall~~ is not ~~be~~ necessary to specify the interests or claims of the several  
2           defendants in the ~~land~~ or property affected by the proceeding.

3           **Section 3. That § 21-35-10.1 be AMENDED:**

4                     **21-35-10.1.** Within thirty days from the date the summons described in § 21-35-  
5           9 is served, the defendant may demand a hearing in circuit court on the petitioner's right  
6           to take. ~~Failure the private property. The defendant's failure to make such the demand or~~  
7           ~~to the defendant's written consent in writing to the taking, within the thirty-day period,~~  
8           ~~shall constitute~~ constitutes a waiver of the defendant's right to question the ~~necessity of~~  
9           ~~the taking~~ existence of authorization for the taking, and the public use for which the  
10          property is to be taken.

11                    ~~The~~ A finding ~~of necessity by the plaintiff by the court that the taking is a public~~  
12          use, unless based upon fraud, bad faith, or an abuse of discretion, ~~shall be~~ is binding on  
13          all persons.

14          **Section 4. That chapter 21-35 be amended with a NEW SECTION:**

15                    For purposes of this chapter, the taking or damaging of private property is declared  
16          to be a public use if it meets the criteria set forth in section 5 of this Act and is:

- 17          (1) Authorized by the government of the United States;  
18          (2) Authorized by the Legislature of this state;  
19          (3) Exercised by the Bureau of Information and Telecommunications in accordance  
20          with chapter 1-13;  
21          (4) Exercised by the Department of Corrections in accordance with chapter 1-15;  
22          (5) Exercised by the South Dakota Health and Educational Facilities Authority in  
23          accordance with chapter 1-16A;  
24          (6) Exercised by the South Dakota Ellsworth Development Authority in accordance with  
25          chapter 1-16J;  
26          (7) Exercised by the governing body of any county or municipality for the acquisition  
27          of historic easements, in accordance with chapter 1-19B;  
28          (8) Exercised by the Department of Human Services in accordance with chapter 1-  
29          36A;  
30          (9) Exercised by the South Dakota Building Authority in accordance with chapter 5-12;  
31          (10) Exercised by the South Dakota Capitol Complex Restoration and Beautification  
32          Commission in accordance with chapter 5-15;  
33          (11) Exercised by a board of county commissioners in accordance with chapter 7-18;

- 1        (12) Exercised by a board of county commissioners in accordance with chapter 7-25;  
2        (13) Exercised by an improvement district in accordance with chapter 7-25A;  
3        (14) Exercised by a board of county commissioners in accordance with chapter 7-29;  
4        (15) Exercised by a board of township supervisors in accordance with chapter 8-2;  
5        (16) Exercised by the governing board of a municipality in accordance with chapter 9-  
6            12;  
7        (17) Exercised by the governing board of a municipality in accordance with chapter 9-  
8            27;  
9        (18) Exercised by the governing board of a municipality in accordance with chapter 9-  
10            32;  
11        (19) Exercised by the governing board of a municipality in accordance with chapter 9-  
12            36;  
13        (20) Exercised by the governing board of a municipality in accordance with chapter 9-  
14            38;  
15        (21) Exercised by a municipal power agency in accordance with chapter 9-41A;  
16        (22) Exercised by the governing board of a municipality in accordance with chapter 9-  
17            47;  
18        (23) Exercised by the governing board of a municipality in accordance with chapter 9-  
19            48;  
20        (24) Exercised by the governing board of a municipality in accordance with chapter 9-  
21            51;  
22        (25) Exercised by a municipal housing and redevelopment commission in accordance  
23            with chapter 11-7;  
24        (26) Exercised by the governing board of a municipality in accordance with chapter 11-  
25            8;  
26        (27) Exercised by the governing board of a municipality in accordance with chapter 11-  
27            9;  
28        (28) Exercised by a political subdivision in accordance with chapter 11-14;  
29        (29) Exercised by the board of a school district in accordance with chapter 13-24;  
30        (30) Exercised by the Board of Regents in accordance with chapter 13-51;  
31        (31) Exercised by the Board of Regents in accordance with chapter 13-51A;  
32        (32) Exercised by highway authorities of the state, counties, or municipalities in  
33            accordance with chapter 31-8;  
34        (33) Exercised by the Department of Transportation in accordance with chapter 31-10;

- 1        (34) Exercised by the highway authority charged with the construction, reconstruction,  
2                    or repair of a public highway along a section line in accordance with chapter 31-  
3                    18;
- 4        (35) Exercised by the Department of Transportation in accordance with chapter 31-19;
- 5        (36) Exercised by the owner of an isolated tract of land containing at least ten acres not  
6                    touched by a passable public highway or smaller tract of land containing at least  
7                    five acres used or intended to be used in good faith in whole or in part for residential  
8                    purposes, in accordance with chapter 31-22;
- 9        (37) Exercised by the Department of Transportation in accordance with chapter 31-27;
- 10       (38) Exercised by the Department of Transportation in accordance with chapter 31-29;
- 11       (39) Exercised by the Department of Transportation in accordance with chapter 31-30;
- 12       (40) Exercised by a sanitary district board of trustees in accordance with chapter 34A-  
13                    5;
- 14       (41) Exercised by a municipality in accordance with chapter 34A-6;
- 15       (42) Exercised by a regional recycling and waste management district in accordance  
16                    with chapter 34A-16;
- 17       (43) Exercised by the Department of Game, Fish and Parks in accordance with chapter  
18                    41-2;
- 19       (44) Exercised by the Department of Game, Fish and Parks in accordance with chapter  
20                    41-4;
- 21       (45) Exercised by a board of county commissioners in accordance with chapter 41-18;
- 22       (46) Exercised by the owner of a mine or a mining claim in accordance with chapter 45-  
23                    5;
- 24       (47) Exercised by any person in accordance with chapter 46-8;
- 25       (48) Exercised by Board of Water and Natural Resources in accordance with chapter  
26                    46A-2;
- 27       (49) Exercised by the South Dakota Conservancy District in accordance with chapter  
28                    46A-2;
- 29       (50) Exercised by a water development district board of directors in accordance with  
30                    chapter 46A-3D;
- 31       (51) Exercised by an irrigation district board of directors in accordance with chapter  
32                    46A-5;
- 33       (52) Exercised by an irrigation district board of directors in accordance with chapter  
34                    46A-6;
- 35       (53) Exercised by a water user district in accordance with chapter 46A-9;

