

Chapter

II

SD ASSOCIATION OF COUNTY HIGHWAY SUPERINTENDENTS

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Certification Manual



County Bridges

# TABLE OF CONTENTS

<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
County Bridges	II-3
Bridge Construction Supervision	II-10
Purchase of Materials for Bridge Construction	II-10
Emergency Bridge Contracts	II-11
Bridge & Culvert Inspection	II-12
Bridges Between Counties	II-13
Navigation on Rivers	II-14
Posting of Bridges and Rating Levels	II-15
Link to SDDOT Bridge Replacement Resolution	II-15

## **County Bridges**

The duty to construct and maintain all bridges and culverts throughout the county, except upon the state trunk highway system, is imposed upon the county commissioners, subject to the conditions relating to bridges and culverts on secondary highways in the townships. (SDCL 31-14-2)

After determining the necessity for county bridges, the board of county commissioners requires the county highway superintendent or a registered engineer retained by the county board to make a survey of the bridge sites (SDCL 31-14-3). The profile, location, soundings and estimated watershed of each bridge is forwarded to the department of transportation together with a request for plans and specifications for the bridge or related work or information as may be used by the registered engineer in preparing plans and specifications for the work, which must conform to the design requirements of the American Association of State Highway Officials. In any case, the plans and specifications are forwarded to the proper county auditor. (SDCL 31-14-5).

Upon receipt of the plans and specifications, the county highway superintendent makes a detailed estimate of the cost of the bridge, abutment, pier or other work contemplated and files the cost estimate with the county auditor (SDCL 31-14-6). If the work is to be let by contract, the county commissioners may request bids in lump sum on each bridge or piece of work separately (SDCL 31-14-7). Each bid must be accompanied by a certified check in the sum of ten percent of the total amount of the bid (SDCL 31-14-8). The commissioners cause to be published in the official county newspapers, for a period of fifteen days immediately prior to the opening of sealed bids, a notice of the time and place when they will open all bids received for the work. (SDCL 31-14-10)

Counties may build their own bridges, abutments, approaches and foundations, and make repairs by day labor without advertising for bids on any county bridge or other related work. (SDCL 31-14-20)

When any township board of supervisors requests the county board to construct or replace in its entirety any bridge or the placing or replacing of any culvert with an opening of sixteen square feet or more, including material upon the secondary roads within the township, the county board may cause the request to be filled. The township reimburses the county up to and including five hundred dollars; any cost in excess of five hundred dollars is paid by the county. After the placing or replacing of any culvert, it must be maintained and kept clean at the expense of the township. The construction or replacing of any bridge or the placing or replacing of any culvert with an opening of less than sixteen square feet upon a secondary road within a township must be at the total expense of the township as must be the cost of maintenance and cleaning. (SDCL 31-14-27)

Upon petition of one-third of the resident taxpayers of a county, the county board must hold a hearing to determine whether or not a bridge should be constructed across a navigable river on the county line. If the hearing is favorable for the petition, the board may authorize expenditure of a sum not exceeding one-half the estimated cost of the bridge, contingent upon sufficient bond of guaranty of the remaining half of the costs by the other public agency involved in the joint enterprise. (SDCL 31-14-4, 31-14-42)

If the board approves the proposed bridge, it advises the county highway superintendent of its decision. The bridge plans and specifications are forwarded to the department of transportation for approval. These detailed plans are filed with the county auditor, together with the estimate of the cost of the project. (SDCL 31-14-3, 31-14-6)

Bridge contracts are usually awarded to the lowest bidder and the board may reject any or all bids and advertise for new bids. In lieu of accepting any bids, or in case of emergency, the board may cause the bridge to be constructed by regular county day labor and county owned equipment if

the cost is less than any bid submitted. In this instance the county highway superintendent is in charge of the work. (SDCL 31-14-21)

**31-14-2. County commissioners' responsibility for bridges and culverts.** The duty to construct and maintain all bridges and culverts throughout the county, except upon the state trunk highways system, is hereby imposed upon the board of county commissioners, subject to conditions relating to bridges and culverts on secondary highways in townships.

