

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0377

HOUSE BILL NO. 1059

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Environment and Natural Resources

1 FOR AN ACT ENTITLED, An Act to repeal and revise certain obsolete and unnecessary
2 statutes and rules relating to the Department of Environment and Natural Resources.

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

4 Section 1. That § 34A-1-6.1 be repealed.

5 ~~— 34A-1-6.1. The Board of Minerals and Environment shall promulgate rules governed by~~
6 ~~subdivision § 34A-1-6(10) by October 1, 1990. No new permit related to incinerators for~~
7 ~~municipal solid waste may be issued under this chapter until the rules required in this section~~
8 ~~are in effect. The rules required in this section need not address medical waste incineration, and~~
9 ~~the prohibition of permitting provided in this section does not apply to medical waste~~
10 ~~incineration. A violation of the rules promulgated pursuant to this section is subject to § 34A-1-~~
11 ~~39.~~

12 Section 2. That § 34A-1-7 be repealed.

13 ~~— 34A-1-7. In accordance with chapter 3-6A, the department may employ, compensate, and~~
14 ~~prescribe the powers and duties of such persons as may be necessary to carry out the provisions~~
15 ~~of this chapter.~~



1 Section 3. That § 34A-1-8 be repealed.

2 ~~— 34A-1-8. The secretary may delegate to officers and employees of the department such~~
3 ~~functions, duties, and authority as are vested in the department by this chapter.~~

4 Section 4. That § 34A-1-24 be repealed.

5 ~~— 34A-1-24. Any person who owns or is in control of any plant, building structure, process,~~
6 ~~or equipment may apply to the board for a variance from rules governing the quality, nature,~~
7 ~~duration, or extent of emissions. The application shall be accompanied by such information and~~
8 ~~data as the board may require. However, no variance may be granted for any facility subject to~~
9 ~~Title V of the Federal Clean Air Act 42 U.S.C. §§ 7401 to 7642, inclusive, as amended to~~
10 ~~January 1, 1995.~~

11 Section 5. That § 34A-1-25 be repealed.

12 ~~— 34A-1-25. No variance may be granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive,~~
13 ~~until the board has considered the relative interests of the applicant, the owners of property~~
14 ~~likely to be affected by the discharges, and the general public.~~

15 Section 6. That § 34A-1-26 be repealed.

16 ~~— 34A-1-26. In determining whether to grant a variance the board shall consider whether the~~
17 ~~facility was in existence on July 1, 1970. If the facility was constructed after July 1, 1970, the~~
18 ~~board shall consider whether the facility was in compliance at the time of its construction.~~

19 Section 7. That § 34A-1-27 be repealed.

20 ~~— 34A-1-27. The board may grant a variance from rules or regulations governing the quality,~~
21 ~~nature, duration, or extent of emissions, but only after proceedings under chapter 1-26, if it finds~~
22 ~~that:~~

23 ~~— (1) — The emissions occurring or proposed to occur do not endanger or tend to endanger~~
24 ~~human health or safety; and~~

1 ~~(2) Compliance with the rules or regulations from which variance is sought would~~
2 ~~produce serious hardship without equal or greater benefits to the public.~~

3 Section 8. That § 34A-1-29 be repealed.

4 ~~34A-1-29. A variance or renewal is not a right of the applicant or holder of the variance or~~
5 ~~renewal but is at the discretion of the board.~~

6 Section 9. That § 34A-1-30 be repealed.

7 ~~34A-1-30. Any variance or renewal of the variance shall be granted within the requirements~~
8 ~~of § 34A-1-27, for time periods and under conditions consistent with the reasons for the~~
9 ~~variance or renewal, and within the limitations set forth in §§ 34A-1-31 to 34A-1-33, inclusive.~~

10 ~~Any violation of a variance granted pursuant to this section is subject to § 34A-1-39.~~

11 Section 10. That § 34A-1-31 be repealed.

12 ~~34A-1-31. If the variance is granted on the ground that there is no practicable means known~~
13 ~~or available for the adequate prevention, abatement, or control of the air pollution involved, it~~
14 ~~shall be only until the necessary means for prevention, abatement, or control become known and~~
15 ~~available and subject to the taking of any substitute or alternate measures that the board may~~
16 ~~prescribe.~~

17 Section 11. That § 34A-1-32 be repealed.

18 ~~34A-1-32. If the variance is granted on the ground that compliance with the particular~~
19 ~~requirement or requirements from which variance is sought will necessitate the taking of~~
20 ~~measures which, because of their extent or cost, must be spread over a considerable period of~~
21 ~~time, it shall be for a period not to exceed such reasonable time as, in the view of the board is~~
22 ~~requisite for the taking of the necessary measures. A variance granted on the ground specified~~
23 ~~herein shall contain a timetable for the taking of action in an expeditious manner and shall be~~
24 ~~conditioned on adherence to such timetable.~~

1 Section 12. That § 34A-1-33 be repealed.

2 ~~—34A-1-33. If the variance is granted on the ground that it is justified to relieve or prevent~~
3 ~~hardship of a kind other than that provided for in §§ 34A-1-31 and 34A-1-32, the variance may~~
4 ~~not be for more than three years.~~

5 Section 13. That § 34A-1-34 be repealed.

6 ~~—34A-1-34. Any variance granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive, may be~~
7 ~~renewed on terms and conditions and for periods which would be appropriate on initial granting~~
8 ~~of a variance. If complaint is made to the board on account of the variance, no renewal may be~~
9 ~~granted, unless following proceedings under chapter 1-26, the board finds the renewal is~~
10 ~~justified. No renewal may be granted except on application for a renewal. Any such application~~
11 ~~shall be made before the expiration of the variance.~~

12 Section 14. That § 34A-1-35 be repealed.

13 ~~—34A-1-35. Nothing in §§ 34A-1-24 to 34A-1-34, inclusive, and no variance or renewal~~
14 ~~granted pursuant to §§ 34A-1-24 to 34A-1-34, inclusive, prevents or limits the application of~~
15 ~~the emergency provisions and procedures of §§ 34A-1-45 and 34A-1-46 to any person or the~~
16 ~~person's property.~~

17 Section 15. That ARSD 74:36:04:03.01 be repealed.

18 ~~—74:36:04:03.01. Minor source operating permit variance. The owner or operator of a minor~~
19 ~~source may request a variance from applicable emission standards. The variance allows the~~
20 ~~minor source to operate in noncompliance with applicable emission standards. A minor source~~
21 ~~is eligible for a variance if it is located within an area that is in attainment for all regulated air~~
22 ~~pollutants for which the source is requesting a variance. The minor source may not receive a~~
23 ~~variance if the source obtained a minor source operating permit by accepting federally~~
24 ~~enforceable permit conditions to prevent the source from needing a Part 70 operating permit.~~

1 ~~—The owner or operator desiring to obtain a variance must submit an application. The~~
2 ~~application must include the same provisions required by § 74:36:04:07, the requirements and~~
3 ~~a compliance plan for which a variance is requested, and the facts relevant to establishing the~~
4 ~~burden of proof required under SDCL 34A-1-27. The compliance plan must outline the steps~~
5 ~~that will be taken to come into compliance and the completion date for each step.~~

6 ~~—The board shall hold a hearing on the department's recommendation on a request for a~~
7 ~~variance. Any person affected by the recommendation or any person interested in testifying~~
8 ~~either for or against the department's recommendation may submit written comments to the~~
9 ~~department or present oral testimony before the board at the hearing. After the hearing is closed,~~
10 ~~the board may amend and approve, deny, or adopt the department's recommendation.~~

11 Section 16. That § 34A-2-3 be repealed.

12 ~~—34A-2-3. The committee on water pollution is abolished, and all its functions shall be~~
13 ~~administered by the secretary and Water Management Board, as provided by this chapter.~~

14 Section 17. That § 34A-2-4 be repealed.

15 ~~—34A-2-4. The secretary shall collect and furnish information relating to the prevention and~~
16 ~~control of water pollution.~~

17 Section 18. That § 34A-2-5 be repealed.

18 ~~—34A-2-5. The secretary shall conduct or encourage necessary research demonstrations~~
19 ~~concerning water pollution.~~

20 Section 19. That § 34A-2-7 be repealed.

21 ~~—34A-2-7. The board shall establish policy for prevention, control, and abatement of new or~~
22 ~~existing pollution of the waters of the state.~~

23 Section 20. That § 34A-2-8 be repealed.

24 ~~—34A-2-8. The secretary of environment and natural resources shall administer this chapter.~~

1 ~~The secretary, in accordance with policies established by the board and pursuant to laws~~
2 ~~governing state employees, may hire personnel necessary to carry out the provisions of this~~
3 ~~chapter and the rules and orders of the board.~~

4 Section 21. That § 34A-2-47 be repealed.

5 ~~— 34A-2-47. Any person, association, corporation, or agency of the state or federal government~~
6 ~~may apply to the board protesting any violation of this chapter. The board shall thereupon direct~~
7 ~~the secretary to investigate the alleged violation. The secretary shall make the investigation and~~
8 ~~make a written report to the board and to the person, association, corporation, or agency which~~
9 ~~made the protest.~~

10 Section 22. That § 34A-2-80 be repealed.

11 ~~— 34A-2-80. The Governor shall designate:~~

12 ~~— (1) — The boundaries of areas within the state which have substantial water quality~~
13 ~~problems;~~

14 ~~— (2) — Respective planning agencies for such areas;~~

15 ~~— (3) — Respective waste treatment management agencies for such areas.~~

16 Section 23. That § 34A-2-80.1 be repealed.

17 ~~— 34A-2-80.1. Municipalities, counties, conservation districts, and other political subdivisions~~
18 ~~of the state may join together under chapter 1-24 to form a separate agency to act as a waste~~
19 ~~treatment management agency under § 34A-2-80 and for the purpose of planning, consulting,~~
20 ~~and coordinating their efforts to implement area-wide waste treatment under the Federal Water~~
21 ~~Pollution Control Act, as amended to January 1, 2011, within designated water quality~~
22 ~~management areas.~~

23 Section 24. That § 34A-2-81 be repealed.

24 ~~— 34A-2-81. The waste treatment management agencies shall have prior to being designated~~

1 by the Governor, the following authority:

2 ~~—(1)—To carry out appropriate portions of an areawide waste treatment management plan;~~

3 ~~—(2)—To manage effectively waste treatment works and related facilities serving such areas~~
4 ~~in conformance with any plan;~~

5 ~~—(3)—Directly or by contract, to design and construct new works, and to operate and~~
6 ~~maintain new and existing works as required by any plan;~~

7 ~~—(4)—To accept and utilize grants or other funds from any source for waste treatment~~
8 ~~management purposes;~~

9 ~~—(5)—To raise revenues, including the assessment of waste treatment charges;~~

10 ~~—(6)—To incur short and long-term indebtedness;~~

11 ~~—(7)—To assure in implementation of an areawide waste treatment management plan that~~
12 ~~each participating community pays its proportionate share of treatment costs;~~

13 ~~—(8)—To refuse to receive any wastes from any municipality or subdivision thereof which~~
14 ~~does not comply with any provisions of an approved plan applicable to such area; and~~

15 ~~—(9)—To accept for treatment industrial wastes.~~

16 Section 25. That § 34A-2-86 be repealed.

17 ~~—34A-2-86. The secretary shall establish a project priority list of municipalities, sewer or~~
18 ~~sanitary districts, state institutions, and other political subdivisions, that are eligible for federal~~
19 ~~water pollution project grants for the purpose of the secretary certifying to the federal~~
20 ~~government that allotted federal grant funds are, or will be, available for a project and that a~~
21 ~~particular project is higher than other projects on the project priority list eligible for such funds.~~

