

# State of South Dakota

## NINETIETH SESSION LEGISLATIVE ASSEMBLY, 2015

792W0132

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, mediation time line, notification and intervention  
11 procedures, and any other mediation procedures as may be necessary for the prompt and  
12 expeditious mediation of drainage disputes.

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

15 All staff services required by the drainage mediation program shall be provided by the  
16 Department of Agriculture. The secretary of agriculture may employ a director of drainage



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

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

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

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

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

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

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

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

12 Any agreement reached between the parties to the drainage dispute as a result of mediation  
13 shall be drafted into a written agreement. If signed by the parties, the agreement constitutes a  
14 binding contract, and the mediator shall so certify.

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

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

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

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

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

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

7 Any person or party that claims to be impacted by the planned drainage activities is allowed  
8 to intervene in the mediation process if the person's or party's claim of impact is supported by  
9 a claim that the person or party owns or administers real property impacted by the planned  
10 drainage.