

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

456R0032

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1191** - 2/16/2010

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. However, in any county that has
10 adopted a subdivision ordinance, the minimum size of the tract of land used or to be used for
11 residential purposes for which an easement or right-of-way may be granted is the minimum size
12 required by the ordinance. An isolated tract is further defined as an area which is either
13 inaccessible by motor vehicle because of natural barriers from all other land owned by the owner
14 of the isolated tract or is such an area which is not touched by a ~~passable~~ public highway, ~~which~~



1 ~~is in use or reasonably usable for motor vehicles.~~ A tract of land adjoining a section line
2 right-of-way for at least sixty-six feet is not an isolated tract if a passable road can be built
3 within the adjoining section line to connect to a ~~passable~~ public highway.

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

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

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

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

government fractional subdivision of a section.

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

31-22-4. The county commissioners or its representative shall assess and determine the damage which the right-of-way is to the owner of the land across which it is laid, ~~and they shall file.~~ A report of the proceeding concerning the right-of-way shall be filed with the county auditor ~~a full report of all their proceedings in the premises, and the.~~ The county auditor shall record the ~~same in his~~ right-of-way in the record of highways. However, the county auditor may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.

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

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

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

31-22-6. Upon payment of the sum assessed to the owner of the land over which ~~such the~~ right-of-way is laid or upon ~~his~~ such owner's refusal to accept the same upon the deposit of such sum with the clerk of courts of the county in which ~~such the~~ lands are located, the right of the owner of ~~such the~~ isolated tract of land to the free use of ~~said the~~ right-of-way ~~shall be is~~ complete; provided. In addition, before the owner has free use of the right-of-way, the owner

1 of ~~such~~ the isolated tract shall ~~have paid~~ pay all of the costs of the proceedings in laying out and
2 assessing the damages of said right-of-way, ~~and the commissioners shall each be entitled to a~~
3 ~~fee of three dollars per day and five cents for each mile necessarily traveled in going to and~~
4 ~~returning from the lands where such right-of-way is located~~ including the costs of the county
5 commission's representative.