22 Section 26. That § 34A-2-87 be repealed.

23 ~~—34A-2-87. The Board of Water and Natural Resources shall promulgate pursuant to chapter~~
24 ~~1-26 and the secretary shall implement rules for the effective administration of such federally~~

1 ~~allotted funds in conjunction with state grants, for such projects including the determination of~~
2 ~~need, priority of construction, and standards for construction consistent with the requirements~~
3 ~~of the Federal Water Pollution Control Act as amended to January 1, 2011. The secretary and~~
4 ~~Board of Water and Natural Resources shall seek to achieve expeditious approval and~~
5 ~~certification of grant applications, sound environmental planning, cost effectiveness in~~
6 ~~distribution of grant funds, and an appreciation of the numerous public pollution control needs~~
7 ~~in the state as allowed under the federal act.~~

8 Section 27. That § 34A-3-6 be repealed.

9 ~~—34A-3-6. The Board of Certification of Water Supply and Wastewater Systems Operators~~
10 ~~shall be administered under the direction and supervision of the Department of Environment and~~
11 ~~Natural Resources.~~

12 Section 28. That § 34A-3-10 be repealed.

13 ~~—34A-3-10. The board shall meet as often as necessary to perform its duties. The board shall~~
14 ~~keep complete minutes of all its meetings, and make reports to the Governor as required by~~
15 ~~statute.~~

16 Section 29. That § 34A-3-16 be repealed.

17 ~~—34A-3-16. Certificates of proper classification may be issued without examination to~~
18 ~~operators of treatment works, collection system, or distribution system, including the person~~
19 ~~who was in direct responsible charge, on July 1, 1970. The governing body or owner must~~
20 ~~certify such persons in writing to the secretary. A certificate so issued will be valid only for that~~
21 ~~plant or system and shall be marked "restricted."~~

22 Section 30. That § 34A-3-17 be repealed.

23 ~~—34A-3-17. Individuals holding valid certificates under the voluntary certification programs~~
24 ~~in this state will be issued a new certificate in an equivalent grade upon submitting a proper~~

1 application.

2 Section 31. That § 34A-3A-21 be repealed.

3 ~~—34A-3A-21. From the amount recovered pursuant to § 34A-3A-20 and appropriated through~~
4 ~~§ 34A-3A-22, the department shall expend such sums as are necessary to pay the cost of initial~~
5 ~~lead and copper monitoring as required by the Federal Safe Drinking Water Act as amended to~~
6 ~~January 1, 2011, and the rules promulgated by the U.S. Environmental Protection Agency~~
7 ~~thereunder.~~

8 Section 32. That ARSD 74:21:01:05 be repealed.

9 ~~—74:21:01:05. Informal proceedings prior to formal rules adoption hearing. The board may,~~
10 ~~at its own discretion, appoint one of its members or the secretary of the board to conduct an~~
11 ~~informal hearing prior to the formal adoption, amendment, or repeal of a rule. The procedure~~
12 ~~for the informal hearing shall be as follows:~~

13 ~~—(1) Brief summary of the issues by the hearing examiner;~~

14 ~~—(2) Presentation by party or parties advocating adoption, amendment, or repeal;~~

15 ~~—(3) Examination of proponents, witnesses, or staff by adverse party or parties;~~

16 ~~—(4) Presentation by party or parties adverse to the issue;~~

17 ~~—(5) Examination of adverse witnesses or staff by party or parties advocating;~~

18 ~~—(6) Summary by the advocating party or brief filed with the board;~~

19 ~~—(7) Summary by adverse party or brief; and~~

20 ~~—(8) Adjournment and submission of record to board. The hearing examiner shall give parties~~
21 ~~an approximate date upon which a formal hearing will be held.~~

22 Section 33. That § 34A-13-2 be repealed.

23 ~~—34A-13-2. If a release is discovered, the director may order or join, subject to § 34A-13-3,~~
24 ~~in an order of the department directing a responsible person to take reasonable and necessary~~

1 ~~corrective actions. The director shall notify the owner of real property where corrective action~~
2 ~~is ordered. If the department or other political subdivision has pursuant to statute, rule, or~~
3 ~~ordinance ordered a responsible person to take a corrective action or undertake a corrective plan~~
4 ~~of action, no other governmental unit may give an order to a responsible person that conflicts~~
5 ~~with or alters the original order or corrective plan. If an order is given which does conflict, the~~
6 ~~representatives of the governmental unit shall give notice to the responsible person of the~~
7 ~~conflict. The notice given shall be actual notice and may be an oral notice if an emergency~~
8 ~~exists. The representatives of the governmental units in conflict and the responsible person or~~
9 ~~his representative shall meet at an agreed time at the site. The responsible person shall follow~~
10 ~~the order of the governmental unit that was first in time unless, by agreement of the parties at~~
11 ~~the site, the original order is altered and the original order is not less stringent than would be~~
12 ~~required by the department. If the governmental unit that did not make the original order or~~
13 ~~corrective plan requires additional work to be done, the responsible person may not be required~~
14 ~~to pay the cost of the additional work required by the governmental unit that was second in time~~
15 ~~to give an order. The governmental unit that was first to assume jurisdiction of the site shall~~
16 ~~direct all work at the site including if necessary additional requirements of the secondary~~
17 ~~governmental units who have required additional work beyond that required of the~~
18 ~~governmental unit which has jurisdiction of the site.~~

19 Section 34. That § 34A-13-3 be repealed.

20 ~~—34A-13-3. The director, following notice and an opportunity for hearing, pursuant to chapter~~
21 ~~1-26, may take corrective action or cause legal action to be brought to compel performance of~~
22 ~~a corrective action if:~~

23 ~~—(1)— A covered party cannot be identified;~~

24 ~~—(2)— A covered party fails or refuses to comply with an order of the director or the~~

1 department;

2 ~~(3) A governmental unit has failed to respond or take action;~~

3 ~~(4) The covered party has failed to pay the deductible amount as determined by the~~
4 ~~board; or~~

5 ~~(5) The covered party has defaulted in the repayment of any loan or other obligation~~
6 ~~undertaken in accordance with the provisions of §§ 34A-14-3 to 34A-14-26,~~
7 ~~inclusive.~~

8 Section 35. That § 34A-13-6 be repealed.

9 ~~34A-13-6. If the director has reason to believe that a release has occurred, the director shall~~
10 ~~notify the department. The director may undertake reasonable, independent investigations, in~~
11 ~~addition to any investigation of the department, necessary to identify the existence, source,~~
12 ~~nature, and extent of a release, the responsible persons, and the extent of danger to the public~~
13 ~~health, safety, and welfare or the environment.~~

14 Section 36. That § 34A-13-9 be amended to read as follows:

15 34A-13-9. A responsible person is liable for the cost of the corrective action taken by the
16 board or the department, including the cost of investigating the release and administrative and
17 legal expenses of the fund. This chapter does not create any new cause of action for damages
18 on behalf of third parties for release of petroleum products against the fund, petroleum marketer,
19 or covered parties. Reimbursement shall be made to a covered party who qualifies pursuant to
20 the criteria set forth in this chapter.

21 No reimbursement from the fund may be made to a covered party if:

22 (1) Corrective action has been taken in an emergency pursuant to §§ 34A-13-3 and 34A-
23 13-4, and the responsible person failed to report the existence of the emergency;

24 (2) The board has taken corrective action because a responsible person could not be

1 identified or a tank has not been registered as required by law; or

2 (3) ~~The person has defaulted in the repayment of any loan or other obligation due or~~
3 ~~owing to the authority or to a lender and undertaken in accordance with the~~
4 ~~provisions of §§ 34A-14-3 to 34A-14-26, inclusive; or~~

5 ~~(4) The conditions of § 34A-13-8.5 have not been met.~~

6 Section 37. That § 34A-13-13 be repealed.

7 ~~34A-13-13. Nothing in this chapter limits any person's duty to notify the Department of~~
8 ~~Environment and Natural Resources and to take action related to a release as provided by~~
9 ~~chapters 34A-2 and 34A-12 and rules promulgated pursuant to these chapters. Reimbursement~~
10 ~~for petroleum-caused corrective actions and third-party claims shall be governed by this chapter.~~
11 ~~The board shall provide by rule, promulgated pursuant to chapter 1-26, a method for prorating~~
12 ~~reimbursement of claims whenever the balance of the fund is insufficient to pay all outstanding~~
13 ~~approved claims and the obligated costs of administration of the fund and the board.~~

14 Section 38. That § 34A-13-21 be repealed.

15 ~~34A-13-21. The board may enter into agreements with the secretary of revenue for any and~~
16 ~~all support services, collection services, or other services to aid in the collection of the fee~~
17 ~~required by § 34A-13-20. The board and the secretary of revenue, subject to §§ 10-1-28.1 to 10-~~
18 ~~1-28.9, inclusive, may exchange information, confidential or otherwise, to aid and monitor the~~
19 ~~collection of the fee.~~

20 Section 39. That § 34A-13-27 be amended to read as follows:

21 34A-13-27. Money in the fund may only be expended or obligated:

22 (1) To administer the petroleum release compensation program established in this
23 chapter;

24 (2) For any administrative costs and costs of corrective action taken by the fund,

- 1 including investigations, legal actions, consulting costs, and other necessary costs;
- 2 (3) For any costs of recovering any expenses associated with corrective actions;
- 3 (4) For training, testing, and certification of those who perform services to be reimbursed
- 4 under this chapter;
- 5 (5) For any costs paid to any state agency for services;
- 6 (6) For research and studies designed to reduce releases and improve petroleum industry
- 7 methods for storage and to develop information and knowledge to aid in cleanup;
- 8 (7) To carry out inspections of tanks and to certify inspection persons who may perform
- 9 approved inspections of tanks;
- 10 ~~(8) To carry out the financing responsibilities of the petroleum environmental~~
- 11 ~~compliance authority as provided in chapter 34A-14 and in this chapter. However,~~
- 12 ~~no more than two million dollars of the fund assets at any time may be used in~~
- 13 ~~financing activities;~~
- 14 ~~(9) To purchase insurance for the purpose of limiting certain risks associated with~~
- 15 ~~providing fund coverage as deemed appropriate by the secretary of environment and~~
- 16 ~~natural resources;~~
- 17 ~~(10)~~(9) For any service provider unless the director has determined that a conflict of
- 18 interest exists between the consultant and the contractor that could affect the
- 19 integrity of the cleanup activities;
- 20 ~~(11)~~(10) For rule making; and
- 21 ~~(12)~~(11) For training of board members and staff employed by the secretary of
- 22 environment and natural resources.

23 Section 40. That § 34A-13-37 be repealed.

24 ~~34A-13-37. The director shall cooperate in any action necessary to obtain federal funding~~

1 to carry out the provisions of this chapter.