**Source:** SL 1919, ch 333, § 29; SDC 1939, § 28.1402; SL 1955, ch 102, § 1.

**Notes of Decision:**

***In general***

*Board of adjustment held not authorized to include roads and bridges in township in determining adjustment of indebtedness in forming new townships. Rex Tp. v. Bailey Tp., 1929, 56 S.D. 119, 227 N.W.2d 488.*

***Signs***

*A county is responsible for the construction and maintenance of signs on county bridges, regulatory weight signs, bridge limit signs and signs that specifically relate to use of the bridge. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

***Liability of county***

*In South Dakota, a county cannot be sued for personal injuries except as expressly authorized by statute. Jackson County, S.D. v. Duffy, 1945, 147 F.2d 227.*

*There being no express statutory provision rendering county liable for injuries caused by negligent maintenance of county highway system, a county is not liable for injuries resulting from failure of its officers to repair bridge upon county highway. Hanigan v. Minnehaha County, 1924, 47 S.D. 606, 201 N.W. 522.*

*This section establishes county responsibility for all bridges and culverts within the county except as otherwise set forth in statutes pertaining to township bridges and culverts. Op. Atty. Gen. Opinion No. 90-20, 1990 WL 596789.*

***Townships***

*A township is responsible for maintenance of culverts in excess of 16 square feet opening, which includes all signs associated with such culverts. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

*A township is responsible for signs that specifically relate to bridges with openings under 16 square feet, as well as for normal road direction signs on the township roads. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

**The following resources are no longer included in West's annotations for the SDCL.**

***Opinions of Attorney General***

*Construction of bridges within city limits by county, Report 1921-22, p. 49; 1933-34 p. 362; 1951-52, p.18. Cost of repairing bridge is an obligation of county, Report 1943-44, p. 350; 1947-48, p. 248; 1955-56, p. 172. County is responsible for maintenance of bridges within county on Indian reservation, Report 1947-48, p.357. County responsible for maintenance of bridges constructed by township on secondary highway, Report 1941-42, p. 208. Drainage ditch bridges to be kept in repair by county, Report 1935-36, p. 247. Duty of county to replace demolished bridge on township secondary highway, Report 1955-56, p. 172. Liability of county*

*for failure to repair bridge within reasonable time, Report 1929-30, p. 199; 1939-40, p. 684. Repair of public bridge, Opinion No. 75-16. Townships required to keep culverts clean, Report 1959-60, p. 333.*

**31-14-3. Survey of bridges sites – Contents.** After determining the necessity for any and all bridges required by any county in the state, it shall be the duty of the board of county commissioners of such county to advise the county highway superintendent of such determination, and to require him or a registered engineer retained by the board of county commissioners for that purpose to make a survey of such bridge sites. Such survey shall consist of a profile of the proposed site, approximate location in regard to the nearest section corner, soundings for the location of footings, and an estimate of the available watershed.

**Source:** *SL 1919, ch 333, § 31; 1921, ch 386; SDC 1939, § 28.1404; SL 1961, ch 142, § 1.*

**The following resources are no longer included in the West’s annotated statutes. They are retained here for reference purposes. *Opinions of Attorney General.***  
*Survey of bridges site is mandatory, Report 1919-20, p. 51.*

**31-14-5. Bridge plans forwarded to Department of Transportation– Design requirements – Filing by county auditor.** The profile, location, soundings, and estimated watershed provided for in § 31-14-3 may then be forwarded to the department together with a request for plans and specifications for such bridge or abutments, piers, or other related piece of work, or may be used by a registered engineer retained by the board of county commissioners in preparing plans and specifications for such work. Plans and specifications prepared by a registered engineer retained by the board of county commissioners shall conform to the design requirements of the American Association of State Highway and Transportation Officials. The plans and specifications, whether prepared by the department or by a registered engineer retained for that purpose, shall be forwarded to the proper county auditor who shall place them on file in the auditor’s office.

**Source:** *SL 1919, ch 333, §31; 1921, ch 386; SDC 1939, §28.1404; SL 1961, ch 142, § 1; SL 2010, ch 145, §96.*

***Opinions of Attorney General***

*A bridge includes the structure, abutments, approaches, piers, and foundation, Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

**31-14-6. Cost estimate for bridge construction – Preparation and filing.** Upon receipt of such plans and specifications, it shall be the duty of the county highway superintendent to make and file a detailed estimate of the cost of the bridge, abutment, pier, or other work contemplated by such plans, and file such estimate of cost with the county auditor.

**Source:** *SL 1919, ch 333, § 31; 1921, ch 386; SDC 1939, § 28.1404; SL 1961, ch 142, § 1.*

**31-14-7. Lump-sum bids on bridge construction – Unit price bids on foundation or abutment materials.** Upon determining the necessity of any such bridges, abutments, repairs, or approaches to bridges, the county commissioners shall immediately cause to be filed in the office of the county auditor of such county, complete plans and specifications thereof, as described in 31-14-5 and thereafter, if such bridges, abutments, repairs, or approaches be let by contract, bids in lump sum shall be procured on each bridge or piece of work separately, except that all materials for use in constructing foundation or abutments shall be bid on per cubic yard for concrete, per foot board measure for lumber, per pound for steel, and per lineal foot for piling driven, said unit prices to be added to or deducted from the contract price, if more or less material is required in such foundation than specified in the plans and specifications.

