



2026 South Dakota Legislature

Senate Bill 88

Introduced by: **Senator Lapka**

1 **An Act to clarify the procedure for a potential condemnor to examine real property**
 2 **absent the property owner's permission.**

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 that requires a
 6 siting permit pursuant to chapter 49-41B. ~~Each~~ Except as otherwise provided in this
 7 section, any person vested with authority to take private property for public use may
 8 cause an examination and survey to be made as necessary for its proposed facilities. ~~The,~~
 9 and the person, or the person's ~~agents and officers~~ agent or officer, may enter the private
 10 property ~~for the purpose of~~ to conduct the examination and survey. ~~Any person seeking~~
 11 ~~to cause an examination or survey, where~~

12 If the owner of the property denies permission for the examination or survey has
 13 been denied, the person may conduct only an examination and must:

- 14 (1) Have a pending or approved siting permit application with the Public Utilities
 15 Commission of the State of South Dakota pursuant to § 49-41B-11;
- 16 (2) Provide to the owner ~~of the private property,~~ thirty days' written notice, served in
 17 accordance with § 15-6-4 or sent by certified mail with return receipt requested
 18 ~~that,~~ which contains:
- 19 (a) A description of the specific portions of property to be examined ~~and~~
 20 ~~surveyed;~~
- 21 (b) The anticipated date and time of entry;
- 22 (c) The anticipated duration of presence on the property;
- 23 (d) A description of the ~~types of surveys and examinations~~ type of examination
 24 that may be conducted; and

1 (e) The name and contact information of the person, or the person's ~~manager~~
2 agent or officer, who will enter the property ~~for the purpose of causing to~~
3 conduct the examination ~~and survey~~; and

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

10 ~~A landowner~~ The owner may challenge the ~~right to survey or examine~~ proposed
11 examination or survey by commencing an action in circuit court in the county where the
12 ~~survey or examination or survey~~ is proposed, within thirty days of service of the written
13 notice ~~in circuit court.~~

14 ~~Upon the written request of the owner, the owner is entitled to a copy of the results~~
15 ~~of a any survey or examination of the owner's private property conducted pursuant to this~~
16 ~~section must be provided to the owner.~~

17 This section does not apply to the state or its political subdivisions. This section is
18 in addition to and not in derogation of other existing law.

19 ~~For the purpose purposes~~ of this section, ~~the term~~ "examination" means ~~an a~~
20 minimally invasive, superficial inspection of ~~a real~~ property, resulting in no more than
21 minor soil disturbances, to obtain general information ~~which that~~ is not a matter of public
22 record. ~~For the purpose purposes~~ of this section, ~~the term~~ "survey" means a more detailed,
23 comprehensive, or invasive investigation of ~~a real~~ property.