2 Section 41. That § 34A-13-44 be repealed.

3 ~~—34A-13-44. The board may contract with the fund established by § 3-22-1 for administration
4 and defense of third-party claims as provided in §§ 34A-13-41 and 34A-13-42, inclusive.~~

5 Section 42. That § 34A-14-1 be repealed.

6 ~~—34A-14-1. The Legislature finds that it is in the best interests and welfare of all the citizens
7 of South Dakota that a public authority be established with power to issue revenue bonds and
8 to make the proceeds of such bonds and other moneys as described in this chapter available for
9 loans to petroleum marketers and other business enterprises which private industry alone would
10 be otherwise unable to serve, at interest rates lower than would otherwise be obtainable. It is
11 intended that the authority so established be vested with all the powers necessary to the
12 accomplishment of these purposes. It is also intended that the immediate funding and
13 completion of capital investments will protect the environment, health, and welfare of the
14 citizens of the state by reducing accidental releases into the environment caused by outdated and
15 worn-out equipment for containing petroleum and will reduce the future cost of repairing the
16 environment.~~

17 Section 43. That § 34A-14-2 be repealed.

18 ~~—34A-14-2. Terms used in §§ 34A-14-3 to 34A-14-26, inclusive, mean:~~

19 ~~—(1)—"Authority," the Petroleum Environmental Compliance Authority created pursuant
20 to this chapter;~~

21 ~~—(2)—"Board," the board of directors of the authority;~~

22 ~~—(3)—"Bonds," bonds, notes, and certificates, and bond, grant, or revenue anticipation notes
23 or any other instrument representing an obligation to pay money;~~

24 ~~—(4)—"Business enterprise," a work or improvement including, but not limited to, real~~

1 property, buildings, equipment, furnishings, and any other real and personal property
2 or any interest reconstructed, extended, rehabilitated, improved or equipped, directly
3 or indirectly, in whole or in part, by the authority and which is designed and intended
4 for the purpose of providing facilities for warehousing, commercial trade, including
5 wholesale or retail trade, office, research, business, whether or not for profit, or other
6 related purposes, including, but not limited to, machinery and equipment deemed
7 necessary for the operation thereof which is used for the marketing and storage of
8 petroleum products;

9 ~~— (5) —~~ "Lender," any federal or state chartered bank, federal land bank, production credit
10 association, bank for cooperatives, federal or state chartered savings and loan
11 association or building and loan association, federal savings bank, small business
12 investment company or any other institution qualified within this state to originate
13 and service loans, including insurance companies, credit unions, and mortgage loan
14 companies;

15 ~~— (6) —~~ "Loan insurer" or "loan guarantor," an agency, department, administration or
16 instrumentality, corporate or otherwise, or any private mortgage insurance company
17 or any other public or private agency which insures or guarantees loans;

18 ~~— (7) —~~ "Petroleum marketing," the sale, transportation, or storage of petroleum products,
19 including vehicles, gasoline stations, gasoline tank farms, and all other petroleum
20 marketing and storage operations which are necessary for the furnishing of petroleum
21 products to the citizens of South Dakota.

22 Section 44. That § 34A-14-3 be repealed.

23 ~~— 34A-14-3. There is created a Petroleum Environmental Compliance Authority.~~

24 Section 45. That § 34A-14-4 be repealed.

1 ~~34A-14-4. The board of directors of the authority consists of the five members who have~~
2 ~~been appointed by the Governor to hold a position on the Petroleum Release Compensation~~
3 ~~Board established by § 34A-13-14.~~

4 Section 46. That § 34A-14-5 be repealed.

5 ~~34A-14-5. A majority of the members constitutes a quorum of the board of directors for the~~
6 ~~purpose of organizing the authority and conducting business. Any action may be taken by a vote~~
7 ~~of a majority of the members present, unless the rules of the board require a larger number.~~

8 Section 47. That § 34A-14-6 be repealed.

9 ~~34A-14-6. The authority may:~~

10 ~~(1) Have perpetual succession as a body politic and corporate exercising essential public~~
11 ~~functions;~~

12 ~~(2) Promulgate rules, pursuant to chapter 1-26, to regulate its affairs, to carry into effect~~
13 ~~the powers and purposes of the authority, to conduct its business, to establish the~~
14 ~~standards, form, and procedures for loans from the fund or any account in the fund,~~
15 ~~to establish standards and procedures for securing obligations owed to the fund or~~
16 ~~any account in the fund, and to establish standards and procedures for utilizing the~~
17 ~~fund or any account in the fund directly or indirectly as security for financings~~
18 ~~authorized by this chapter;~~

19 ~~(3) Sue and be sued in its own name;~~

20 ~~(4) Have an official seal and alter it at will;~~

21 ~~(5) Maintain an office at such place or places within the state as it may designate;~~

22 ~~(6) Make and execute contracts and all other instruments necessary or convenient for the~~
23 ~~performance of its duties and the exercise of its powers and functions under this~~
24 ~~chapter;~~

- 1 ~~— (7) — Employ fiscal consultants, engineers, attorneys, and such other consultants and~~
2 ~~employees as may be required;~~
- 3 ~~— (8) — Procure insurance against any loss in connection with any property and other assets~~
4 ~~of the authority and any interests in such property and assets whether as owner,~~
5 ~~mortgagee, secured party, pledgee, or lessor, including loans and loan notes and other~~
6 ~~obligations in such amounts and from such insurers as it may deem advisable;~~
- 7 ~~— (9) — Borrow money, enter into loan and financing arrangements and issue bonds as~~
8 ~~provided by this chapter;~~
- 9 ~~— (10) — Procure insurance, guarantees, or letters of credit from any public or private entities,~~
10 ~~including any department, agency, or instrumentality of this state or the United~~
11 ~~States, for payment of any bonds issued by the authority, including the power to pay~~
12 ~~premiums on any such insurance, guarantees, or letters of credit;~~
- 13 ~~— (11) — Receive and accept from any source aid or contributions of moneys, property, labor,~~
14 ~~or other things of value to be held, used, and applied to carry out the purposes of this~~
15 ~~chapter, subject to the conditions upon which the grants or contributions are made,~~
16 ~~including, but not limited to, gifts or grants from any department, agency, or~~
17 ~~instrumentality of this state or the United States for any purpose consistent with the~~
18 ~~provisions of this chapter;~~
- 19 ~~— (12) — Enter into agreements with any department, agency, or instrumentality of the United~~
20 ~~States or this state and with lenders and enter into loan agreements, sales contracts,~~
21 ~~leases, or any other agreements with lenders or any other persons or contracting~~
22 ~~parties for the purpose of planning, regulating, and providing for the financing of any~~
23 ~~petroleum marketing and business enterprises;~~
- 24 ~~— (13) — Enter into contracts or agreements with lenders for the servicing and processing of~~

- 1 loans;
- 2 ~~— (14) Provide technical assistance to local public bodies and to profit and nonprofit entities~~
- 3 ~~in the development or operation of petroleum marketing and business enterprises and~~
- 4 ~~distribute data and information concerning the encouragement and improvement of~~
- 5 ~~petroleum marketing and business enterprises in a safe and environmentally correct~~
- 6 ~~manner;~~
- 7 ~~— (15) To the extent permitted under its contract with the holders of bonds of the authority~~
- 8 ~~or under any other financing agreements to which the authority is a party or by which~~
- 9 ~~it is bound, consent to any modification with respect to the rate of interest, time and~~
- 10 ~~payment of any installment of principal or interest, or any other term of any contract,~~
- 11 ~~loan, loan note commitment, contract, lease, or agreement of any kind to which the~~
- 12 ~~authority is a party;~~
- 13 ~~— (16) To the extent permitted under its contract with the holders of bonds of the authority~~
- 14 ~~or under any other financing agreements to which the authority is a party or by which~~
- 15 ~~it is bound, enter into contracts with any borrower, lessee, or lender containing~~
- 16 ~~provisions enabling it to reduce the rental or carrying charges to persons unable to~~
- 17 ~~pay the regular schedule or charges when, by reason of other income or payment by~~
- 18 ~~any department, agency, or instrumentality of the United States or of this state, the~~
- 19 ~~reduction can be made without jeopardizing the economic stability of the other~~
- 20 ~~petroleum marketing or business enterprise being financed pursuant to such bond~~
- 21 ~~issue or financing agreement;~~
- 22 ~~— (17) Invest proceeds of any bonds not needed for immediate disbursement in the manner~~
- 23 ~~permitted by the instruments securing such bonds;~~
- 24 ~~— (18) Collect fees and charges, as the authority determines to be reasonable, in connection~~

- 1 with any loans, leases, advances, guarantees, insurance, commitments, servicing, and
2 any other financing arrangements as contemplated in this chapter;
- 3 ~~—(19) Cooperate with and exchange services, personnel and information with any federal,~~
4 ~~state, or local governmental agency;~~
- 5 ~~—(20) Sell or otherwise transfer or dispose of, at public or private sale, with or without~~
6 ~~public bidding, at par or at any premium or discount as the authority deems~~
7 ~~reasonable, any loan, lease, contract, or other obligation held by the authority;~~
- 8 ~~—(21) Take or hold any mortgages, deeds of trust, notes, debentures, bonds, security~~
9 ~~interests, pledges, or similar interests in any real or personal property in connection~~
10 ~~with any transaction authorized in this chapter and foreclose any mortgages, deeds~~
11 ~~of trust, notes, debentures, bonds, and other security interests held by it, either by~~
12 ~~action or by exercise of a power of sale, and to sell the equity of redemption in said~~
13 ~~security interests in accordance with the terms of said instruments and applicable~~
14 ~~state law, and to take all other actions necessary to enforce any obligation held by it;~~
- 15 ~~—(22) Purchase the equity of redemption in any such mortgage, deed of trust, debenture,~~
16 ~~bond, or other security interest;~~
- 17 ~~—(23) Mortgage, pledge, assign, or grant security interests in any or all of its notes or other~~
18 ~~instruments, contract rights, leases, loan agreements, or other property, including, but~~
19 ~~not limited to, any receipts from insurance on or guarantees of any of its notes or~~
20 ~~other instruments, contract rights, leases, or loan agreements as security for the~~
21 ~~payment of the principal of and premiums, if any, and interest on any bonds or other~~
22 ~~obligations issued or held by the authority, or as security for any agreements made~~
23 ~~in connection therewith, whether then owned or thereafter acquired, and to pledge the~~
24 ~~properties and revenues from which said bonds are payable and any funds or accounts~~

1 relating to such obligations, including funds established under § 34A-13-20 to the
2 extent permitted therein and herein, as security for the payment of the principal of
3 and interest on said bonds or amounts due on such obligations and any agreements
4 made in connection therewith;

5 ~~— (24) Enter into agreements for management on behalf of the authority of any of its
6 properties and assets upon such terms and conditions as may be mutually agreeable;~~

7 ~~— (25) Sell, exchange, donate and convey any or all of its properties and assets whenever the
8 board shall find such action to be in furtherance of the purposes for which the
9 corporation was organized;~~

10 ~~— (26) Do any act and execute any instrument which in the authority's judgment is necessary
11 or convenient to the exercise of the powers granted by this chapter, or reasonably
12 implied from it;~~

13 ~~— (27) Own, acquire, encumber, transfer, and dispose of real and personal property and other
14 assets and interests therein, including but not limited to interests as mortgagee,
15 secured party, pledgee, or lessor, in connection with any loan or other financing
16 arrangement authorized under this chapter; and~~

17 ~~— (28) In the exercise of any of its powers and authority, take into account such economic
18 and financial factors as the authority may deem appropriate to best accomplish its
19 purposes and to permit the remarketing of loans and the ongoing financing of capital
20 investments to protect the environment, health and welfare of the citizens of the state
21 as provided in this chapter.~~

22 ~~— At no time may the authority obligate more than two million dollars of the fund assets for
23 financing.~~

24 Section 48. That § 34A-14-7 be repealed.

1 ~~34A-14-7. The authority may:~~

2 ~~(1) Make, and undertake commitments to make, loans to or deposits with lenders~~
3 ~~including certificates of deposits, under terms and conditions which shall require~~
4 ~~such lenders to make loans (in an amount substantially equal to or in an amount~~
5 ~~greater than the principal amount of the loan or deposit and at such interest rates as~~
6 ~~may be agreed to between the authority and such lenders so as to encourage~~
7 ~~compliance by the borrowers with environmental legal requirements) to borrowers~~
8 ~~to finance the costs of petroleum marketing and business enterprises in order to~~
9 ~~comply with environmental legal requirements;~~