**Source:** SL 1919, ch 333, § 32; 1920 (SS), ch 89; SDC 1939, § 28.1405; SL 1961, ch 142, § 2.

**Cross-References**

*Use of metric measures not prohibited, §37-20-33.*

**Opinions of Attorney General**

*A bridge includes the structure, abutments, approaches, piers and foundation, Opinion No. 90-20.*

**31-14-8. Deposit filed with bids – Amount.** Each bid shall be made in accordance with the plans and specifications on file and shall be accompanied by a certified check, certified by a state or national bank domiciled within this state, in the sum of ten percent of the total amount of such bid. To be effectual for any purpose said bid and certified check shall be securely enclosed in a sealed envelope and deposited with the county auditor of the proper county before the hour of opening the sealed bids.

**Source:** SL 1919, ch 333, § 32; 1920 (SS), ch 89, SDC 1939, § 28.1405; SL 1961, ch 142, §2.

**31-14-10. Awards of separate contracts – Rejection of bids – Notice of opening of bids on abutments and approaches or repairs.** Contracts shall be awarded on each bridge or piece of work, separately, to the lowest bidder and the county commissioners shall have the right to reject any and all bids and advertise for new bids. It shall be the duty of the county commissioners of such county to cause to be published in the official papers of such county, for a period of fifteen days immediately prior to the opening of sealed bids, a brief notice to the effect that at the time and place above specified they will open all bids theretofore received for all bridge abutments and approaches or repairs to bridges required by such county during the ensuing month or longer.

**Source:** SL 1919, ch 333, § 32; 1920 (SS), ch 89; SDC 1939, § 28.1405; SL 1961, ch 142, § 2.

**Cross-References**

*Legal newspapers and publication of notice, see Chapter 17-2.*

**31-14-20. Bridge construction and repairs by county work authorized.** Any county of this state may build its own bridges, abutments, approaches and foundations, and make repairs to same by day labor without advertising for bids on any such piece of work.

**Source:** SL 1919, ch 333, § 32; 1920 (SS), ch 89; SDC 1939, § 28.1405; SL 1961, ch 142, § 2.

**Notes of Decision:**

**Bridge**

*A bridge includes the structure, abutments, approaches, piers and foundation. Op. Atty. Gen. Opinion No. 90-20, 1990 WL 596789.*

**Hiring contractors**

*Statutes permitting counties to repair bridges by “day labor” contemplate construction by the county with county labor and county-owned equipment; such statutes do not give county board unrestrained power to hire contractors by the hour. (Per West, Circuit Judge, with one Justice concurring, one Justice concurring specially and one Justice concurring in part and dissenting in part.) SDCL 31-14-20, 31-14-21. Hamar Const. Co. vv. Union County, 1976, 248 N.W.2d 65.*

*County board of commissioners did not have authority to hire contractor to repair bridge via informal method under which individual commissioner orally informed contractor at a meeting at bridge site that contractor could move in with the equipment it needed that contractor was*

*to be paid on an hourly basis and that contractor was to inform county of cost of contractor's services on a weekly basis; contractor could not recover for services performer under theory of quantum meruit. (Per Weust, Circuit Judge, with one Justice concurring, one Justice concurring specially and one Justice concurring in part and dissenting in part.) SDCL 7-8-16, 31-14-20, 31-14-21, 31-14-24, 31-14-25. Hamar Const. Co. v. Union County.*

**31-14-27. County construction or replacement of bridges and culverts on township secondary roads – Reimbursement of county.** If a township board of supervisors or county highway superintendent within this state requests of its board of county commissioners a construction or replacing in its entirety of any bridge or the placing or replacing of any culvert with an opening of sixteen square feet or more including material upon the secondary roads within such township, the board of county commissioners may cause the same to be done and the township shall reimburse the county up to and including five hundred dollars, and any cost in excess of five hundred dollars shall be paid by the county. After the placing or replacing of any culvert as provided in this section, it shall be maintained and kept clean at the expense of the township. The construction or replacing of any bridge or the placing or replacing of any culvert with an opening of less than sixteen square feet upon a secondary road within a township shall be at the total expense of the township, and it shall be maintained and kept clean at the expense of the township.

**Source:** SL 1919, ch 333, § 30; SDC 1939, § 28.1403; SL 1949, ch 111; 1955, ch 102, §2; 1957, ch 127; 1974, ch 203, § 1; 1980, ch 210; 1981, ch 226.

