

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

752W0012

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to provide for mediation of drainage disputes.

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

3 Section 1. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The Department of Agriculture shall establish and administer a statewide mediation program
6 to provide assistance to property owners who seek to use mediation as a method for resolving
7 disputes over the surface or subsurface drainage of water.

8 The secretary of the Department of Agriculture shall promulgate rules pursuant to chapter
9 1-26 necessary for mediation, including the establishment of fees, training requirements for
10 mediators, mediation request forms, and any other mediation procedures as may be necessary
11 for the prompt and expeditious mediation of drainage disputes.

12 Section 2. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 All staff services required by the drainage mediation program shall be provided by the
15 Department of Agriculture. The secretary of agriculture may employ a director of drainage
16 mediation services and such other agents and employees as the secretary deems necessary. The



1 director shall serve at the pleasure of the secretary of agriculture. The mediation services shall
2 be administered under the direction and supervision of the Department of Agriculture. All
3 expenses incurred in carrying on the work of the drainage mediation program, including the per
4 diem and expenses of the staff, salaries, contract payments, and any other items of expense shall
5 be paid out of funds appropriated or otherwise made available to the drainage mediation
6 operating fund.

7 Section 3. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Any fees incurred in the mediation process provided under this Act and by rule shall be
10 borne equally between the parties to the drainage dispute. The fees shall be deposited in the
11 drainage mediation operating fund which is hereby created. All money in the drainage mediation
12 operating fund created by this section is continuously appropriated for the purposes of
13 administering the drainage mediation program. All funds received by the drainage mediation
14 program shall be set forth in an informational budget as described in § 4-7-7.2 and be annually
15 reviewed by the Legislature. Any disbursements from the drainage mediation operating fund
16 shall be by authorization of the secretary of agriculture.

17 Section 4. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The Department of Agriculture, in the administration of this Act, may contract with one or
20 more established agencies of state government, nonprofit corporations, or individuals to provide
21 mediation services of drainage disputes.

22 Section 5. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 The director of the drainage mediation program shall promptly, upon the request of either

1 party for mediation services, send a mediation meeting notice to the parties to the drainage
2 dispute and to any property owner and any county, municipality, township, or any agency of
3 state or federal government reasonably determined by the director to be affected by the drainage
4 activity, setting a time and place for an initial mediation meeting between the parties to the
5 dispute and a mediator. An initial mediation meeting shall be held within twenty-one days of
6 the issuance of the mediation meeting notice. The unintentional failure to notify any party who
7 may potentially be impacted by the drainage activity may not prevent the mediation from being
8 scheduled or completed. No notice is necessary to any property owner within the boundaries of
9 a municipality.

10 Section 6. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The total mediation period shall be for a term of forty-two days after the date the director
13 of the drainage mediation program issues the notice to the parties. The director of the drainage
14 mediation program shall issue a notice of the time and location of the mediation to the party
15 planning to conduct the drainage activities and all persons or parties impacted by the planned
16 drainage within three business days following receipt of the request for mediation. The mediator
17 may, after the initial meeting, schedule additional mediation meetings during the mediation
18 period.

19 Section 7. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 If the parties to the drainage dispute consent, mediation may continue beyond the forty-two
22 day mediation period with the same force and effect as though held within the forty-two day
23 period.

24 Any agreement reached between the parties to the drainage dispute as a result of mediation

1 shall be drafted into a written agreement. If signed by the parties, the agreement constitutes a
2 binding contract, and the mediator shall so certify.

3 Section 8. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Information relating to the dispute between the parties to the drainage dispute which is
6 disclosed to the mediator or which is created, collected, or maintained by the director of the
7 drainage mediation program pursuant to the terms of this Act is confidential to the extent agreed
8 by the parties or provided by state law.

9 All mediation meetings, and all mediation activities provided by this Act, are exempt from
10 the provisions of chapter 1-27.

11 Section 9. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Any person serving as a mediator pursuant to this Act is immune from civil liability in any
14 action brought in any court in this state on the basis of any act or omission resulting in damage
15 or injury if the person was acting in good faith, in a reasonable and prudent manner, and within
16 the scope of such person's official functions and duties as a mediator.

17 Section 10. That chapter 46A-10A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Any person or party that claims to be impacted by the planned drainage activities, upon
20 timely notice, is allowed to intervene in the mediation process if the person's or party's claim
21 of impact is supported by a claim that the person or party owns or administers real property
22 impacted by the planned drainage. The request for intervention shall be supported by evidence
23 that the intervention is necessary to protect the person's or party's property interests or the
24 drainage and that those interests will not be adequately represented by the existing parties. In

1 considering the application for intervention, the mediator shall determine whether an applicant
2 may intervene and whether the interest of the applicant presents a property, health, or safety
3 issue impacted by the mediation and whether the interests of the potential interveners will not
4 be protected by the existing parties.

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