10 ~~(2) Invest in, purchase, or make commitments to invest in or purchase, and take~~
11 ~~assignments of, loans made by lenders to borrowers to finance the costs of petroleum~~
12 ~~marketing and business enterprises in order to comply with environmental legal~~
13 ~~requirements;~~

14 ~~(3) Invest in, purchase, or make commitments to invest in or purchase, and take~~
15 ~~assignments of, loans made by lenders to borrowers to finance the costs meeting the~~
16 ~~financial responsibility requirements of the industry imposed by state or federal~~
17 ~~statute or regulation including capital requirements of any corporation which~~
18 ~~provides agreements of indemnification or risk sharing;~~

19 ~~(4) Make, and undertake commitments to make, loans to borrowers or provide~~
20 ~~guarantees or other security arrangements to borrowers or establish reserves or other~~
21 ~~security arrangements with any lender, trustee, or other party in connection with the~~
22 ~~financing of the costs of petroleum marketing and business enterprises in order to~~
23 ~~comply with environmental legal requirements on such terms and conditions as the~~
24 ~~authority may deem appropriate and at such interest rates and on such terms as may~~

1 encourage compliance with environmental legal requirements; and
2 ~~(5) Utilize moneys credited to the fund established under § 34A-13-20, in such amounts~~
3 ~~and on such terms as the authority and the secretary of environment and natural~~
4 ~~resources may agree, to make loans, deposits, guarantees, and other security~~
5 ~~arrangements with any lender, trustee, or other party for the purposes of encouraging~~
6 ~~compliance with environmental legal requirements, and repay or provide for the~~
7 ~~repayment of moneys to such account in accordance with the procedures and on the~~
8 ~~terms established by the authority and the secretary of environment and natural~~
9 ~~resources.~~

10 Section 49. That § 34A-14-8 be repealed.

11 ~~34A-14-8. The authority may:~~

12 ~~(1) Borrow funds and issue its bonds from time to time and in such principal amounts~~
13 ~~as the authority deems necessary to carry out its purposes under this chapter,~~
14 ~~including, but not limited to, the payment of interest on its bonds, the establishment~~
15 ~~of reserves to secure the bonds, and payment of other expenses necessary, convenient~~
16 ~~and incident to fulfillment of its purposes;~~

17 ~~(2) Issue from time to time bonds to renew or to pay bonds, including the interest and~~
18 ~~any premium thereon, and whenever it deems refunding expedient, to refund any~~
19 ~~bonds by the issuance of new bonds, whether the bonds to be refunded have or have~~
20 ~~not matured, and to issue bonds partly to refund outstanding bonds and partly for any~~
21 ~~other of its corporate purposes. The refunding bonds may be sold and the proceeds~~
22 ~~applied to the purchase, redemption or payment of the bonds to be refunded, or~~
23 ~~exchanged for the bonds to be refunded.~~

24 Section 50. That § 34A-14-9 be repealed.

1 ~~— 34A-14-9. Except as otherwise expressly provided by the authority, every issue of its bonds~~
2 ~~shall be payable solely out of revenue or assets of the authority. The authority may request the~~
3 ~~secretary of environment and natural resources to establish an inspection fee for the purpose of~~
4 ~~payment of bonds up to twenty percent of the face value of defaulted bonds but not to exceed~~
5 ~~four million dollars. Additionally the two million dollars of fund assets available for financing~~
6 ~~purposes may be pledged as security for the issuance of the bonds or may be used in connection~~
7 ~~with any loans or other financing arrangements authorized by the authority as provided in this~~
8 ~~chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or~~
9 ~~guarantee from the federal government or agency thereof or any corporation, limited liability~~
10 ~~company, association, institution, or person or a pledge of any money, income, revenue,~~
11 ~~property, or assets of the authority from any source.~~

12 Section 51. That § 34A-14-10 be repealed.

13 ~~— 34A-14-10. Obligations issued under the provisions of this chapter may not be deemed to~~
14 ~~constitute a debt, liability or obligation of the state or of any other political subdivision thereof,~~
15 ~~nor a pledge of the full faith and credit of the state or any other political subdivision, but shall~~
16 ~~be payable solely from the revenues or assets of the authority pledged therefor. Each obligation~~
17 ~~issued under this chapter, shall contain on the face thereof a statement to the effect that the~~
18 ~~authority may not be obligated to pay the same, nor the interest thereon, except from the~~
19 ~~revenues or assets pledged therefor and that neither the full faith and credit, nor the taxing power~~
20 ~~of the state, or of any political subdivision thereof is pledged to the payment of the principal of~~
21 ~~or the interest on such obligation. All obligations of the authority issued under the provisions~~
22 ~~of this chapter shall be authority revenue bonds, notes or other obligations and may not be~~
23 ~~general obligations of the State of South Dakota.~~

24 Section 52. That § 34A-14-11 be repealed.

1 ~~— 34A-14-11. The bonds shall be authorized by a resolution of the authority, shall bear such~~
2 ~~date or dates and shall mature at such time or times as the resolution or any trust indenture or~~
3 ~~other instrument approved by such resolution may provide, except that no bond may mature~~
4 ~~more than thirty years from the date of its issue, as the resolution or any trust indenture or other~~
5 ~~instrument approved by such resolution shall provide. The bonds shall bear interest at such rate~~
6 ~~or rates, be in such denominations, be in such form, either coupon or registered, carry such~~
7 ~~registration privileges, be executed in such manner, be payable in such medium of payment, at~~
8 ~~such place or places, and be subject to such terms of redemption, including redemption prior to~~
9 ~~maturity, as such resolution or any trust indenture or other instrument approved by such~~
10 ~~resolution may provide. Other state laws relating to the issuance of revenue bonds may not apply~~
11 ~~to bonds issued by the authority, except as to laws regarding facsimile signatures on public~~
12 ~~securities. Bonds of the authority may be sold by the authority at public or private sale, and at~~
13 ~~such price or prices, including any premium or discount, as the authority shall determine.~~

14 Section 53. That § 34A-14-12 be repealed.

15 ~~— 34A-14-12. Any pledge made by the authority shall be valid and binding from the time when~~
16 ~~the pledge is made. The revenue, money, properties, or assets so pledged by the authority shall~~
17 ~~immediately be subject to the lien of such pledge without any physical delivery thereof or~~
18 ~~further act, and the lien of any such pledge shall be valid and binding as against all parties~~
19 ~~having claims of any kind in tort, contract, or otherwise against the authority, irrespective of~~
20 ~~whether the parties have notice thereof. Neither the resolution nor the trust indenture, if any, nor~~
21 ~~any other instrument by which a pledge is created need be recorded.~~

22 Section 54. That § 34A-14-13 be repealed.

23 ~~— 34A-14-13. The authority, subject to such agreements with bondholders or other agreements~~
24 ~~as may then exist, may purchase and cancel its bonds, loans, or other obligations out of any~~

1 funds available therefor, at any reasonable price which, if the bonds are then redeemable, may
2 not exceed the redemption price then applicable plus accrued interest to the next interest
3 payment thereon.

4 Section 55. That § 34A-14-14 be repealed.

5 ~~— 34A-14-14. The bonds may be secured by a trust indenture or other agreement by and~~
6 ~~between the authority and a corporate trustee which may be any bank having the power of a trust~~
7 ~~company or any trust company within or without the state. Such trust indenture or other~~
8 ~~agreement may contain such provisions for protecting and enforcing the rights and remedies of~~
9 ~~the bondholders as may be reasonable and proper and not in violation of law, including~~
10 ~~covenants setting forth the duties of the authority in relation to the exercise of its powers and~~
11 ~~the custody, safekeeping and application of all money. The authority may provide by the trust~~
12 ~~indenture or other agreement for the payment of the proceeds of the bonds, loans, or other~~
13 ~~obligations and the revenue to the trustee under the trust indenture or other agreement or other~~
14 ~~depository, and for the method of disbursement thereof, with such safeguards and restrictions~~
15 ~~as the authority may determine. All expenses incurred in carrying out the trust indenture or other~~
16 ~~agreement may be treated as a part of the operating expenses of the authority.~~

17 Section 56. That § 34A-14-15 be repealed.

18 ~~— 34A-14-15. Whether or not the bonds are in the form and character of negotiable~~
19 ~~instruments, such bonds are hereby made negotiable instruments, subject only to provisions of~~
20 ~~the bonds relating to registration.~~

21 Section 57. That § 34A-14-16 be repealed.

22 ~~— 34A-14-16. If any board member or officer of the authority ceases to be a member or officer~~
23 ~~of the authority prior to the delivery of any bonds or coupons signed by him, his signature or~~
24 ~~facsimile thereof is nevertheless valid and sufficient for all purposes, the same as if such~~

1 ~~member or officer had remained in office until such delivery.~~

2 Section 58. That § 34A-14-17 be repealed.

3 ~~—34A-14-17. Neither the members of the authority nor any other person executing the bonds~~
4 ~~issued under this chapter is subject to personal liability or accountability by reason of the~~
5 ~~issuance thereof.~~

6 Section 59. That § 34A-14-18 be repealed.

7 ~~—34A-14-18. The state does hereby pledge to and agree with the holder of any bonds issued~~
8 ~~under this chapter that the state will not limit or alter the rights vested in the authority to fulfill~~
9 ~~the terms of any agreements made with the holders thereof or in any way impair the rights or~~
10 ~~remedies of the holders until the bonds, together with the interest and any premium thereon,~~
11 ~~with interest on any unpaid installments of interest, and all costs and expenses in connection~~
12 ~~with any action or proceeding by or on behalf of the holders, are fully met and discharged in~~
13 ~~accordance with their terms. The authority may include this pledge and agreement of the state~~
14 ~~in any agreement with the holders of the bonds.~~

15 Section 60. That § 34A-14-19 be repealed.

16 ~~—34A-14-19. Any member or employee of the authority who has, will have, or later acquires~~
17 ~~a personal interest, direct or indirect, in any transaction with the authority shall immediately~~
18 ~~disclose the nature and extent of the interest in writing to the authority as soon as the member~~
19 ~~or employee has knowledge of such actual or prospective interest. The disclosure shall be~~
20 ~~entered upon the minutes of the authority. Upon the disclosure, the member or employee may~~
21 ~~not participate in any action by the authority authorizing the transaction. Actions taken when~~
22 ~~the member or employee reasonably believed that the member or employee had no and would~~
23 ~~not have any conflict are not invalidated because of such conflict. The fact that a member is also~~
24 ~~an officer or owner of an organization is not deemed to be a direct or indirect interest unless:~~

- 1 ~~—(1)—~~ The member has an ownership interest of greater than ten percent in the organization;
2 or
3 ~~—(2)—~~ The transaction in question does not involve all similar organizations, but rather
4 involves only the authority and the organization.