**Cross-References.**

*Municipal power as to bridges, §§ 9-45-3, 9-45-4.*

**Notes of Decision:**

**Signs**

*A county is responsible for the construction and maintenance of signs on county bridges, regulatory weight signs, bridge limit signs and signs that specifically relate to use of the bridge. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

*A township is responsible for signs that specifically relate to bridges with openings under 16 square feet, as well as for normal road directions signs on the township roads. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

**Size of Culvert**

*A township is responsible for maintenance of culverts in excess of 16 square feet opening, which includes all signs associated with such culverts. Op.Atty.Gen. Opinion No. 90-20, 1990 WL 596789.*

**The following notes are no longer included in West's annotated SDCL. They are included here for reference purposes.**

***Township Interest in Bridge***

*County commissioners' control over construction of bridges under this section is inconsistent with a proprietary interest in such bridge by the township, so that a bridge is not property to be taken into account under statute requiring the adjustment of liabilities in the division of an existing township based on the evaluation Township v. Bailey Township (1929) 56 SD 119, 227 NW 488.*

***Opinions of Attorney General***

*"Construction or replacing" includes repairing of bridges and culverts, Report 1955-56, p. 177; 1959-60, p. 107.*

*County obligated to keep all bridges and culverts in repair whether it costs more or less than \$200, Report 1955-56, p. 177; 1959-60, p. 107.*

*Duty of county to replace demolished bridge on township secondary highway, Report 1943-44, p. 350; 1955-56, p. 172.*

*Installation is part of cost of culvert, Report 1959-60, p. 140.*

*Ratification and payment for bridge constructed by township, Report 1923-24, p. 74.*

*Unorganized township, no reimbursement of county, Opinion No. 69-48.*

**31-14-4. Plans and specifications for bridge construction – Preparation by department of transportation or engineer.** All bridges, abutments, and approaches or repairs to bridges hereafter required in any county of this state, shall be constructed in accordance with plans and specifications therefore, which shall be prepared by the department of transportation or a registered engineer retained by the board of county commissioners for such purpose and which shall show and describe the style and size thereof, the kind, weight, and quality of all materials to be used in their construction and the proper proportion of the ingredients for mixture and reinforcements.

**Source:** *SL 1919, ch 333, §32; 1920 (SS), ch 89; SDC 1939, §28.1405; SL 1961, ch 142, §2.*

#### **Cross-References**

*Adoption of standard plans and specifications by Department of Transportation, see §31-2-20.*

#### **Opinions of Attorney General**

*A bridge includes the structure, abutments, approaches, piers and foundation, Opinion No. 90-20, 1990 WL 596789.*

**The following opinion is no longer included in West's annotations for the SDCL. It is included here for reference purposes.** *Plans and specifications for all bridge repair work to be prepared by state highway commission, Report 1919-20, p. 48.*

**31-14-42. Hearing on petition for vehicle bridge across navigable river – Appropriation of half of cost.** At the time appointed for the hearing of a petition under §31-14-41 the board of county commissioners shall investigate the need for such bridge and, finding the same to be demanded for the accommodation of the traveling public, shall be resolution duly entered upon the minutes of such board appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of such bridge, to be paid as provided in § 31-14-43. Such appropriation shall be conditioned upon a sufficient bond or guaranty of the remaining one-half or more, as the case may be, of the costs of such bridge. But the consent of the general government to span such river must first be obtained.

**Source:** *SL 1887, ch 18, §1; SL 1887, §1239; RpolC 1903, §1644; RC 1919, §8689; SDC 1939, §28.1420.*

**31-14-21. Bridge construction and repairs by county work – Supervision – Plans and specifications.** In lieu of accepting any bids received upon any bridge, approach, or abutment, or repair to bridge, or in case of emergency, the board of county commissioners may, if in their judgment the bridge or piece of work may be procured for less money than the amount of any bid submitted, cause the same to be built by day labor by regular county labor and county-owned equipment. The construction shall be in charge of the county highway superintendent. The superintendent shall hire a foreman, purchase the necessary material, and hire the necessary labor for the construction of each such bridge, or piece of work, and such work shall be done in accordance with plans and specifications furnished by the department the same as any other bridge or piece of work let by contract.

