

## CHAPTER 46-8

## EMINENT DOMAIN

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46-8-1. Right of eminent domain for application or conveyance of water for beneficial use. Any person may exercise the right of eminent domain in the manner provided by law to acquire as a public use any property or other rights necessary for application of water to beneficial uses or to enlarge an existing structure for conveyance of water for use in common with an existing or former owner. Application of water to beneficial use is a public use, in the public interest and of benefit to the public.

**Source:** SDC 1939, § 61.0103; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0156; SL 1983, ch 314, § 131.

46-8-1.1. Limit on exercise of right of eminent domain. Any exercise of the right of eminent domain under the provisions of this chapter shall do the least possible injury to private property, consistent with sound engineering principles and with economic feasibility.

**Source:** SL 1983, ch 314, § 132.

46-8-1.2. Location of routes restricted. No routes acquired under the provisions of this chapter may be located within two hundred fifty feet of a dwelling house or other buildings on the premises or across any noncommercial orchard or garden without written consent of the owner. This section does not apply to works located in public rights-of-way or to water distribution systems as defined in § 46-1-6.

**Source:** SL 1983, ch 314, § 134; SL 2006, ch 225, § 1.

46-8-2. Permission required for entry on land for surveys--Liability for damages. No person may enter upon the lands of any other person without first obtaining written permission or a court order obtained pursuant to § 46-8-2.1 for the purpose of surveying or locating the most advantageous route for works necessary to put water to beneficial use. Actual damages sustained by reason of the entrance are the responsibility of the person causing the damages.

**Source:** SDC 1939, § 61.0416; SL 1955, ch 431, § 1; SL 1983, ch 314, § 133.

46-8-2.1. Order of circuit court for entry on land. The circuit court for the county in which a proposed water project is located has jurisdiction to issue an order permitting entry upon land for the purpose of surveying or locating the most advantageous route for works necessary to put water to beneficial use. No order may be issued unless the petitioner can show a present intent to construct a project to put water to beneficial use.

**Source:** SL 1983, ch 314, § 133A.

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46-8-3 to 46-8-5. Repealed by SL 1983, ch 314, §§ 135 to 137

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46-8-6. Multiple water conduits prohibited where single conduit sufficient. The right of eminent domain may not be exercised to allow two or more pipelines, canals, ditches, or other water conduits to be constructed on lands owned by any person when a single pipeline, canal, ditch, or other water conduit can feasibly convey the water.

**Source:** SDC 1939, § 61.0417; SL 1955, ch 431, § 1; SL 1983, ch 314, § 138.

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46-8-7. Plat of route for water conduit--Certification and recording. When the route for any pipeline, canal, ditch, or other water conduit mentioned in this chapter is located, a correct survey and plat of the route shall be made, indicating by proper description the lands over which the route is located. The plat shall be certified and recorded in the office of the register of deeds of the county or counties in which the route is located.

**Source:** SDC 1939, § 61.0425; SL 1955, ch 431, § 1; SL 1983, ch 314, § 139.

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46-8-8. Right for location of route an easement. The right acquired by the location of the route for any waterway mentioned in this chapter shall be an easement.

**Source:** SDC 1939, § 61.0425; SL 1955, ch 431, § 1; SL 1983, ch 314, § 140.

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46-8-9. Repealed by SL 1983, ch 314, § 141

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46-8-10. Reasonable access to land. The owner of any works for application of water to beneficial use which may prevent reasonable access to lands crossed or adjacent to the works is responsible for providing reasonable access to the land. If the owner of the works does not provide reasonable access, the owner or occupant of the land may construct reasonable access and may recover the costs of constructing access from the owner of the works.

**Source:** SDC 1939, § 61.0428; SL 1955, ch 431, § 1; SL 1983, ch 314, § 142.

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46-8-11 to 46-8-15. Repealed by SL 1983, ch 314, §§ 143 to 147

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46-8-16. Right to cross public or railroad right-of-way--Construction of bridges, culverts, or similar structures. An owner of works for the storage, carriage, or application of water to beneficial use has the right to cross any public or railroad right-of-way, subject to such reasonable conditions as may be prescribed by the board or officer having charge of the right-of-way. The owner of the works shall notify the board or officer in charge of the right-of-way in writing showing the location and character of the crossing and shall provide a plat showing the location of the proposed route across the right-of-way. The owner of the works shall bear the cost of construction of any bridge, culvert, or similar structure where it crosses the right-of-way. All bridges, culverts, or similar structures shall be constructed in accordance with pertinent provisions of law.

**Source:** SDC 1939, § 61.0144; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0131; SL 1983, ch 314, § 148.

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46-8-17. Repealed by SL 1983, ch 314, § 149

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46-8-18. Right to cross school and public lands--Notice to commissioner. An owner of works for storage, carriage, or application of water to beneficial use has the right, if necessary, to cross school and public lands, subject to such reasonable conditions as may be prescribed by the commissioner of school and public lands. The owner of the works shall notify the commissioner in writing prior to the crossing. The notification shall contain a description of the works, the location of the land and a plat showing the proposed route of the works. The owner of the works shall bear the cost of construction of any device necessary to assure continued use of the land in the usual manner.

**Source:** SDC 1939, § 61.0431; SL 1955, ch 431, § 1; SL 1983, ch 314, § 150.

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46-8-19, 46-8-20. Repealed by SL 1983, ch 314, §§ 151, 152

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