

State of South Dakota

EIGHTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2010

456R0032

HOUSE BILL NO. 1191

Introduced by: Representatives Rounds, Brunner, and Frerichs and Senators Fryslie, Bradford, and Brown

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding right-of-way
2 easements for isolated tracts of land.

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

4 Section 1. That § 31-22-1 be amended to read as follows:

5 31-22-1. ~~Every~~ Each 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 five acres~~ used
7 or intended to be used in good faith in whole or in part for residential purposes is entitled to an
8 easement or right-of-way across adjacent lands to reach a public highway, ~~which~~. The easement
9 or right-of-way may be secured as provided in this chapter. An isolated tract is further defined
10 as an area which is either inaccessible by motor vehicle because of natural barriers from all other
11 land owned by the owner of the isolated tract or is such an area which is not touched by a
12 ~~passable~~ public highway, ~~which is in use or reasonably usable for motor vehicles~~. A tract of land
13 adjoining a section line right-of-way for at least sixty-six feet is not an isolated tract if a passable
14 road can be built within the adjoining section line to connect to a ~~passable~~ public highway.

15 Section 2. That § 31-22-2 be amended to read as follows:



1 31-22-2. If the owner of ~~such~~ an isolated tract of land is unable to agree with the owner of
2 surrounding lands for purchase of a right-of-way from ~~such~~ the isolated tract of land to a public
3 highway, ~~he~~ the owner may apply to the board of county commissioners for relief, ~~making his~~.
4 The owner shall submit an application in writing and describing the isolated tract and the
5 surrounding land over which a right-of-way is desired. The county commissioners shall
6 ~~thereupon cause to be served~~ serve upon the owner or owners of ~~such~~ the surrounding land a
7 notice in writing of a time when ~~such~~ the board or its representative will visit ~~such~~ the land and
8 lay out one right-of-way across ~~such~~ the surrounding land; and assess the damages therefor;
9 ~~which.~~ The notice shall be served at least five days prior to the date set for ~~such~~ the visit and
10 appraisal. The board may employ a representative to visit the land, lay out the right-of-way, and
11 assess the damages.

12 Section 3. That § 31-22-3 be amended to read as follows:

13 31-22-3. ~~Upon the day set for such~~ On the day set for the visit to ~~such~~ land for the purpose
14 of laying out such right-of-way and appraising the damages to the owner of the surrounding land
15 ~~therefor~~ and appraisal pursuant to § 31-22-2, the county commissioners or its representative
16 shall proceed to the ~~place named, shall~~ land and lay out a right-of-way not less than twenty-five
17 nor more than sixty-five feet in width from ~~such~~ the isolated tract of land across surrounding
18 lands to a public highway, ~~and in so doing shall consider the.~~ The convenience of the parties
19 shall be considered when laying out the right-of-way. Wherever it is practicable to do so, ~~such~~
20 ~~board shall lay such~~ the right-of-way shall be laid along a section line or the line of a
21 government fractional subdivision of a section.

22 Section 4. That § 31-22-4 be amended to read as follows:

23 31-22-4. The county commissioners or its representative shall assess and determine the
24 damage which the right-of-way is to the owner of the land across which it is laid, ~~and they shall~~

1 ~~file.~~ A report of the proceeding concerning the right-of-way shall be filed with the county
2 ~~auditor a full report of all their proceedings in the premises, and the.~~ The county auditor shall
3 record the ~~same in his~~ right-of-way in the record of highways. However, the county auditor may
4 destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares
5 to have no further administrative, legal, fiscal, research, or historical value.

6 Section 5. That § 31-22-5 be amended to read as follows:

7 31-22-5. The owner of the land over which such right-of-way is laid pursuant to this chapter
8 may appeal from the decision and assessment of damages by ~~such the~~ county commissioners ~~or~~
9 ~~its representative~~ to the circuit court for the county where ~~such the~~ land or some part thereof is
10 located, ~~and upon such appeal the.~~ The trial shall be de novo. ~~Such appeal shall be and the~~
11 appeal shall be taken within the time and in the manner as other appeals from the board of
12 county commissioners, ~~but.~~ However, the appellant ~~shall~~ may not recover costs upon ~~such~~
13 ~~appeals the appeal unless he~~ the appellant is awarded judgment for a greater sum than the sum
14 awarded by ~~such the~~ board of county commissioners.

15 Section 6. That § 31-22-6 be amended to read as follows:

16 31-22-6. Upon payment of the sum assessed to the owner of the land over which ~~such the~~
17 right-of-way is laid or upon ~~his~~ such owner's refusal to accept the same upon the deposit of such
18 sum with the clerk of courts of the county in which ~~such the~~ lands are located, the right of the
19 owner of ~~such the~~ isolated tract of land to the free use of ~~said the~~ right-of-way ~~shall be is~~
20 complete; ~~provided.~~ In addition, before the owner has free use of the right-of-way, the owner
21 of ~~such the~~ isolated tract shall ~~have paid~~ pay all of the costs of the proceedings in laying out and
22 assessing the damages of said right-of-way, ~~and the commissioners shall each be entitled to a~~
23 ~~fee of three dollars per day and five cents for each mile necessarily traveled in going to and~~
24 ~~returning from the lands where such right-of-way is located~~ including the costs of the county

1 commission's representative.