

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

372B0407

## HOUSE BILL NO. 1078

Introduced by: Representatives Otten (Herman) and Smith (Jamie) and Senators Soholt and Heinert

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the repair of  
2 sidewalks within a municipality.

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

4 Section 1. That § 9-46-1 be amended to read:

5 9-46-1. The governing body may, by ordinance ~~shall~~, prescribe the width of sidewalks and  
6 may establish different widths in different ~~localities~~ areas of the municipality and determine the  
7 kind of material of which ~~they~~ the sidewalk shall be constructed, ~~having regard to the business~~  
8 ~~and amount of travel in the vicinity of each.~~

9 Section 2. That § 9-46-2 be amended to read:

10 9-46-2. ~~Any owner of real property who fails to keep in~~ An adjoining property owner is  
11 responsible for repair or replacement of the sidewalks in front of or along ~~such~~ the owner's  
12 property if he resides thereon, or if he does not reside thereon. ~~The adjoining property owner~~  
13 who fails, if notified by the municipality, to repair the same forthwith when notified; sidewalk  
14 is liable to the municipality for any damage caused by ~~such~~ neglect. The duty of the municipality  
15 to notify the nonresident owner does not affect the liability of the owner for any injury



1 proximately caused by the negligent construction or repair of the sidewalk. The failure of the  
2 municipality to notify the nonresident owner does not result in any liability on the part of the  
3 municipality for any injury proximately caused by the negligent construction or repair of the  
4 sidewalk.

5 Section 3. That § 9-46-3 be amended to read:

6 9-46-3. If the ~~governing body~~ municipality deems it necessary to ~~construct, rebuild,~~  
7 reconstruct or repair any sidewalk, ~~it~~ the municipality shall notify all owners of lots adjoining  
8 ~~such the~~ sidewalk to ~~construct, rebuild,~~ reconstruct or repair the sidewalk at ~~their~~ the owner's  
9 own expense within a time designated by the municipality.

10 ~~Such~~ The notice shall be in writing and ~~either be served personally or by return receipt mail,~~  
11 by first class mail on each owner or by publication once in each week for two consecutive  
12 weeks. ~~It~~ The notice shall set forth the ~~character~~ nature of the work and the time ~~within which~~  
13 it frame that the work is to be ~~done~~ completed. ~~Such~~ The notice may be general as to the owners  
14 but shall be specific as to the description of ~~such the~~ lots.

15 Section 4. That § 9-46-4 be amended to read:

16 9-46-4. If ~~such the~~ sidewalk is not ~~constructed,~~ reconstructed, or repaired in the manner and  
17 within the time prescribed pursuant to § 9-46-3, the ~~governing body by resolution~~ municipality  
18 may cause the work to be ~~done by day labor or by job~~. If the amount of the contract is less than  
19 ~~the amount provided for in § 5-18A-14,~~ it is not necessary to advertise for bids completed.

20 Section 5. That § 9-46-5 be amended to read:

21 9-46-5. The cost ~~thereof shall~~ of reconstruction or repairing the sidewalk may be assessed  
22 against the lots fronting or abutting upon the sidewalk ~~so constructed, reconstructed, or repaired,~~  
23 ~~as provided in this title or hereinafter provided. In estimating such assessment the entire cost of~~  
24 ~~the improvement fronting on the property to be assessed shall be divided by the number of feet~~

1 ~~fronting or abutting on the same, and the quotient shall be the sum to be assessed per front foot~~  
2 ~~against each lot so fronting or abutting~~ as provided in this title.

3 Section 6. That § 9-46-6 be amended to read:

4 9-46-6. After the completion of the ~~construction~~ reconstruction or repair of ~~said the~~  
5 sidewalk, the municipal engineer or ~~such other person designated~~ a person designated for that  
6 purpose shall file in the office of the ~~city auditor or clerk~~ municipal finance officer, an  
7 assessment roll showing the amount to be assessed against each lot or parcel of ground which  
8 amount shall include the ~~contract price or the~~ cost of the ~~work by day~~ labor, materials,  
9 engineering and any other costs entering into ~~such construction~~ reconstruction or repair, the  
10 description of the property abutting upon ~~said the~~ sidewalk ~~which that~~ is to be assessed and the  
11 name of the property owner or owners ~~thereof~~ as shown by the records in the office of the  
12 director of equalization.

13 Section 7. That § 9-46-8 be amended to read:

14 9-46-8. Upon the hearing, the governing body may approve ~~said the~~ roll with or without  
15 amendment, or reject the same, and upon the approval ~~thereof~~, the governing body shall direct  
16 the ~~city auditor or town~~ municipal finance officer or clerk to file a certified copy of the  
17 assessment roll with the municipal finance office for collection by the municipality or in the  
18 office of the county auditor who shall ~~thereupon~~ certify ~~said the~~ assessment to the county  
19 treasurer ~~to be collected in the manner provided for the collection of special assessments as~~  
20 ~~provided in chapter 9-43~~ for collection by the county.

21 Section 8. That § 9-46-9 be repealed.

22 ~~9-46-9. Except as otherwise expressly provided in §§ 9-46-4 to 9-46-8, inclusive,~~  
23 ~~proceedings for levy of and collecting sidewalk assessments shall be governed by and performed~~  
24 ~~according to the provisions of chapter 9-43, including without limitation, provisions relating to~~

1 ~~the mailing of notices of assessment hearings, reassessment proceedings, the interest to be borne~~  
2 ~~by deferred installments, filing of the assessment roll, giving notice of filing, prepayments of~~  
3 ~~deferred installments, assessment certificates and bonds, actions and remedies, compromises~~  
4 ~~and deeds in settlement, and limitations of proceedings.~~

5 Section 9. That chapter 9-46 be amended by adding a NEW SECTION to read:

6 The decision of a municipal governing body regarding the assessment roll may be appealed  
7 to circuit court. The appeal shall be made within twenty days after publication of a notice that  
8 the resolution confirming the assessment roll has been adopted. The party appealing the  
9 resolution shall file a written notice of appeal with the municipal finance officer and the clerk  
10 of the circuit court in the county that the property is located. The notice of appeal shall describe  
11 the property and set forth the objections.

12 Section 10. That chapter 9-46 be amended by adding a NEW SECTION to read:

13 Collection of any assessment not addressed in this chapter shall be collected in the manner  
14 provided for in §§ 9-43-97 to 9-43-113, inclusive.