5 Section 61. That § 34A-14-20 be repealed.

6 ~~—34A-14-20. The exercise of the powers granted by this chapter will be in all respects for the~~
7 ~~benefit of the people of the state, and the authority is not required to pay any tax or assessment~~
8 ~~on any property owned by the authority under the provisions of this chapter, or upon the income~~
9 ~~therefrom; nor is the authority required to pay any transfer tax of any kind on account of~~
10 ~~instruments recorded by it or on its behalf.~~

11 ~~—Any obligations issued by the authority pursuant to this chapter, their transfer, and the~~
12 ~~income therefrom (including any profit made on the sale thereof), shall at all times be free from~~
13 ~~taxation by the state or any local unit or political subdivision or other instrumentality of the~~
14 ~~state.~~

15 Section 62. That § 34A-14-21 be repealed.

16 ~~—34A-14-21. The bonds and notes of the authority are hereby made securities in which all~~
17 ~~public officers and bodies of this state and all municipal subdivisions, all insurance companies~~
18 ~~and associations, and other persons carrying on insurance business, all banks, bankers, trust~~
19 ~~companies, including savings and loan associations, building and loan associations, investment~~
20 ~~banking companies, and other persons carrying on an investment banking business, all personal~~
21 ~~representatives, conservators, trustees, and other fiduciaries, and all other persons authorized~~
22 ~~to invest in bonds or obligations of the state, may properly and legally invest in the bonds and~~
23 ~~notes of the authority funds including capital in their own control or belonging to them. The~~
24 ~~bonds and notes are also hereby made securities which may be deposited with and may be~~

1 ~~received by all public officers and bodies of this state and all municipalities and municipal~~
2 ~~subdivisions for any purpose for which the deposit of bonds or notes or other obligations of this~~
3 ~~state is authorized.~~

4 Section 63. That § 34A-14-22 be repealed.

5 ~~— 34A-14-22. Insofar as the provisions of this chapter are inconsistent with the provisions of~~
6 ~~any other law, the provisions of this chapter shall be controlling.~~

7 Section 64. That § 34A-14-23 be repealed.

8 ~~— 34A-14-23. This chapter, being necessary to the welfare of the state and its inhabitants, shall~~
9 ~~be liberally construed so as to effectuate its purposes.~~

10 Section 65. That § 34A-14-24 be repealed.

11 ~~— 34A-14-24. If, after all indebtedness and other obligations of the authority are discharged,~~
12 ~~the authority is dissolved, its remaining assets shall inure to the benefit of the state.~~

13 Section 66. That § 34A-14-25 be repealed.

14 ~~— 34A-14-25. The authority may issue a cumulative total of twenty million dollars in bonds~~
15 ~~and the authority may pledge assets of the fund that are authorized for financing purposes as~~
16 ~~additional security for the issuance of the bonds, and the secretary of environment and natural~~
17 ~~resources may additionally pledge payment of up to four million dollars from future revenues~~
18 ~~of the inspection fee.~~

19 Section 67. That § 34A-14-26 be repealed.

20 ~~— 34A-14-26. The authority shall submit to the Governor and the Legislature within ninety~~
21 ~~days of the close of its fiscal year a complete and detailed report setting forth:~~

22 ~~— (1) — Its operations and accomplishments;~~

23 ~~— (2) — Its receipts and expenditures during such fiscal year in accordance with the categories~~
24 ~~or classifications established by the authority for its operating and capital outlay~~

1 purposes;

2 ~~(3) Its assets and liabilities at the end of its fiscal year, including a schedule of its loans~~
3 ~~and commitments and the status of reserve, special, or other funds; and~~

4 ~~(4) A schedule of its notes and bonds outstanding at the end of its fiscal year, together~~
5 ~~with a statement of the amounts redeemed and incurred during such fiscal year.~~

6 Section 68. That § 34A-14-27 be repealed.

7 ~~34A-14-27. This chapter may be cited as the "Petroleum Environmental Compliance~~
8 ~~Authority Act."~~

9 Section 69. That ARSD 74:33:01:01 be repealed.

10 ~~74:33:01:01. Definitions. Terms defined in SDCL 34A-13-1 and 34A-14-2 have the same~~
11 ~~meaning when used in this article with exception of the term "board." In addition, terms used~~
12 ~~in this article mean:~~

13 ~~(1) "Board," the board of PECA or the petroleum release compensation board as the context~~
14 ~~requires;~~

15 ~~(2) "PECA," the South Dakota petroleum environmental compliance authority.~~

16 Section 70. That ARSD 74:33:01:02 be repealed.

17 ~~74:33:01:02. Fee delinquency. Financing under chapters 74:33:02 and 74:33:03 is not~~
18 ~~available to a responsible person who is delinquent in the payment of the petroleum release~~
19 ~~compensation and tank inspection fee imposed by SDCL 34A-13-20.~~

20 Section 71. That ARSD 74:33:02:01 be repealed.

21 ~~74:33:02:01. Loan portions purchased from lenders. PECA shall purchase United States~~
22 ~~small business administration guaranteed portions of loans from originating lenders for the~~
23 ~~purpose of financing compliance with environmental legal requirements. Subject to the rules~~
24 ~~of this chapter, the PECA may sell the loans to investors and may designate the proceeds from~~

1 ~~the sales to purchase additional United States small business administration guaranteed loans.~~
2 ~~By making a market available to originating lenders of these loans, the PECA shall effect the~~
3 ~~terms and length of the loans pursuant to the rules of this chapter.~~

4 Section 72. That ARSD 74:33:02:02 be repealed.

5 ~~— 74:33:02:02. Small business administration guarantee. The principal and interest of the loan~~
6 ~~portion to be purchased must be fully guaranteed by the United States small business~~
7 ~~administration.~~

8 Section 73. That ARSD 74:33:02:03 be repealed.

9 ~~— 74:33:02:03. Eligible expenditures. Loan proceeds equal to or greater than the purchased~~
10 ~~portion must have been expended by a responsible person to obtain compliance with~~
11 ~~environmental legal requirements relating to petroleum storage tanks. Compliance costs may~~
12 ~~include actual loan origination costs and cleanup costs that were occasioned by a release from~~
13 ~~the tank but were not compensated by the petroleum release compensation board. The purchased~~
14 ~~portion cannot be attributable to additional tanks that provide expanded storage capacity or to~~
15 ~~facilities not related to compliance with environmental legal requirements relating to petroleum~~
16 ~~storage tanks. PECA may not purchase loan portions attributable to refinancing unless the~~
17 ~~refinancing is originated with new money financing to obtain or maintain compliance with~~
18 ~~environmental legal requirements relating to petroleum storage tanks.~~

19 Section 74. That ARSD 74:33:02:04 be repealed.

20 ~~— 74:33:02:04. Interest rate. The interest rate on the portion to be purchased, net of lender~~
21 ~~servicing fees, is PECA's interest rate in effect on the date the small business administration~~
22 ~~receives a guaranty application for the loan.~~

23 Section 75. That ARSD 74:33:02:05 be repealed.

24 ~~— 74:33:02:05. Interest calculation. Interest on the purchased portion shall be calculated on~~

1 ~~the basis of 365 days per year.~~

2 Section 76. That ARSD 74:33:02:06 be repealed.

3 ~~—74:33:02:06. Servicing fees. The originating lender may charge a servicing fee only on the~~
4 ~~purchased portion. The fee may not exceed one and one-half percent annually of the unpaid~~
5 ~~balance of the purchased portion.~~

6 Section 77. That ARSD 74:33:02:07 be repealed.

7 ~~—74:33:02:07. Loan term and amortization. The original loan term shall be for ten years. The~~
8 ~~loan shall be fully amortizing over its term.~~

9 Section 78. That ARSD 74:33:02:08 be repealed.

10 ~~—74:33:02:08. Loan payment. Loan payments shall be made in equal monthly installments~~
11 ~~to the extent practicable.~~

12 Section 79. That ARSD 74:33:02:09 be repealed.

13 ~~—74:33:02:09. Certificate of eligible expenditures. The originating lender must provide~~
14 ~~PECA a certificate signed by both the lender and the responsible person. The certificate must~~
15 ~~state that loan proceeds equal to or greater than the loan portion to be purchased were expended~~
16 ~~for eligible purposes. The certificate must be on a form provided by the director. The form shall~~
17 ~~allow listing of expenditures by categories, including loan closing costs, guaranty fees, cleanup~~
18 ~~costs, equipment costs, and construction costs.~~

19 Section 80. That ARSD 74:33:02:10 be repealed.

20 ~~—74:33:02:10. Construction approvals. Copies of tank installation approvals provided by the~~
21 ~~department of environment and natural resources, the state fire marshal, and municipal and~~
22 ~~county agencies with jurisdiction over project construction shall be provided PECA by the~~
23 ~~originating lender. Copies must be provided to PECA before sale and settlement on the~~
24 ~~purchased portion.~~

1 Section 81. That ARSD 74:33:02:11 be repealed.

2 ~~74:33:02:11. Sale and settlement. Sale and settlement on the purchase of the loan portion~~
3 ~~shall occur within one month after the date of the final loan settlement as submitted to the small~~
4 ~~business administration. Settlement shall be by wire transfer of funds.~~

5 Section 82. That ARSD 74:33:02:12 be repealed.

6 ~~74:33:02:12. PECA interest rate -- Criteria. The interest rate on purchased loan portions~~
7 ~~shall be based on the following factors:~~

8 ~~(1) Expected proceeds from the resale of the purchased portion under credit market~~
9 ~~conditions existing when the interest rate is set;~~

10 ~~(2) Interest rates necessary to provide an incentive for investment to responsible persons;~~

11 ~~(3) Estimated costs of reselling the purchased portion; and~~

12 ~~(4) Estimated interest rate risk during the time PECA owns the purchased portion.~~

13 ~~The interest rate shall be set by official motion of PECA not more often than monthly and~~
14 ~~not less often than semiannually.~~

15 Section 83. That ARSD 74:33:02:13 be repealed.

16 ~~74:33:02:13. PECA interest rate -- Announcement. PECA shall provide the interest rate~~
17 ~~applicable to purchased loan portions and its effective date to lenders in South Dakota upon~~
18 ~~their request. The rate shall also be posted at PECA's office.~~

19 Section 84. That ARSD 74:33:02:14 be repealed.

20 ~~74:33:02:14. PECA interest rate -- When effective. The interest rate applicable to purchased~~
21 ~~loan portions is effective on the date specified by PECA in its rate setting motion. The effective~~
22 ~~date shall be no earlier than seven days after the date of the passage of the motion.~~

23 Section 85. That ARSD 74:33:02:15 be repealed.

24 ~~74:33:02:15. Exemptions -- Interest rate and settlement period. If a guaranty application was~~

1 ~~received by the small business administration before the effective date of PECA's first~~
2 ~~established interest rate, PECA shall purchase the guaranteed portion of the loan if the interest~~
3 ~~rate on the guaranteed portion is at market rates existing when the guaranty application was~~
4 ~~received by the small business administration, as determined by PECA's board. Sale and~~
5 ~~settlement on these loan portions must occur within one month after the final loan settlement~~
6 ~~with the borrower as reported to the small business administration or within one month after the~~
7 ~~effective date of PECA's first interest rate, whichever is later.~~

8 Section 86. That ARSD 74:33:02:16 be repealed.

9 ~~— 74:33:02:16. Director's authority. The director may obligate PECA to purchase any loan~~
10 ~~portion meeting the requirements of this chapter.~~

11 Section 87. That ARSD 74:33:03:01 be repealed.

12 ~~— 74:33:03:01. Funds for unguaranteed loans. PECA shall make up to \$1,000,000 of~~
13 ~~uncommitted funds available for loans not guaranteed by the small business administration. The~~
14 ~~loans must be originated by lenders and must be to responsible persons.~~

15 Section 88. That ARSD 74:33:03:02 be repealed.

16 ~~— 74:33:03:02. Loan participation share -- Criteria. The funds provided by PECA for each~~
17 ~~loan shall be that share of total compliance costs necessary to achieve a blended interest rate on~~
18 ~~a loan for compliance costs to the responsible person which interest rate approximates estimated~~
19 ~~effective rates provided to responsible persons by lenders under chapter 74:33:02.~~