**Source:** SL 1919, ch 333, § 35; SDC 1939, § 28.1408; SL 1959, ch 138; SL 2010, ch 145, §100.

**Notes of Decision:**

***Necessity of plans and specifications***

*County commissioners had no authority to enter into a contract after requesting bids for rental of road equipment and operators therefor on an hourly rental basis where equipment and operators would be used to construct, repair and maintain entire county highway system under authority of "day labor" without preliminary plans, specifications, surveys, cost estimates or advertisement for bids of any kind on any project regardless of estimated cost. SDC 28.0115, 28.0306, 28.0308, 28.0309; SDC 1960 Supp. 28.0208, 28.0304, 65.07. State ex rel. Small v. Hughes County Commission, 1965, 81 S.D. 238, 133 N.W.2d 228.*

***Purpose of statute***

*Legislative purpose of requiring plans, specifications, cost estimates, and advertisements for bids on competitive basis before day labor may be employed is to provide for orderly and systematic development of county highway system, to provide comparative cost estimates and yardsticks, and to guard against favoritism, improvidence, extravagance, fraud, and corruption. SDC 28.0115, 28.0306, 28.0308, 28.0309; SDC 1960 Supp. 28.0208, 28.0304, 65.07. State ex rel. Small v. Hughes County Commission, 1965, 81 S.D. 238, 133 N.W.2d 228.*

***Hiring contractors***

*Statutes permitting counties to repair bridges by "day labor" contemplate construction by the county with county labor and county-owned equipment; such statutes do not give county board unrestrained power to hire contractors by the hour. (Per Wuest, Circuit Judge, with one Justice concurring, one Justice concurring specially and one Justice concurring in part and dissenting in part.) SDCL 31-14-20, 31-14-21. Hamar Const. Co. v. Union County, 1976, 248 N.W.2d 65.*

***Recovery for work performed***

*County board of commissioners did not have authority to hire contractor to repair bridge via informal method under which individual commissioner orally informed contractor at a meeting at bridge site that contractor could move in with the equipment it needed, that contractor was to be paid on an hourly basis and that contractor was to inform county of cost of contractor's services on a weekly basis; contractor could not recover for services performed under theory of quantum meruit. (Per Wuest, Circuit Judge, with one Justice concurring, one Justice concurring specially and one Justice concurring in part and dissenting in part.) SDCL 7-8-16, 31-14-20, 31-14-21, 31-14-24, 31-14-25. Hamar Const. Co. v. Union County, 1976, 248 N.W.2d 65.*

*Contractor who did repair work and grading on county road, which had been damaged by rain, without entering into express contract or complying with statutes requiring plans and specifications and competitive bidding could not recover on theory of emergency in absence of statute authorizing counties to have road work done on emergency basis. SDCL 5-18-1 et seq., 31-12-1 et seq., 31-14-21, 31-14-24. Bak v. Jones County, 1973, 87 S.D. 468, 210 N.W.2d 65*

**The following opinions are no longer included in West's annotated SDCL. It is included here for reference purposes. Opinions of Attorney General.** *Employment of bookkeeper by county highway superintendent authorized, Report 1919-20, p. 184. Hiring and fixing of wages of workmen to be done by county highway superintendent, Report 1919-20, p. 281.*

## **Bridge Construction Supervision**

An inspector may be appointed by the highway superintendent when there is need for constant inspection of bridge construction. He receives his compensation out of the county bridge fund. Moreover, the county highway superintendent reports to the county board every thirty days or as often as it may require, as to the progress of work done by the contractor. Upon receipt of the periodic reports, the board members may make partial payments for the bridge work completed. (SDCL 31-14-17, 31-14-18)

**31-14-17. Supervision of construction by county highway superintendent – Appointment and compensation of inspector.** The county highway superintendent shall have supervision of construction of any and all bridges built by the county and he shall have the power to appoint an inspector for any such bridge or piece of work at any time when in his judgment constant inspection of the same is necessary. The compensation of such inspector shall be paid out of the county road and bridge fund and be charged as part of the cost of the particular bridge in question.

*Source: SL 1919, ch 333, § 34; SDC 1939, § 28.1407.*

### ***Cross-References.***

*Supervision of construction and maintenance by Department of Transportation, see § 31-2-21.*

**31-14-18. Progress reports by county highway superintendent – Partial payments on contracts.** The county highway superintendent shall report to the board of county commissioners every thirty days, or so often as they may require, as to the progress and character of the work done by the contractor of each bridge, or piece of work built by the county, and upon the report of said superintendent, partial payments in the amounts and manner specified for each particular bridge or piece of work shall be made. None of such partial payments, however, shall be held to constitute an acceptance of the work in whole or in part by the county.

