



2024 South Dakota Legislature

House Bill 1185

CONFERENCE COMMITTEE ENGROSSED

Introduced by: **Representative** Mortenson

1 **An Act to amend provisions regarding entry on private property for examination and**
 2 **survey of a project requiring a siting permit.**

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

4 **Section 1. That § 21-35-31 be AMENDED:**

5 **21-35-31.** The provisions of this section only apply to a project ~~which~~ that requires
 6 a siting permit pursuant to chapter 49-41B. Each person vested with authority to take
 7 private property for public use may cause an examination and survey to be made as
 8 necessary for its proposed facilities. The person or the person's agents and officers may
 9 enter the private property for the purpose of the examination and survey. Any person
 10 seeking to cause an examination or survey, where permission for examination or survey
 11 has been denied, ~~shall~~ must:

- 12 (1) ~~Have filed a~~ pending or approved siting permit application with the Public Utilities
 13 Commission pursuant to § 49-41B-11;
- 14 (2) ~~Give thirty days written notice, including the filing and expected dates of entry,~~
 15 Provide to the owner ~~and any tenant in possession~~ of the private property, thirty
 16 days' written notice served in accordance with § 15-6-4 or sent by certified mail
 17 with return receipt requested that contains:
- 18 (a) A description of the specific portions of property to be examined and
 19 surveyed;
- 20 (b) The anticipated date and time of entry;
- 21 (c) The anticipated duration of presence on the property;
- 22 (d) A description of the types of surveys and examinations that may be
 23 conducted; and
- 24 (e) The name and contact information of the person, or the person's manager
 25 or officer, who will enter the property for the purpose of causing the
 26 examination and survey; and

1 (3) Make a payment to the owner, or provide sufficient security for the payment, for
2 any actual damage done to the property by the entry. If the project is for
3 construction of a common carrier, as described in § 49-7-11, in addition to the
4 foregoing, the person must make a one-time payment to the owner, prior to entry,
5 in the amount of five hundred dollars as compensation for entering the owner's
6 property.

7 A landowner may challenge the right to survey or examine by commencing an
8 action in circuit court in the county where the survey or examination is proposed within
9 thirty days of service of the written notice in circuit court. Upon the written request of the
10 owner, the results of a survey or examination of the owner's private property conducted
11 pursuant to this section must be provided to the owner. This section does not apply to the
12 state or its political subdivisions. This section is in addition to and not in derogation of
13 other existing law.

14 For the purpose of this section, the term "examination" means an inspection of a
15 property to obtain general information which is not a matter of public record. For the
16 purpose of this section, the term "survey" means a more detailed, comprehensive, or
17 invasive investigation of a property.