20 Section 89. That ARSD 74:33:03:03 be repealed.

21 ~~— 74:33:03:03. Loan participation share -- How set. PECA's board shall establish PECA's~~
22 ~~participation share in loans by motion following the criteria in § 74:33:03:02. This participation~~
23 ~~share shall be applicable to all loans in which PECA participates until the participation share~~
24 ~~is changed by subsequent PECA motion. The participation share shall be expressed as a fraction~~

1 ~~of the total lender loan provided by PECA.~~

2 Section 90. That ARSD 74:33:03:04 be repealed.

3 ~~—74:33:03:04. Loan participation share -- When set. PECA shall set its loan participation~~
4 ~~share not more often than monthly and not less often than semiannually.~~

5 Section 91. That ARSD 74:33:03:05 be repealed.

6 ~~—74:33:03:05. Loan participation share -- Notification. Lenders seeking PECA's established~~
7 ~~loan participation share may be advised of the share by calling or writing PECA's office. The~~
8 ~~call or letter shall request PECA's current loan participation share.~~

9 Section 92. That ARSD 74:33:03:06 be repealed.

10 ~~—74:33:03:06. Loan participation share -- Interest rate. The interest rate on the loan~~
11 ~~participation share shall be one percent of the remaining balance of the share calculated on an~~
12 ~~annual basis.~~

13 Section 93. That ARSD 74:33:03:07 be repealed.

14 ~~—74:33:03:07. Loan participation share -- Structure. The loan participation share shall be~~
15 ~~structured as the purchase of a certificate of deposit from the lender, as a loan to the lender, or~~
16 ~~as direct participation in a loan by the lender to a responsible person. Certificates of deposit and~~
17 ~~loans to originating lenders shall require the lender to pass on the interest rate on the loan~~
18 ~~participation share plus allowable servicing fees to the responsible person. Violation of this~~
19 ~~requirement shall result in the certificate of deposit or loan to the lender being immediately due~~
20 ~~and payable, without penalty to PECA, for the amount of the outstanding balance plus accrued~~
21 ~~interest and penalty interest on the original amount of the certificate or loan at the annual rate~~
22 ~~of seven percent. Direct participation in a loan to a responsible person shall be conditioned on~~
23 ~~repurchase of PECA's share by the originating lender for the remaining balance plus accrued~~
24 ~~interest at the request of the director in the event of default or 90 days of delinquency.~~

1 Section 94. That ARSD 74:33:03:08 be repealed.

2 ~~74:33:03:08. Origination fees. The originating lender may charge an origination fee of up~~
3 ~~to one percent of PECA's loan participation share. The origination fee may be included in the~~
4 ~~principal amount of PECA's loan participation share.~~

5 Section 95. That ARSD 74:33:03:09 be repealed.

6 ~~74:33:03:09. Servicing fees. The originating lender may charge a servicing fee to the~~
7 ~~responsible person of up to one and one-half percent on an annual basis of the outstanding~~
8 ~~balance of the loan participation share provided by PECA.~~

9 Section 96. That ARSD 74:33:03:10 be repealed.

10 ~~74:33:03:10. Eligible expenditures. Loan proceeds must be expended by a responsible~~
11 ~~person to obtain compliance with environmental legal requirements pertaining to petroleum~~
12 ~~storage tanks. Compliance costs may include actual loan origination costs and cleanup costs that~~
13 ~~were occasioned by a release from the tank but were not compensated by the petroleum release~~
14 ~~compensation board. The compliance costs cannot be attributable to additional tanks that~~
15 ~~provide expanded storage capacity or to facilities not related to compliance with environmental~~
16 ~~legal requirements relating to petroleum storage tanks. The loan may be used for refinancing~~
17 ~~otherwise eligible loans dated after April 1, 1988, and before the effective date of this chapter.~~

18 Section 97. That ARSD 74:33:03:11 be repealed.

19 ~~74:33:03:11. Certificates and approvals. The lender must comply with §§ 74:33:02:09 and~~
20 ~~74:33:02:10 except that the required copies must be provided upon the lender's final settlement~~
21 ~~of the loan to the responsible person. Failure to provide the necessary copies within 90 days~~
22 ~~after settlement is a violation subject to the penalties of § 74:33:03:07.~~

23 Section 98. That ARSD 74:33:03:12 be repealed.

24 ~~74:33:03:12. Director's authority. The director may obligate PECA to any loan participation~~

1 ~~share meeting the requirements of this chapter and may make arrangements with lenders to~~
2 ~~provide for the transfer of funds and the execution of documents related to the transaction.~~

3 Section 99. That § 46A-1-13.1 be repealed.

4 ~~—46A-1-13.1. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a twenty-one~~
5 ~~million dollar Bad River Restoration Project as generally described in the report entitled "The~~
6 ~~Missouri River/Bad River Restoration Project: An Eco System Approach" dated May 1994, is~~
7 ~~hereby authorized for the purpose of restoration of the Bad River through the prevention of~~
8 ~~nonpoint source pollution in the Bad River watershed area.~~

9 ~~—The Board of Water and Natural Resources may provide under the State Water Resources~~
10 ~~Management System grants in amounts not to exceed eight hundred seventy-five thousand~~
11 ~~dollars (\$875,000), or so much thereof as may be necessary, to the Bad River Restoration~~
12 ~~Project to provide the nonfederal matching requirements for the project under the federal Clean~~
13 ~~Water Act § 319 grant program or other federal fund programs requiring state match. No~~
14 ~~disbursements may be made under the grants authorized by this section unless funds are~~
15 ~~appropriated by the Legislature in conformance with § 46A-1-61.~~

16 Section 100. That § 45-6B-58 be repealed.

17 ~~—45-6B-58. After June 30, 1982, any operator proposing to engage in a new mining operation~~
18 ~~as provided in § 45-6B-53 shall file a permit application to engage in mining forty-five days~~
19 ~~prior to the start of the mining operation. Mining operations which were lawfully conducted~~
20 ~~prior to July 1, 1982, pursuant to § 45-6A-10, may continue to be so conducted if the operator~~
21 ~~files with the Board of Minerals and Environment a permit application. Unless the board finds~~
22 ~~that the operator has not complied with the terms of § 45-6A-10, as it existed prior to July 1,~~
23 ~~1982, the board shall grant the operator a new permit for the life of the mine.~~

24 Section 101. That § 45-6B-86 be repealed.

1 ~~45-6B-86. The department shall gather and publish information on an annual basis as to the~~
2 ~~number of acres of surface mining disturbed land and the amount of such land that has~~
3 ~~undergone reclamation as defined in this chapter and in § 45-6B-83.1.~~

4 Section 102. That § 45-6B-89 be repealed.

5 ~~45-6B-89. Pursuant to § 45-6B-82, a cumulative evaluation of the impacts of large-scale~~
6 ~~surface gold or silver mines in the Black Hills has been conducted and reviewed by a committee~~
7 ~~of citizens representing a cross section of interests attentive to issues relating to mining in the~~
8 ~~Black Hills. The study and the committee have recommended that certain controls be placed on~~
9 ~~the number of acres affected by large-scale mining in the Black Hills. The study and committee~~
10 ~~have further recommended that more extensive requirements are necessary for closure and~~
11 ~~postclosure, reclamation assurances, yearly activity and compliance reporting, critical resources~~
12 ~~and financial assurances for remediating accidental releases.~~

13 ~~The Legislature finds it to be in the public interest and the public policy of the State of South~~
14 ~~Dakota that the findings of the study and committee be implemented in law.~~

15 Section 103. That § 45-6B-93 be amended to read as follows:

16 45-6B-93. Any operator of a large-scale gold or silver surface mining operation shall submit
17 an annual report by January first of each year including an oral presentation to the Board of
18 Minerals and Environment explaining the information in the written annual report. The annual
19 report shall include the following information:

- 20 (1) The total and previous year's amount of affected land;
- 21 (2) The total and previous year's amount of surface mining disturbed land;
- 22 (3) The total and previous year's amount of land that has undergone interim reclamation;
- 23 (4) The total and previous year's amount of land that has undergone final reclamation and
24 which meets the required post-mining land use;

- 1 (5) The total and previous year's amount of land that has undergone final reclamation but
- 2 which does not meet the required post-mining land use;
- 3 (6) The total amount of groundwater withdrawn during the previous year;
- 4 (7) The total amount of surface water withdrawn during the previous year;
- 5 (8) The total amount of ore mined during the previous year;
- 6 (9) The total amount of ore processed during the previous year;
- 7 (10) The total amount of waste rock mined during the previous year;
- 8 (11) The total amount of gold and silver produced during the previous year;
- 9 (12) The total amount of cyanide used during the previous year; and
- 10 (13) A brief discussion of the coming year's operational plans including any anticipated
- 11 revisions that might require department or board approval.

12 ~~—Based on the annual reports submitted, the department shall publish an annual summary of~~

13 ~~the status of the large-scale gold and silver surface mining industry in the Black Hills. The~~

14 ~~report shall be provided to the board and to any interested person upon request.~~

15 Section 104. That § 45-6C-30 be repealed.

16 ~~—45-6C-30. The rules of the Board of Minerals and Environment and the Department of~~

17 ~~Environment and Natural Resources, adopted pursuant to §§ 45-6A-6.9 to 45-6A-6.13,~~

18 ~~inclusive, concerning the plugging of test holes, are transferred to the Board of Minerals and~~

19 ~~Environment. Such rules may be amended pursuant to the rule making authority granted in § 45-~~

20 ~~6C-29. The code commission shall replace §§ 45-6A-6.9 to 45-6A-6.13, inclusive, with § 45-~~

21 ~~6C-29 when such rules are reprinted.~~

22 Section 105. That § 45-6C-50 be repealed.

23 ~~—45-6C-50. Exploration operations shall be conducted as specified below:~~

- 24 ~~—(1) After July 1, 1982, any operator proposing to engage in a new exploration operation~~

1 shall comply with the provisions of this chapter;

2 ~~—(2)—~~ Applications for exploration operation permits filed under the provisions of chapter
3 45-6A prior to and pending on July 1, 1982, shall be processed in accordance with
4 the provisions of this chapter;

5 ~~—(3)—~~ Exploration permits granted under the provisions of chapter 45-6A prior to July 1,
6 1982, are valid for purposes of this chapter.