*Source: SL 1919, ch 333, § 34; SDC 1939, § 28.1407.*

## **Purchase of Materials for Bridge Construction**

If the county board deems it advisable, it may purchase highway materials, such as cement, sand, stone, metal, culverts, reinforcement steel or other material to be used in the construction of roads, bridges or culverts. The purchase must be in quantities sufficient to meet the estimated need of the county for the succeeding twelve months. This estimate is prepared by the county highway superintendent. The superintendent prepares specifications of the quality of materials and submits them for the approval to the department of transportation. (SDCL 31-14-23)

**31-14-23. Purchase of twelve months' supply of materials authorized – Estimate by county highway superintendent – Specifications.** If it is deemed advisable by the board of county commissioners, the board may purchase such materials as cement, sand, stone, metal, culverts, reinforcement steel, or other material to be used in the construction of roads, bridges, and culverts, in quantities sufficient to meet the estimated demand of the county for such materials for the next succeeding twelve months. Before purchasing any such materials, however, the board of county commissioners shall first have an estimate prepared by the county highway superintendent setting forth the needs of the county during the twelve months. The county highway superintendent shall prepare specifications of the quality of all materials, such specifications to be approved by the department. No patented material may be specified to the exclusion of unpatented material.

**Source:** SL 1919, ch 333, § 35; SDC 1939, § 28.1409; SL 2010, ch 145, §102.

**The following opinion is no longer listed in West's annotated SDCL. It is included here for reference purposes.** **Opinions of Attorney General.** Advertising for competitive bids, necessary of, Report 1963-64, p. 333.

### **Emergency Bridge Contracts**

If the county board feels the public would be seriously inconvenienced in awaiting the advertising for bridge contract bids, it may enter into the contract without advertising for the letting of such contract. (SDCL 31-14-24)

If there are sufficient funds in the road and bridge fund for the payment of the emergency work, the county board may issue emergency warrants upon the assessments made and contemplated for road and bridge work.(SDCL 31-14-26)

Before any contract is let, the necessity for an emergency contract and the actual contract must be approved by the Department of Transportation. (SDCL 31-14-25)

#### **31-14-24. Emergency contracts for repair of bridges and approaches authorized.**

Whenever an emergency arises requiring immediate expenditure for the repair or rebuilding of bridges and approaches to bridges, when such bridges and approaches to bridges are required to be built immediately, and on such short time that in the judgment of the board of county commissioners the public would be seriously inconvenienced in awaiting the regular advertising for bids for such building and rebuilding of bridges and approaches, the board of county commissioners may enter into contract for any such building or rebuilding of bridges and approaches to bridges without advertising for the letting of any contract therefore.

**Source:** SL 1920 (SS), ch 33, § 1; SDC 1939, § 28.1410.

#### **Notes of Decisions:**

##### ***In general***

*Contractor who did repair work and grading on county road, which had been damaged by rain, without entering into express contract or complying with statutes requiring plans and specifications and competitive bidding could not recover on theory of emergency in absence of statute authorizing counties to have road work done on emergency basis. SDCL 5-18-1, et seq., 31-12-1 et seq., 31-14-21, 31-14-24. Bak v. Jones County, 1973, 87 S.D. 468, 210 N.W.2d 65.*

**31-14-26. Insufficient funds to pay emergency contract – Issuance of emergency warrants.** If there are not sufficient funds in the road and bridge fund of any county for the payment of work authorized by §31-14-24 the county commissioners are hereby authorized to issue emergency warrants based upon the assessments made and contemplated for road and bridge work.

**Source:** SL 1920 (SS), ch 33, § 2; SDC 1939, § 28.1410.

**31-14-25. Approval of emergency contract by transportation department.** Before any contract is let by any board of county commissioners under § 31-14-24, the necessity for the emergency contract shall first be approved by the department and any contract let thereunder shall in all respects be first approved by the department.

**Source:** SL 1920 (SS), ch 33, § 3; SDC 1939, § 28.1410; SL 2010, ch 145, §103.

**Notes of Decision:**

***In general***

*County board of commissioners did not have authority to hire contractor to repair bridge via informal method under which individual commissioner orally informed contractor at a meeting at bridge site that contractor could move in with the equipment it needed, that contractor was to be paid on an hourly basis and that contractor was to inform county of cost of contractor's services on a weekly basis; contractor could not recover for services performed under theory of quantum meruit. (Per Wuest, Circuit Judge, with one Justice concurring, one Justice concurring specially and one Justice concurring in part and dissenting in part.) SDCL 7-8-16, 31-14-20, 31-14-21, 31-14-24, 31-14-25. Hamar Const. Co. v. Union County, 1976, 248 N.W.2d 65.*

**Bridge and Culvert Inspection**

At reasonable intervals the county highway superintendent should inspect all bridges in the county and any culverts on the county highways and submit a report on their condition together with recommendations for repairs to the county board. He also inspects the culverts on secondary highways which are not regularly inspected by the townships. (SDCL 31-14-32, 31-14-34)

**31-14-32. Inspection of bridges by county highway superintendent – Report required.** It shall be the duty of the county highway superintendent at reasonable intervals to make a thorough inspection of each and every existing bridge in the county. Such inspection shall consist of a thorough examination of the whole structure for any conditions affecting the life and safety of the bridge such as faulty design, neglect of maintenance, excessive loading, development of cracks, conditions of footing, etc. The county highways superintendent shall make a report of the conditions of each such bridge as he finds it, together with recommendation for repairs, stating the date of inspection, and shall cause the same to be filed in the office of the county auditor who shall refer the matter to the board of county commissioners at their next regular or special meeting.

