

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

276Q0387

SENATE BILL NO. 133

Introduced by: Senators Gillespie, Knudson, and Olson (Russell) and Representatives Nygaard, Brunner, Cutler, Hunhoff (Bernie), Peters, Pitts, and Rounds

1 FOR AN ACT ENTITLED, An Act to provide for central filing of documents necessary to
2 perfect a security interest in personal property or fixtures of a rural electric cooperative.

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

4 Section 1. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of §§ 57A-9-302, 57A-9-401, 57A-9-402, and 57A-9-403,
7 any filing required under the uniform commercial code in order to perfect a security interest
8 against the personal property or fixtures of a debtor rural electric cooperative shall be made and
9 maintained in the Office of the Secretary of State. If the financing statement covers goods of a
10 debtor rural electric cooperative which are or are to become fixtures, no description of the real
11 estate or the name of the record owner thereof is required. Filing of a financing statement
12 against the property of a debtor rural electric cooperative is effective until released or
13 terminated.

14 Section 2. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
15 follows:



1 A mortgage or trust deed to secure a debt executed by a rural electric cooperative, covering
2 the whole or part of its easements or other less than fee simple interests in real estate used in the
3 transmission or distribution of electric service, and also covering the fixtures of the rural electric
4 cooperative which are annexed to it, may be filed in the Office of the Secretary of State along
5 with, or as part of, the financing statement covering the fixtures. The filing of the mortgage or
6 deed of trust has the same effect, and is notice of the rights and interest of the mortgagee or
7 trustee in the easements and other less than fee simple interest in real estate to the same extent
8 as if the mortgage or deed of trust were duly recorded in the office of the register of deeds of
9 each county in which the real estate is situated. The effectiveness of the filing terminates at the
10 same time as provided in section 1 of this Act for the termination of the effectiveness of a
11 fixture filing. For the purpose of this section, a mortgage or deed of trust filed under this section
12 contains a sufficient description to give notice of the rights and interest of the mortgagee or
13 trustee in the easements and other less than fee simple interest in the real estate used for the
14 transmission and distribution of electric service of the rural electric cooperative if the mortgage
15 or deed of trust states that the security includes rights-of-way of, or transmission or distribution
16 systems of, or lines of, the rural electric cooperative, or all property owned by the rural electric
17 cooperative. A mortgage or deed of trust filed before July 1, 2009, pursuant to § 47-21-46,
18 which complies with the provisions of this section, is filed under this section as of July 1, 2009.
19 Section 47-21-46 applies to real estate owned in fee simple by a rural electric cooperative.

20 Section 3. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 To the extent not superceded by the specific provisions of sections 1 to 3, inclusive, of this
23 Act, the uniform commercial code and other applicable laws remain in full force and effect and
24 supplement the provisions of sections 1 to 3, inclusive, of this Act. Any rural electric

1 cooperative may make a single filing under sections 1 and 2 of this Act, and the secretary of
2 state shall accept the same as a single filing for both purposes. The financing statement shall
3 identify the rural electric cooperative as a transmitting utility and shall be indexed under
4 § 57A-9-501(b), but the index may also refer to the secretary of state's recording data for real
5 estate records under sections 1 and 2 of this Act and the retention by the secretary of state of a
6 microfilm or other photographic copy of the document filed in the real estate records shall be
7 sufficient to comply with the retention requirements of § 57A-9-522.

8 Section 4. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Any trust deed or mortgage described in § 47-21-46 and sections 1 and 2 of this Act may be
11 assigned or discharged by filing for record in the Office of the Secretary of State and in the
12 Office of the Register of Deeds of each county, if any, in which the trust deed or mortgage has
13 been filed for record an instrument of assignment or discharge executed in the manner and
14 providing the information required with respect to real estate mortgages by §§ 44-8-13 and
15 44-8-14, respectively. However, no such instrument need provide the description of the
16 mortgaged property, except that an instrument of discharge whereby less than all the mortgaged
17 property is released from the lien of the trust deed or mortgage provides the full description of,
18 or clearly identify by reference to numbered or lettered portions of the descriptions as the same
19 appears in the trust deed or mortgage, the property so released.