7 Section 106. That § 45-6D-35 be repealed.

8 ~~—45-6D-35. The rules of the Board of Minerals and Environment and the Department of~~
9 ~~Environment and Natural Resources, adopted pursuant to §§ 45-6A-6.9 to 45-6A-6.13,~~
10 ~~inclusive, concerning the plugging of test holes, are transferred to the Board of Minerals and~~
11 ~~Environment. Such rules may be amended pursuant to the rule making authority granted in § 45-~~
12 ~~6D-34. The Code Commission shall replace §§ 45-6A-6.9 to 45-6A-9.13, inclusive, with § 45-~~
13 ~~6D-34 when such rules are reprinted.~~

14 Section 107. That § 45-10-1 be repealed.

15 ~~—45-10-1. The Governor of the State of South Dakota is hereby authorized and directed for~~
16 ~~and in the name of the State of South Dakota to join with the other states in the Interstate Oil~~
17 ~~Compact to Conserve Oil and Gas, which was heretofore executed in the city of Dallas, Texas,~~
18 ~~on February 16, 1935, and is now on deposit with the Department of State of the United States,~~
19 ~~and has been extended to the first day of September, 1969, all with the consent of the Congress~~
20 ~~of the United States.~~

21 Section 108. That § 45-10-2 be repealed.

22 ~~—45-10-2. The Governor of the State of South Dakota is further authorized and empowered,~~
23 ~~for and in the name of the State of South Dakota to execute agreements for the further extension~~
24 ~~of the expiration date of said Interstate Compact to Conserve Oil and Gas, and to determine if~~

1 ~~and when it shall be to the best interest of the State of South Dakota to withdraw from said~~
2 ~~compact following a sixty days' notice as provided by its terms.~~

3 Section 109. That § 45-10-3 be repealed.

4 ~~—45-10-3. In the event of any withdrawal the Governor of the state or any succeeding~~
5 ~~Governor may thereafter in his discretion effect the reentry of the state into the said compact as~~
6 ~~herein provided.~~

7 Section 110. That § 45-10-4 be repealed.

8 ~~—45-10-4. The Governor shall be the official representative of the State of South Dakota on~~
9 ~~the Interstate Oil Compact Commission provided for in the compact to conserve oil and gas, and~~
10 ~~shall exercise and perform for the State of South Dakota all of the powers and duties as~~
11 ~~members of the Interstate Oil Compact Commission.~~

12 Section 111. That § 45-10-5 be repealed.

13 ~~—45-10-5. The Governor shall have the authority to appoint an assistant representative who~~
14 ~~shall act in his stead as the official representative of the State of South Dakota as a member of~~
15 ~~said commission. His official representative, if not already a state official, shall take the oath~~
16 ~~of office prescribed by the Constitution and file the same with the secretary of state.~~

17 Section 112. That § 45-10-6 be repealed.

18 ~~—45-10-6. The Governor shall make a detailed report of the acts and accomplishments of the~~
19 ~~commission or commissions selected under the provisions of this chapter and all accounting of~~
20 ~~expenditures made pursuant to this chapter, to each regular session of the Legislature.~~

21 Section 113. That § 46A-1-13.3 be repealed.

22 ~~—46A-1-13.3. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a six million~~
23 ~~five hundred thousand (\$6,500,000) dollar Fall River County Rural Water System project as~~
24 ~~generally described in the report "Engineering Planning Report Fall River Water Users System"~~

1 ~~dated May 1992, as supplemented by "Revised Cost Estimates for Fall River Water Users~~
2 ~~System" dated August 5, 1994 is hereby authorized for the purposes of providing safe and~~
3 ~~adequate municipal, rural, and industrial water supplies in Fall River County. There is hereby~~
4 ~~authorized from the South Dakota water and environment fund established pursuant to § 46A-1-~~
5 ~~60, a grant in the amount of eight hundred thousand dollars, or so much thereof as may be~~
6 ~~necessary, to provide the State of South Dakota's portion of the nonfederal matching~~
7 ~~requirements for the Fall River project. No disbursements may be made under the grant~~
8 ~~authorized by this section unless funds are appropriated by the Legislature in conformance with~~
9 ~~§ 46A-1-61. Grant terms and conditions shall be set by the Board of Water and Natural~~
10 ~~Resources.~~

11 Section 114. That § 46A-1-13.5 be repealed.

12 ~~— 46A-1-13.5. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a one hundred~~
13 ~~eight million four hundred thousand dollar Mid-Dakota Rural Water System as generally~~
14 ~~described in the report "Mid-Dakota Rural Water System Feasibility Study and Report" dated~~
15 ~~November 1988 and revised January 1989 and March 1989, as supplemented by the~~
16 ~~"Supplemental Report for Mid-Dakota Rural Water System" dated March 1990 is hereby~~
17 ~~authorized for the purposes of providing safe and adequate municipal, rural, and industrial water~~
18 ~~supplies as well as mitigation of wetlands and water conservation on the counties of Beadle,~~
19 ~~Buffalo, Hand, Hughes, Hyde, Jerauld, Potter, Sanborn, Sully, and small portions of Spink,~~
20 ~~Kingsbury, and Aurora counties.~~

21 Section 115. That § 46A-1-13.9 be repealed.

22 ~~— 46A-1-13.9. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, the twenty million dollar~~
23 ~~James River project as generally described in P.L. 99-662 as amended to January 1, 1992, is~~
24 ~~hereby authorized for the purposes of providing tributary drainage control, wetlands~~

1 enhancement, riparian habitat development and minimum in-stream flows in the counties of
2 ~~Brown, Spink, Beadle, Sanborn, Davison, Hanson, Hutchinson, and Yankton.~~

3 Section 116. That § 46A-1-90 be repealed.

4 ~~—46A-1-90. The South Dakota Conservancy District in carrying out the authority established~~
5 ~~in subdivision 46A-2-2(7) through a contractual agreement with the federal government to~~
6 ~~upgrade federal hydroelectric facilities shall ensure that the power realized from upgrading~~
7 ~~federal hydroelectric facilities is marketed subject to the statutory limitation contained in section~~
8 ~~5 of the Flood Control Act of 1944, 16 U.S.C. § 825s, as amended to January 1, 2011. Funds~~
9 ~~accruing to the district under such contracts shall be deposited into the South Dakota water and~~
10 ~~environment fund established by § 46A-1-60 for the purposes of debt service of any bond~~
11 ~~indebtedness incurred pursuant to the upgrade of federal hydroelectric facilities and for grants~~
12 ~~and loans authorized from the water and environment fund.~~

13 Section 117. That § 46A-2-9 be repealed.

14 ~~—46A-2-9. The Board of Water and Natural Resources shall keep accurate minutes of their~~
15 ~~meetings and accurate records and books of accounts clearly setting forth and reflecting the~~
16 ~~operations, management, and business of the district. Said minutes, records, and books shall be~~
17 ~~kept at the principal place of business of the district and during reasonable business hours~~
18 ~~always open to public inspection.~~

19 Section 118. That § 46A-2-10 be repealed.

20 ~~—46A-2-10. The fiscal year of the district shall be July first through June thirtieth of each year.~~
21 ~~The Board of Water and Natural Resources, at the close of each year's business, shall cause an~~
22 ~~audit to be made by the State Department of Legislative Audit, or an auditor approved by the~~
23 ~~State Department of Legislative Audit, of the books, records, and financial affairs of the district,~~
24 ~~and a written report of such audit shall be kept on file in the principal place of business of the~~

1 ~~district and a copy shall be filed in the Office of the Secretary of State.~~

2 Section 119. That § 46A-7A-1 be repealed.

3 ~~—46A-7A-1. Terms used in this chapter mean:~~

4 ~~—(1)—"Board," the board of directors of the Cendak Irrigation District;~~

5 ~~—(2)—"District," the Cendak Irrigation District;~~

6 ~~—(3)—"Elector," a natural person or designated representative of a firm, partnership, limited~~
7 ~~liability company, association, estate, or corporation that is a holder of title of lands~~
8 ~~within the district;~~

9 ~~—(4)—"Holder of title," a holder of evidence of title to lands within the district or a holder~~
10 ~~of land within the district under a possessory right acquired by entry or purchase from~~
11 ~~the United States or the State of South Dakota;~~

12 ~~—(5)—"Landowner," a holder of title;~~

13 ~~—(6)—"Publication," publication in one official newspaper, as designated in § 7-18-3, in~~
14 ~~each county where a portion of the district lies;~~

15 ~~—(7)—"State board," the Board of Water and Natural Resources; and~~

16 ~~—(8)—"Total benefit," the estimated cost of a construction project of the district if it is to~~
17 ~~be funded by the issuance of bonds, the total amount of the loan or loans made to the~~
18 ~~district by the United States or the state if a construction project is so funded, or the~~
19 ~~sum of such bonds and loans if a construction project is funded by such combination.~~

20 Section 120. That § 46A-7A-2 be repealed.

21 ~~—46A-7A-2. There is established the Cendak Irrigation District to provide irrigation water and~~
22 ~~other services from works constructed to deliver and distribute water from the Missouri River~~
23 ~~pursuant to plans developed in studies authorized by federal Public Law 97-273 (96 Stat. 1181).~~

24 Section 121. That § 46A-7A-3 be repealed.

1 ~~46A-7A-3. Lands initially within the district are those lands on a list provided by local~~
2 ~~project sponsors to be filed with the state board. The list shall contain the name and address of~~
3 ~~each landowner whose lands are to be included in the district. Before it fixes the date for the~~
4 ~~validation election required by § 46A-7A-11, the state board shall notify each such landowner,~~
5 ~~by first class mail, that:~~

6 ~~(1) The landowner's land is to be included in the district;~~

7 ~~(2) An election is to be held on the question of whether the district should be formed;~~

8 ~~(3) Information concerning the district and the election may be obtained from the address~~
9 ~~of the state board; and~~

10 ~~(4) Each landowner has the right to have the landowner's land excluded from the district~~
11 ~~within one hundred eighty days following the validation election without obligation.~~

12 ~~The lands included in the district, which need not be contiguous, may be changed from time~~
13 ~~to time by action of the board by exclusions or inclusions as provided in §§ 46A-7A-12 to 46A-~~
14 ~~7A-18, inclusive.~~

15 Section 122. That § 46A-7A-4 be repealed.

16 ~~46A-7A-4. The district shall provide water service for irrigation and other farm purposes,~~
17 ~~including on-farm environmental mitigation and enhancement measures. With approval of the~~
18 ~~state board and the board, the district may provide water for environmental and recreational~~
19 ~~purposes. If water is available and it is the judgment of the board that it can be delivered for~~
20 ~~other uses without impairment of the district's primary irrigation function, the district may~~
21 ~~provide water service under contract to municipalities, other districts or to private individuals~~
22 ~~or companies under terms established by the board. Providing water service to areas other than~~
23 ~~district lands is subject to prior approval by the state board.~~

24 Section 123. That § 46A-7A-5 be repealed.

1 ~~—46A-7A-5. The district, under contract approved by the board, may transport water which~~
2 ~~others hold rights to use through district facilities, provided that such transport does not impair~~
3 ~~the district's ability to perform its primary functions.~~

4 Section 124. That § 46A-7A-6 be repealed.

5 ~~—46A-7A-6. If land within the district is converted from farming to other uses, including~~
6 ~~residential or industrial, such land shall be excluded from the district and may not continue to~~
7 ~~have a right to irrigation or other water, but may be served under contract as provided in § 46A-~~
8 ~~7A-4.~~

9 Section 125. That § 46A-7A-7 be repealed.

10 ~~—46A-7A-7. The provisions of this chapter do not abrogate or limit the rights, powers, duties,~~
11 ~~and functions of the State Water Management Board, but are supplementary thereto. This~~
12 ~~chapter does not limit or affect the laws of this state relating to the organization and~~
13 ~~maintenance of irrigation districts, water user districts, drainage districts, soil conservation~~
14 ~~districts, or watershed districts, nor does it infringe upon or establish any rights superior to any~~
15 ~~existing water rights, nor does it preclude establishment of any similar public entity wholly or~~
16 ~~in part within the boundaries of the district created by this chapter. The provisions of chapters~~
17 ~~46A-4, 46A-5, 46A-6, and 46A-7 do not apply to the district.~~

18 Section 126. That § 46A-7A-8 be repealed.

19 ~~—46A-7A-8. Only electors are entitled to vote in a district election. Each elector over the age~~
20 ~~of eighteen years may vote in person or by proxy. Any conservator or personal representative~~
21 ~~of a person or estate of an elector shall be considered the elector for the purpose of this chapter.~~

22 Section 127. That § 46A-7A-9 be repealed.

23 ~~—46A-7A-9. Any firm, association, or corporation that is a holder of title may designate an~~
24 ~~officer or agent to vote as its elector by a written instrument under the seal of the firm,~~