**Source:** SL 1919, ch 333, § 37; SDC 1939, § 28.1414.

**Notes of Decision:**

***Liability of county***

*In action against county in South Dakota for death of motorist whose automobile tires broke through road bridge floor causing motorist to lose control and precipitating the automobile from bridge to creek bed below, evidence sustained finding of county's negligence in maintaining the bridge in dilapidated condition. SDC 28.0312, 28.0913, 28.1402, 28.1414. Jackson County, S. D., v. Dufty, 1945, 147 F.2d 227.*

*Evidence sustained finding that negligence of county in South Dakota in failing to repair dilapidated bridge was proximate cause of death of motorist who lost control of automobile when tires broke through floor and precipitated the automobile from bridge to creek bed below. SDC 28.0312, 28.0913, 28.1402, 28.1414. Jackson County, S. D., v. Dufty, 1945, 147 F.2d 227.*

*In action against county in South Dakota for motorist's death resulting from defective condition of road bridge, whether bridge was part of county highway system was a mixed question of fact and law. SDC 28.0312, 28.0913, 28.1402, 28.1414. Jackson County, S. D., v. Dufty, 1945, 147 F.2d 227.*

*In South Dakota, a county cannot be sued for personal injuries except as expressly authorized by statute. Jackson County, S. D., v. Dufty, 1945, 147 F.2d 227.*

*In determining liability of county in South Dakota for death of motorist resulting from defective condition of bridge, evidence sustained finding that bridge was part of county highway system at time of accident. SDC 28.0302, 28.0312, 28.0913, 28.1402, 28.1414. Jackson County, S. D., v. Dufty, 1945, 147 F.2d 227*

**31-14-34. Inspection of culverts on secondary highways and county highway system – Duty of county highway superintendent.** The county highway superintendent shall make inspection of all culverts on secondary highways other than those described in § 31-14-33 and of all culverts on the county highway system and report to the board of county commissioners, which shall cause necessary repairs to be made.

**Source:** SDC 1939, § 28.1415.

## **Bridges Between Counties**

Two counties which join along any highway or meandered stream are required to enter into an agreement to divide that portion of the county line into two or more parts. Each county assumes liability for the construction and maintenance of all necessary bridges upon the portion of the county line in the district allotted to it. If the stream running between the counties is so large that one county alone cannot afford to build a bridge over it, the counties involved may divide the expense equally (SDCL 31-14-35). In assigning the apportionment of construction, the respective county boards are to take into consideration the number of bridges and the extent of highways that must be built and maintained in each district; and, in apportioning the same into districts, they must attempt to equalize as nearly as possible the burden of highway and bridge maintenance. (SDCL 31-14-36)

Only one bridge may be constructed across a navigable river on the line of a county and the total cost of such bridge must not exceed fifty thousand dollars. The restriction applies only when the bridge construction is paid for entirely by county funds raised by taxation for road and bridge purposes. If state or federal aid funds are used, the maximum financial restriction does not apply. (SDCL 31-14-45; AGR 1949-50, pp. 271-273)

**31-14-35. County line bridges – Agreement apportioning responsibility – Cost of large bridges divided equally.** It shall be lawful and the duty of the respective boards of county commissioners of the counties adjoining any highway or meandered stream on a county line in this state to divide that portion of such county line between such counties into two or more parts or districts, and to enter into an agreement and contract providing that each such counties shall assume the liability and become responsible for the construction and maintenance of all necessary bridges upon such county line in the district allotted to such county. In case the stream forming the boundary between two counties shall be so large that one county alone is unable to build a bridge out of the ordinary amount of funds available, it shall be the duty of the two counties when a bridge is built over such stream to divide the expense equally between such two counties.

**Source:** SL 1913, ch 114, § 1; RC 1919, § 8686; SDC 1939, §28.1417.

### ***Cross-References***

*County names and boundaries, Chapter 7-1.*

**31-14-36. County line bridges – Considerations in apportioning responsibility between counties – Apportionment by department.** In making such apportionment of any highway or meandered stream constituting the county line between two or more counties, as provided by § 31-14-35, the respective boards of county commissioners shall take into consideration the number of streams crossing the highway and the probable necessity of the number of

bridges to be constructed and to be kept in repair upon the county line. In apportioning the highway or stream, the boards shall equalize, as near as possible, the burden of building and maintaining the bridges on the highways of the county line. In case of a failure to apportion any such highway or meandered stream, as provided in § 31-14-35, the same shall be apportioned by the department.

