



2020 South Dakota Legislature

Senate Bill 137

SENATE ENGROSSED

Introduced by: **Senator Schoenfish**

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

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

4 **Section 1.** That § 9-45-1 be AMENDED:

5 **9-45-1. Municipal power over streets, alleys, and public grounds--Types of**
 6 **improvements permitted.**

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

13 **Section 2.** That § 9-46-1 be AMENDED:

14 **9-46-1. Width and material of sidewalks prescribed by ordinance.**

15 ~~The governing body~~ Every municipality may, by ordinance ~~shall,~~ prescribe the width
 16 of sidewalks and may establish different widths in different ~~localities~~ areas of the
 17 municipality and determine the kind of material of which ~~they~~ the sidewalk shall be
 18 constructed, having regard to the business and amount of travel in the vicinity of each.

19 **Section 3.** That a NEW SECTION be added:

20 **9-46-1.1. Resolution--Sidewalk Location.**

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

1 **Section 4.** That § 9-46-2 be AMENDED:

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

4 Any owner of real property who fails to keep ~~in repair the sidewalks in front of or~~
5 ~~along such property if he resides thereon, or if he does not reside thereon, to repair the~~
6 ~~same forthwith when notified, is liable to the municipality for any damage caused by such~~
7 ~~neglect. The duty of the municipality to notify the nonresident owner does not affect the~~
8 ~~liability of the owner for any injury proximately caused by the negligent construction or~~
9 ~~repair of the sidewalk. The failure of the municipality to notify the nonresident owner does~~
10 ~~not result in any liability on the part of the municipality for any injury proximately caused~~
11 ~~by the negligent construction or repair of the sidewalk~~ the sidewalks abutting or adjoining
12 the property in repair creates or maintains a public nuisance and the owner is liable to the
13 municipality for any damage or injury caused by neglect and responsible for the costs of
14 abating the public nuisance pursuant to § 21-10-6.

15 **Section 5.** That a NEW SECTION be added:

16 **9-46-2.1. Municipal sidewalk--Construction.**

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

21 The proposed resolution of necessity shall contain the proposed location of the
22 sidewalk to be constructed and the date by which the construction must be completed.
23 The proposed resolution may provide that:

24 (1) The owner of the real property abutting or adjoining the sidewalk to be constructed
25 shall construct the sidewalk and be responsible for all cost of constructing the
26 sidewalk commensurate with the benefit to the property;

27 (2) The owner of the real property abutting or adjoining the sidewalk to be constructed
28 shall be assessed any definite, specified portion or all of the cost of the sidewalk;
29 or

30 (3) The municipality shall pay any definite, specified portion or all of the cost of the
31 sidewalk.

32 The proposed resolution of necessity shall state that details, plans, and
33 specifications may be reviewed at the finance office during regular office hours. Multiple

1 sidewalks may be embraced by one resolution of necessity if the requirements of this
2 section are followed for each sidewalk set forth in the resolution.

3 **Section 6.** That a NEW SECTION be added:

4 **9-46-2.2. Notice of hearing--Municipal sidewalk.**

5 The notice of hearing on the proposed resolution of necessity shall contain the time
6 and place of the hearing and shall state that the governing body will consider any
7 objections to the proposed resolution by owners of the property abutting or adjoining the
8 sidewalk proposed to be constructed. Notice of hearing on the proposed resolution of
9 necessity shall be published once, not less than ten nor more than twenty days before the
10 hearing on the resolution of necessity.

11 **Section 7.** That a NEW SECTION be added:

12 **9-46-2.3. Notice--Mailing.**

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

19 **Section 8.** That § 9-46-3 be REPEALED.

20 **9-46-3. Notice to adjoining property owners to construct or repair sidewalk-**
21 **-Service of notice--Contents.**

22 **Section 9.** That § 9-46-4 be AMENDED:

23 **9-46-4. Municipal construction or repair on failure by adjoining owner.**

24 If ~~such~~ the sidewalk is not constructed, ~~reconstructed,~~ or repaired in the manner
25 and within the time ~~prescribed~~ set forth in the resolution of necessity pursuant to ~~§ 9-46-~~
26 ~~3~~ § 9-46-2.1, the governing body ~~by resolution~~ may cause the work sidewalk to be done
27 by day labor or by job. If the amount of the contract is less than the amount provided for
28 in ~~§ 5-18A-14~~, it is not necessary to advertise for bids constructed and make assessments
29 for the sidewalk pursuant to § 9-46-4.1.

1 **Section 10.** That a NEW SECTION be added:

2 **9-46-4.1. Sidewalk--Financing.**

3 If the governing body, pursuant to § 9-46-2.1, deems it necessary that a sidewalk
4 be constructed and financed in total or in part by special assessment, the procedures set
5 forth in chapter 9-43 shall be followed. A resolution of necessity adopted pursuant to § 9-
6 46-2.1 shall satisfy the requirements of § 9-43-82.

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

8 **Section 12.** That a NEW SECTION be added:

9 **9-46-4.2. Definition.**

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

12 **Section 13.** That a NEW SECTION be added:

13 **9-46-12. Municipal authority.**

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

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

17 **21-10-1. Acts and omissions constituting nuisances.**

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

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

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

1 **21-10-6. Abatement of nuisance--Notice required--Taxing cost of**
2 **abatement--Civil action.**

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

12 Any private person may ~~also~~ abate a public nuisance which is specially injurious to
13 ~~such that~~ person or any private nuisance injurious to ~~such that~~ person by removing or if
14 necessary destroying that which constitutes the nuisance without committing a breach of
15 the peace or doing unnecessary injury. If a private nuisance results from a mere omission
16 of the wrongdoer, and cannot be abated without entering upon the wrongdoer's land,
17 reasonable notice shall be given to the wrongdoer before entering to abate it.