



## 2025 South Dakota Legislature

# Senate Bill 198

SENATE ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Senator Larson**

1 **An Act to establish conditions a prospective condemnor must satisfy before**  
 2 **commencing condemnation proceedings.**

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

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

5 **21-35-1.** In all cases where any person, group, or corporation, public or private,  
 6 including the owners of water rights, ditches, flumes, reservoirs, and mining property  
 7 under the provisions of the laws of Congress, invested with the privilege of taking or  
 8 damaging private property for public use, in making, constructing, repairing, or using any  
 9 work or improvement allowed by law, shall determine to exercise ~~such the~~ the privilege, ~~it the~~  
 10 prospective condemnor shall file a petition in the circuit court for the county in which the  
 11 property to be taken or damaged is situated, praying that the just compensation to be  
 12 made for ~~such the~~ the property may be ascertained by a jury.

13 A petition may not be filed pursuant to this chapter until the condemnor has  
 14 complied with the requirements of sections 2 to 5, inclusive, of this Act.

15 **Section 2. That a NEW SECTION be added to chapter 21-35:**

16 Before any prospective condemnor, as described in § 21-35-1, may initiate  
 17 condemnation proceedings pursuant to this chapter, the condemnor shall engage in good  
 18 faith mediation with any affected property owner in an attempt to reach a mutually  
 19 agreeable resolution regarding the property proposed to be taken or damaged.

20 The condemnor shall provide the property owner written notice of the condemnor's  
 21 intent to acquire an interest in the property at least ninety days before commencement of  
 22 any condemnation proceeding pursuant to this chapter.

23 The condemnor shall pay any cost associated with the mediation.

24 **Section 3. That a NEW SECTION be added to chapter 21-35:**

- 1           The notice required in section 2 of this Act must contain:
- 2           (1) The prospective condemnor's full legal name, phone number, and primary address;
- 3           (2) A detailed description of the property proposed to be taken or damaged;
- 4           (3) A request for mediation in accordance with chapter 19-13A;
- 5           (4) A list of at least three proposed mediators; and
- 6           (5) A statement that the affected property owner has fifteen days to either:
- 7                 (a) Select one of the mediators proposed by the condemnor; or
- 8                 (b) Propose an alternate mediator agreeable to both parties.

9           **Section 4. That a NEW SECTION be added to chapter 21-35:**

10           Mediation, as required in section 2 of this Act, must be conducted within sixty days  
 11 of the affected property owner's receipt of the notice pursuant to sections 2 and 3 of this  
 12 Act, unless the parties agree to extend the time for mediation.

13           The mediator shall facilitate discussions to explore alternatives to condemnation,  
 14 including alternative routes within the confines of the applicable permit, as required in  
 15 section 5 of this Act, and increased compensation.

16           If mediation results in a voluntary agreement between the parties, the mediator  
 17 must facilitate preparation of a written settlement agreement, which upon execution by  
 18 the parties is binding and enforceable.

19           If mediation does not result in an agreement, the mediator must issue a written  
 20 confirmation of mediation completion to be filed with the court upon commencement of  
 21 any condemnation proceeding pursuant to this chapter.

22           If the property owner refuses to participate in mediation, then upon  
 23 commencement of a condemnation proceeding pursuant to this chapter, the prospective  
 24 condemnor, as described in § 21-35-1, must submit an affidavit to the court documenting  
 25 the condemnor's efforts, and the property owner's refusal, to participate in mediation.

26           **Section 5. That a NEW SECTION be added to chapter 21-35:**

27           If a project for which property is proposed to be taken or damaged requires a  
 28 permit under chapter 49-41B, a prospective condemnor must obtain the permit from the  
 29 Public Utilities Commission before commencement of any condemnation proceeding  
 30 pursuant to this chapter.

31           **Section 6. That a NEW SECTION be added to chapter 49-41B:**

1           If an easement is necessary for a proposed facility requiring a permit pursuant to  
2 this chapter, and as a precondition for initiating condemnation proceedings under chapter  
3 21-35, the applicant must, at least sixty days before applying to the commission for the  
4 permit, provide notice of the applicant's intent to obtain a permit to the owner of record  
5 of the property on which the easement is sought.

6           The notice must:

7           (1) Be sent by certified mail, return receipt requested;

8           (2) Contain a description of the nature and location of the proposed facility; and

9           (3) Include a color aerial map of the property, showing the intended location of the  
10 proposed facility.

11           Notice is not required pursuant to this section if the applicant has already obtained  
12 the necessary easement on the property.

13           For purposes of this section, "owner of record" means the person designated to  
14 receive the property tax bill, on the property at issue, sent by the county treasurer.