**Source:** *SL 1913, ch 114, § 2; RC 1919, § 8687; SDC, § 28.1418; SL 2010, ch 145, §104.*

**31-14-45. Limitation on number and cost of vehicle bridges across navigable rivers.**

Not more than one vehicle bridge in each county so situated shall be constructed under §§31-14-41 to 31-14-44, inclusive, and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars.

**Source:** *SL 1887, ch 18, § 4; CL 1887, §1242; RpoIC 1903, §1647; RC 1919, § 8690; SDC 1939, §28.1421.*

**The following opinion is no longer listed in West's annotated SDCL. It is included here for reference purposes. Opinions of Attorney General. Interstate bridges constructed cooperatively by federal government and counties of adjoining states, Report 1949-50, p. 271.**

## **Navigation on Rivers**

The county commissioners of the counties bordering the Missouri river may, upon a majority vote of the qualified electors of the county, expend money from the general fund to improve navigation on the river. The funds are to be expended in conjunction with appropriations made by the United States Government in proportionate amounts as may be agreed upon by the commissioners and the chief on engineers of the United States Army. (SDCL 46A-15-4)

**46A-15-4. Improving navigation on Missouri River – Expenditure of funds by counties, affirmative vote of qualified voters – Appropriations of county funds.**

The county commissioners of any county bordering the Missouri River may, upon an affirmative vote of the qualified voters of the county, expend money for the purpose of improving navigation on the river where the river borders the county. The funds shall be expended in conjunction with appropriations made by the United States government in proportionate amounts as may be agreed upon by the county board of commissioners and the chief of engineers of the United States Army for the purpose of aiding in the securing of a permanent navigable channel in the river. The funds shall be expended in accordance with plans conforming to the character and approved methods of improvement of the river as determined by the chief of engineers of the United States Army.

The county commissioners may appropriate moneys out of the general funds of the county available for county purposes to meet the expense of any such improvements.

**Source:** *SL 1929, ch 176; SDC 1939, § 12.2902; SDCL, § 46-27-4; SL 2011, ch 165, §536.*

### **Cross-References**

*Municipal stream improvements and flood control, Chapter 9-36.*

**Excerpts for Posting of Bridges and Rating Levels**  
**(From the American Association of State Highway and Transportation**  
**Officials 2011 Manual for Bridge Evaluation, Second Edition)**

**6A.8 – POSTING OF BRIDGES**

**6A.8.1 – General**

Weight limitations for the posted structure should conform to local regulations or policy, using the guidelines in this Manual. Bridge posting should not be confused with bridge-load rating. Bridge inspection and rating are engineering-related activities, whereas bridge posting is a policy decision. If State legal loads exceed the calculated load capacity of the bridge, the bridge must be posted; however, the bridge may be posted at a lower level.

Bridges not capable of carrying a minimum gross live load weight of three tons must be closed. A Bridge Owner may close a structure at any higher posting threshold. When deciding whether to close or post a bridge, the Owner should consider the character of traffic, the likelihood of overweight vehicles, and the enforceability of weight posting.

A concrete bridge with unknown reinforcement need not be posted for restricted loading when it has been carrying normal traffic for an appreciable length of time and shows no distress. In other cases, a concrete bridge with no visible signs of distress, but whose calculated load rating indicates the bridge needs to be posted, can be alternately evaluated through load testing.

**6B.2 – RATING LEVELS**

Each highway bridge should be load rated at two levels, Inventory and Operations levels.

**6B.2.1 - Inventory Rating Level**

The Inventory rating level generally corresponds to the customary design level of stresses but reflects the existing bridge and material conditions with regard to deterioration and loss of section. Load ratings based on the Inventory level allow comparisons with the capacity for new structures and, therefore, results in a live load, which can safely utilize an existing structure for an indefinite period of time.

**6B.2.2 - Operating Rating Level**

Load ratings based on the Operating rating level generally describe the maximum permissible live load to which the structure may be subjected. Allowing unlimited numbers of vehicles to use the bridge at Operating level may shorten the life of the bridge.

**Link to SDDOT Bridge Replacement Resolution**

The SD Department of Transportation resolution for programming a structure replacement project can be found at the following link under “Resolutions” as ‘County & Urban Bridge Projects’:

<http://sddot.com/business/local/forms/>