



2020 South Dakota Legislature
Senate Bill 137
ENROLLED

AN ACT

ENTITLED An Act to revise provisions for repair, replacement, and construction of sidewalks within a municipality.

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

Section 1. That § 9-45-1 be AMENDED:

9-45-1. Municipal power over streets, alleys, and public grounds--Types of improvements permitted.

Every municipality may lay out, establish, open, vacate, construct, alter, widen, extend, improve, repair, grade, gravel, surface, pave, repave, bridge, construct a viaduct upon or over, erect equipment for street lighting in and otherwise improve, and establish and change the grade of roads, streets, alleys, sidewalks, and public grounds, and to regulate the making of openings and connections therein and the erection of lights thereon as provided by this title.

Section 2. That § 9-46-1 be AMENDED:

9-46-1. Width and material of sidewalks prescribed by ordinance.

Every municipality may, by ordinance, prescribe the width of sidewalks and may establish different widths in different areas of the municipality and determine the kind of material of which the sidewalk shall be constructed, having regard to the business and amount of travel in the vicinity of each.

Section 3. That a NEW SECTION be added:

9-46-1.1. Resolution--Sidewalk Location.

Every municipality may, by resolution, require the owner of real property abutting or adjoining a public right-of-way or abutting or adjoining public property containing a highway to construct a sidewalk in a location as designated in the resolution.

Section 4. That § 9-46-2 be AMENDED:

9-46-2. Liability of adjoining property owner for failure to keep sidewalks in repair.

Any owner of real property who fails to keep the sidewalks abutting or adjoining the property in repair creates or maintains a public nuisance and the owner is liable to the municipality for any damage or injury caused by neglect and responsible for the costs of abating the public nuisance pursuant to § 21-10-6.

Section 5. That a NEW SECTION be added:

9-46-2.1. Municipal sidewalk--Construction.

If the governing body deems it necessary that any sidewalk be constructed, and after plans and specifications are filed with the finance officer, the governing body shall draft a proposed resolution of necessity for the sidewalk and shall schedule a public hearing on the resolution.

The proposed resolution of necessity shall contain the proposed location of the sidewalk to be constructed and the date by which the construction must be completed.

The proposed resolution may provide that:

- (1) The owner of the real property abutting or adjoining the sidewalk to be constructed shall construct the sidewalk and be responsible for all cost of constructing the sidewalk commensurate with the benefit to the property;
- (2) The owner of the real property abutting or adjoining the sidewalk to be constructed shall be assessed any definite, specified portion or all of the cost of the sidewalk;
or
- (3) The municipality shall pay any definite, specified portion or all of the cost of the sidewalk.

The proposed resolution of necessity shall state that details, plans, and specifications may be reviewed at the finance office during regular office hours. Multiple sidewalks may be embraced by one resolution of necessity if the requirements of this section are followed for each sidewalk set forth in the resolution.

Section 6. That a NEW SECTION be added:

9-46-2.2. Notice of hearing--Municipal sidewalk.

The notice of hearing on the proposed resolution of necessity shall contain the time and place of the hearing and shall state that the governing body will consider any

objections to the proposed resolution by owners of the property abutting or adjoining the sidewalk proposed to be constructed. Notice of hearing on the proposed resolution of necessity shall be published once, not less than ten nor more than twenty days before the hearing on the resolution of necessity.

Section 7. That a NEW SECTION be added:

9-46-2.3. Notice--Mailing.

In addition to the published notice set forth in § 9-46-2.2, the governing body, not less than ten nor more than twenty days before the hearing on the proposed resolution, shall cause a copy of the notice of hearing, set forth in § 9-46-2.2, to be mailed by first class or certified mail to each owner of real property abutting or adjoining the sidewalk proposed to be constructed. The mailed notice shall contain the location of the sidewalk to be constructed and the date by which the construction must be completed.

Section 8. That § 9-46-3 be REPEALED.

9-46-3. Notice to adjoining property owners to construct or repair sidewalk--Service of notice--Contents.

Section 9. That § 9-46-4 be AMENDED:

9-46-4. Municipal construction or repair on failure by adjoining owner.

If the sidewalk is not constructed in the manner and within the time set forth in the resolution of necessity pursuant to § 9-46-2.1, the governing body may cause the sidewalk to be constructed and make assessments for the sidewalk pursuant to § 9-46-4.1.

Section 10. That a NEW SECTION be added:

9-46-4.1. Sidewalk--Financing.

If the governing body, pursuant to § 9-46-2.1, deems it necessary that a sidewalk be constructed and financed in total or in part by special assessment, the procedures set forth in chapter 9-43 shall be followed. A resolution of necessity adopted pursuant to § 9-46-2.1 shall satisfy the requirements of § 9-43-82.

Section 11. That §§ 9-46-5 to 9-46-9 be REPEALED.

Section 12. That a NEW SECTION be added:

9-46-4.2. Definition.

For the purposes of this chapter, the term, lot, includes tracts or other parcels of land.

Section 13. That a NEW SECTION be added:

9-46-12. Municipal authority.

Nothing contained in this chapter limits or restricts any municipal power or authority as set forth in title 11.

Section 14. That § 21-10-1 be AMENDED:

21-10-1. Acts and omissions constituting nuisances.

A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

- (1) Annoys, injures, or endangers the comfort, repose, health, or safety of others;
- (2) Offends decency;
- (3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, sidewalk, street, or highway;
- (4) In any way renders other persons insecure in life, or in the use of property.

Section 15. That § 21-10-6 be AMENDED:

21-10-6. Abatement of nuisance--Notice required--Taxing cost of abatement--Civil action.

A public nuisance may be abated without civil action by any public body or officer as authorized by law. Any municipality, county, or township may defray the cost of abating a public nuisance by taxing the cost thereof by assessment against the real property on which the nuisance occurred or against the real property abutting or adjoining the unrepared sidewalk as set forth in § 9-46-2. If the nuisance abated is an unsafe or dilapidated building, unrepared sidewalk, junk, trash, debris, or similar nuisance arising from the condition of the property, the municipality, county, or township may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment.

Any private person may abate a public nuisance which is specially injurious to that person or any private nuisance injurious to that person by removing or if necessary

destroying that which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon the wrongdoer's land, reasonable notice shall be given to the wrongdoer before entering to abate it.

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I certify that the attached Act originated in
the:
Senate as Bill No. 137

Received at this Executive Office
this ____ day of _____,
2020 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 137
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State