- 1        (54) Exercised by a drainage district board of trustees in accordance with chapter 46A-  
 2            10A;
- 3        (55) Exercised by a watershed district in accordance with chapter 46A-14;
- 4        (56) Exercised by a water project district in accordance with chapter 46A-18;
- 5        (57) Exercised by an electric cooperative in accordance with chapter 47-21;
- 6        (58) Exercised by a cemetery association in accordance with chapter 47-29;
- 7        (59) Exercised by a common carrier in accordance with chapter 49-2;
- 8        (60) Exercised by a pipeline company owning a pipeline, which is a common carrier as  
 9            defined by § 49-7-11, in accordance with chapter 49-7;
- 10       (61) Exercised by a railroad in accordance with chapter 49-16A;
- 11       (62) Exercised by the South Dakota Railroad Authority in accordance with chapter 49-  
 12            16B;
- 13       (63) Exercised by a regional railroad authority in accordance with chapter 49-17A;
- 14       (64) Exercised by a corporation owning or operating lines of telegraph or telephone in  
 15            accordance with chapter 49-30;
- 16       (65) Exercised by a translator district in accordance with chapter 49-32A;
- 17       (66) Exercised by a corporation organized for constructing, maintaining and operating  
 18            a street railway, or for generating, transmitting, or distributing electricity to be sold  
 19            to or used by the public for heat, light or power, in accordance with chapter 49-  
 20            33;
- 21       (67) Exercised by a corporation organized for constructing, maintaining and operating  
 22            a street railway, or for generating, transmitting, or distributing electricity to be sold  
 23            to or used by the public for heat, light or power, in accordance with chapter 49-  
 24            34;
- 25       (68) Exercised by a consumers power district in accordance with chapter 49-37; or
- 26       (69) Exercised by a regional airport authority in accordance with chapter 50-6A.

27       **Section 5. That chapter 21-35 be amended with a NEW SECTION:**

- 28            In order to be declared a public use, the taking or damaging of private property  
 29            must provide an obvious public benefit, avoid uncompensated private injury, and:
- 30        (1) Culminate in the possession or ownership of the property by the United States, this  
 31            state, or a political subdivision of this state;
- 32        (2) Culminate in the construction of an energy facility, an AC/DC conversion facility,  
 33            or a transmission or distribution facility, and any associated facility, including:
- 34            (a) An aqueduct;

- 1           **(b)** A cooling pond;  
 2           **(c)** A diversion dam;  
 3           **(d)** A reservoir;  
 4           **(e)** A storage pond; and  
 5           **(f)** A transmission substation;  
 6       **(3)** Culminate in the placement of a pipeline for the transportation of crude oil,  
 7           hydrocarbons, natural gas, refined petroleum products, or biofuels;  
 8       **(4)** Culminate in the creation of a project or facility for the management of water  
 9           resources;  
 10       **(5)** Culminate in the maintenance or working of mines or mining claims, including  
 11           actions necessary for pollution control measures; or  
 12       **(6)** Culminate in the creation or maintenance of a rail, road, or air transportation  
 13           system for the movement of persons, freight, or both.  
 14           An economic development effort or other undertaking, which is designed to  
 15           increase the tax base, increase tax revenues, increase employment, or improve general  
 16           economic well-being, is not sufficient to constitute a public use, unless the effort or  
 17           undertaking also meets one of the requirements set forth in this section.

18       **Section 6. That chapter 21-35 be amended with a NEW SECTION:**

19           The court may award reasonable attorneys' fees to the defendant upon a finding  
 20           that the petitioner does not meet the requirements set forth in sections 4 and 5 of this  
 21           Act.

22       **Section 7. That § 31-19-3 be AMENDED:**

23           **31-19-3.** If land or material is to be acquired by condemnation, the Department  
 24           of Transportation, on behalf of the state and in its name, ~~shall~~ must file a petition in the  
 25           circuit court for the county in which the property to be taken or damaged is situated,  
 26           praying that the just compensation be made and such property be ascertained by a jury  
 27           and shall name the Department of Transportation as the department of the state  
 28           government desiring to take or damage the property on behalf of the state as plaintiff. All  
 29           persons having an interest in or a lien upon the property affected by the proceedings ~~shall~~  
 30           must be named as defendants so far as they may be known at the time of the filing of the  
 31           petition. ~~It shall contain~~ The petition must:

- 32       **(1)** Include a description of the property to be taken or damaged ~~and shall contain;~~

