

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

295U0069

HOUSE BILL NO. 1003

Introduced by: Representatives Rozum, Hawley, Hoffman, Magstadt, Olson (Betty), Schrempp, and Solum and Senators Rampelberg, Maher, Sutton, and Tieszen at the request of the Interim Oil and Gas Study Committee

1 FOR AN ACT ENTITLED, An Act to provide for mediation between mineral developers and
2 surface owners in certain disputes over surface depredation and to provide for mediation of
3 mineral fee disputes.

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

5 Section 1. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Department of Agriculture shall administer a surface depredation mediation program
8 to provide assistance to mineral developers and surface owners who seek to use mediation as
9 a method for resolving disputes over the determination of damages pursuant to § 45-5A-4. The
10 program may also be used to mediate disputes between mineral fee holders and surface owners.

11 The secretary of the Department of Agriculture shall promulgate rules pursuant to chapter
12 1-26 necessary for mediation, including the establishment of fees, training requirements for
13 mediators, mediation request forms, and any other mediation procedures as may be necessary
14 for the prompt and expeditious mediation of surface depredation disputes.



1 Section 2. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
2 follows:

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

12 Section 3. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any fees provided under this Act or by rule shall be borne equally between the mineral
15 developer and the surface owner. Such fees shall be deposited in the surface deprecation
16 mediation operating fund which is hereby created. All money in the surface deprecation
17 mediation operating fund created by this section is continuously appropriated for the purposes
18 of administering the surface deprecation mediation program. All funds received by the surface
19 deprecation mediation program shall be set forth in an informational budget as described in
20 § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the surface
21 deprecation mediation operating fund shall be by authorization of the secretary of agriculture.

22 Section 4. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
23 follows:

24 The Department of Agriculture, in the administration of this Act, may contract with one or

1 more established agencies of state government, nonprofit corporations, or individuals to provide
2 mediation services for mineral developers and surface owners.

3 Section 5. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The director of the surface depredation mediation program shall promptly, upon the request
6 of either party for mediation services, send a mediation meeting notice to the mineral developers
7 and surface owners, setting a time and place for an initial mediation meeting between the
8 mineral developers and surface owners, and a mediator. An initial mediation meeting shall be
9 held within twenty-one days of the issuance of the mediation meeting notice.

10 Section 6. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The total mediation period shall be for a term of forty-two days after the date the director
13 of the surface depredation mediation program issues the notice to the parties. The director of the
14 surface depredation mediation program shall issue a notice to both parties within three business
15 days following receipt of the request for mediation. The mediator may, after the initial meeting,
16 schedule additional mediation meetings during the mediation period.

17 Section 7. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
18 follows:

19 If the mineral developer and the surface owner consent, mediation may continue beyond the
20 forty-two day mediation period with the same force and effect as though held within the
21 forty-two day period.

22 Any agreement reached between the mineral developer and the surface owner as a result of
23 mediation shall be drafted into a written agreement. If signed by the mineral developer and the
24 surface owner, the agreement constitutes a binding contract, and the mediator shall so certify.

1 Section 8. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
2 follows:

3 All information regarding the dispute between the mineral developers and the surface
4 owners which is created, collected, or maintained by the director of the surface depredation
5 mediation program pursuant to the terms of this Act or disclosed to the mediator are not public
6 records and are confidential and discussions with the mediators are privileged communications.

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

9 Section 9. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
10 follows:

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