1 ~~association, or corporation. Holders of title as joint tenants, joint tenants with rights of~~
2 ~~survivorship, and tenants in common shall vote their separate interests as they appear. If their~~
3 ~~separate interests are not specifically defined either in the county assessment role or a signed~~
4 ~~statement on file with the district, each tenant shall be deemed to own an equal share. Any~~
5 ~~partnership that is a holder of title may designate the partner or agent to vote as its elector by~~
6 ~~a written instrument signed by all the partners. The written instruments required under this~~
7 ~~section shall be presented to and filed with the election officials or with the board if the election~~
8 ~~is by mail.~~

9 Section 128. That § 46A-7A-10 be repealed.

10 ~~—46A-7A-10. In the validation election required by § 46A-7A-11, each elector may cast one~~
11 ~~vote in the division in which the majority of the elector's land is located. In any election for~~
12 ~~directors or election for dissolution of the district, as provided in this chapter, each elector may~~
13 ~~vote in each division in which any of the district land owned by the elector is situated and may~~
14 ~~cast one vote for each full acre of such land to which the elector holds title in the division. In~~
15 ~~any other district election, each elector may cast one vote for each one hundred dollars, but not~~
16 ~~fraction thereof, of district assessed valuation of district land to which the elector holds title. The~~
17 ~~district assessed valuation is the valuation assessed by the district.~~

18 Section 129. That § 46A-7A-11 be repealed.

19 ~~—46A-7A-11. The state board shall fix a date for a validation election on this chapter, which~~
20 ~~election may not be more than ninety days after the list provided for in § 46A-7A-3 is filed with~~
21 ~~the state board. The ballots at that election shall have printed on them "For approval of Cendak~~
22 ~~Irrigation District Act" and "Against approval of Cendak Irrigation District Act." Notice of such~~
23 ~~election need not give the entire chapter, but shall be sufficient if it shall state in a general way~~
24 ~~the substance thereof.~~

1 Section 130. That § 46A-7A-12 be repealed.

2 ~~—46A-7A-12. Any holder of title to land included in the original district or any land~~
3 ~~subsequently annexed to the district may elect to exclude all or any part of his or her lands~~
4 ~~without any obligation whatsoever by notice to the board within one hundred eighty days~~
5 ~~following the validation election.~~

6 Section 131. That § 46A-7A-13 be repealed.

7 ~~—46A-7A-13. After one hundred eighty days following the validation election, any request~~
8 ~~for exclusion of land shall be granted by the board. Land so excluded and land excluded in~~
9 ~~accordance with the provisions of § 46A-7A-6 shall remain liable for its share of all obligations~~
10 ~~made to benefit such land as determined by the board. Any credits for landowner bonds~~
11 ~~applicable to excluded land may be credited against liabilities. If the exclusion is subsequent to~~
12 ~~execution of a contract with the United States, such exclusion only may be granted by the board~~
13 ~~subject to any terms and conditions of such contract.~~

14 Section 132. That § 46A-7A-14 be repealed.

15 ~~—46A-7A-14. A petition for inclusion of lands in the district may be submitted to the board.~~
16 ~~If, in the judgment of the board, and with prior written approval of the secretary of the interior~~
17 ~~if required by contract with the United States, such lands are susceptible to irrigation from the~~
18 ~~Cendak project without adverse effect upon other land within the district, the board may~~
19 ~~establish terms and conditions as appropriate, including annexation fees equivalent to the~~
20 ~~amounts previously advanced by other district lands for initial project formulation; liability for~~
21 ~~the obligations assumed by the district; if capital benefit assessments for bonds have been~~
22 ~~levied, the assumption by the lands to be included of an equivalent capital benefit assessment;~~
23 ~~and such other terms and conditions as the board finds appropriate.~~

24 Section 133. That § 46A-7A-15 be repealed.

1 ~~—46A-7A-15. If a holder of title wishes both to exclude certain lands from the district and to~~
2 ~~bring other lands into the district, the board, subject to any approvals from the secretary of the~~
3 ~~interior required by contracts with the United States, if it feels that the lands to be included are~~
4 ~~substantially equivalent to the lands to be excluded, may agree to grant both the inclusion and~~
5 ~~exclusion simultaneously, with the liabilities to the district of the excluded land to be transferred~~
6 ~~to the included land.~~

7 Section 134. That § 46A-7A-16 be repealed.

8 ~~—46A-7A-16. The board may not accept lands for annexation that would make the total~~
9 ~~acreage of land in the district, exclusive of rights-of-way for project works, exceed five hundred~~
10 ~~forty thousand acres.~~

11 Section 135. That § 46A-7A-17 be repealed.

12 ~~—46A-7A-17. The district shall prepare a list of lands within the district as of the one hundred~~
13 ~~eighty-first day following the validation election and shall file a copy of the list with the register~~
14 ~~of deeds in each county within which any of the lands of the district are situated. Upon any~~
15 ~~further change of the lands included in the district, a copy of the order of the board ordering the~~
16 ~~change, certified by the president and secretary of the board, shall be filed for record with the~~
17 ~~register of deeds of each county within which the change is made.~~

18 Section 136. That § 46A-7A-18 be repealed.

19 ~~—46A-7A-18. If there is an inclusion or exclusion of any land within the district by~~
20 ~~proceedings under this chapter, the board, at least thirty days prior to the next succeeding regular~~
21 ~~election, shall make an order readjusting as necessary the boundaries of its divisions to keep~~
22 ~~them as nearly equal in area of district lands as is practicable.~~

23 Section 137. That § 46A-7A-19 be repealed.

24 ~~—46A-7A-19. The district shall be governed by a board of seven directors. The district shall~~

1 be divided into seven divisions, as depicted on a map to accompany the list filed with the state
2 board in accordance with ~~§ 46A-7A-17~~. Division boundaries are subject to state board review
3 and approval, which approval may not be unreasonably withheld. Divisions shall be as nearly
4 equal in area district lands as practical. The state board shall provide for an initial election of
5 directors, which election shall be combined with the validation election required by ~~§ 46A-7A-~~
6 ~~11~~. One director shall represent each division. The initial members of the board from divisions
7 one, four, and seven shall be elected for terms of three years, the initial members of the board
8 from divisions two and five shall be elected for terms of two years, and the initial members of
9 the board from divisions three and six shall be elected for terms of one year.

10 Section 138. That § 46A-7A-20 be repealed.

11 ~~— 46A-7A-20. Any director shall either be an elector, or the designated representative of an~~
12 ~~elector, holding title to a minimum of one hundred acres of district land within the division the~~
13 ~~director represents and shall reside within the general boundaries of the division as set forth in~~
14 ~~the notice provided in § 46A-7A-21 or as later modified by the board.~~

15 Section 139. That § 46A-7A-21 be repealed.

16 ~~— 46A-7A-21. After setting the date of the election for validation and the initial board of~~
17 ~~directors, the state board shall publish notice of the election and shall prepare any necessary~~
18 ~~initial voting lists for the election. The notice shall contain the day and date of the election and~~
19 ~~shall describe the general boundaries of the divisions. The notice shall be published at least once~~
20 ~~each week for at least two consecutive weeks. The second publication shall be at least forty days~~
21 ~~prior to the election.~~

22 Section 140. That § 46A-7A-22 be repealed.

23 ~~— 46A-7A-22. Nominating petitions for the initial board of directors of the district shall be~~
24 ~~provided by the state board and shall be filed with the state board not later than thirty days prior~~

1 to the election. The petitions shall be in a form prescribed by the State Board of Elections and
2 shall be signed by at least ten qualified electors of the district division. If two or more
3 nominating petitions are filed for any division, the state board shall certify the nomination of
4 candidates to the proper county auditors and shall furnish nonpolitical sample and official
5 ballots in adequate numbers in time to permit distribution of the ballots by the auditors. If only
6 one nominating petition is filed for any division, no election for director need be held in that
7 division.

8 Section 141. That § 46A-7A-23 be repealed.

9 ~~46A-7A-23. For the purpose of the validation election and for election of the initial directors~~
10 ~~of the district, the state board shall establish a convenient number of election precincts in each~~
11 ~~division, which precincts may be changed by the board in subsequent elections. The election~~
12 ~~shall be conducted in accordance with the general election laws of the state.~~

13 Section 142. That § 46A-7A-24 be repealed.

14 ~~46A-7A-24. If a majority of all votes cast are for approval of the Cendak Irrigation District,~~
15 ~~the board, by resolution, shall declare the Cendak Irrigation District fully functional under the~~
16 ~~provisions of this chapter. Upon filing a copy of the resolution with the secretary of state, the~~
17 ~~district shall be a political subdivision of the state with the authority, powers, and duties~~
18 ~~prescribed in this chapter. The secretary of state shall issue certificates of election to the~~
19 ~~successful candidate for director in any contested division and to the single candidate for~~
20 ~~director in any uncontested division. The cost of the election shall be assigned to the district.~~

21 Section 143. That § 46A-7A-25 be repealed.

22 ~~46A-7A-25. Any election shall be conducted, canvassed, recounted, and contested as other~~
23 ~~elections under the general laws of this state, unless the general election laws conflict with the~~
24 ~~provisions of this chapter. If details concerning conduct, canvassing, recounting, or contest of~~

1 an election are not set forth in this chapter and the general election laws are not applicable, the
2 state board shall promulgate rules pursuant to chapter 1-26 to carry out the intentions of this
3 chapter with respect to elections.

4 Section 144. That § 46A-7A-26 be repealed.

5 ~~46A-7A-26. Prior to any election held after the initial election, the board shall publish notice~~
6 ~~of the time and place of the election at least once each week for at least two consecutive weeks~~
7 ~~prior to the election. The second publication shall be at least thirty days prior to the election. The~~
8 ~~secretary of the board shall post notice of the election in the office of the district.~~

9 Section 145. That § 46A-7A-27 be repealed.

10 ~~46A-7A-27. In the calendar year following the validation election and each year thereafter,~~
11 ~~the district shall call a regular election, at which there shall be elected for a term of three years,~~
12 ~~two or more members of the board, as the case may be. Any nominee from each division shall~~
13 ~~be nominated as provided and shall be elected by receiving the highest number of votes cast by~~
14 ~~the electors of the nominee's division. Any regular election of the district shall be held on the~~
15 ~~last Tuesday in October of each year.~~

16 Section 146. That § 46A-7A-28 be repealed.

17 ~~46A-7A-28. After the initial election of directors, the directors shall be nominated by filing~~
18 ~~with the board, not less than thirty days before the regular election, nominating petitions for the~~
19 ~~vacancies to be filled. The petitions shall be in the form prescribed by the State Board of~~
20 ~~Elections and shall be signed by at least ten qualified electors of the division in which a vacancy~~
21 ~~will occur. No petition may contain the name of more than one candidate for any vacancy to be~~
22 ~~filled. Each elector may sign petitions for vacancies in each division in which the elector is a~~
23 ~~holder of title, but no elector may sign more than one petition for any particular vacancy.~~

24 Section 147. That § 46A-7A-29 be repealed.

1 ~~—46A-7A-29. If only one nominating petition for any vacancy has been filed, then no election~~
2 ~~is necessary to fill the vacancy and the secretary of the board shall issue a certificate of election~~
3 ~~to the nominee in the same manner as to a successful candidate after election.~~

4 Section 148. That § 46A-7A-30 be repealed.

5 ~~—46A-7A-30. The board may provide for a system of voting by mail for resident and~~
6 ~~nonresident electors alike in any election after the one for the election of the first set of directors~~
7 ~~in the bylaws of the district. Such system shall provide for a secret ballot and shall provide for~~
8 ~~additional general safeguards, as included in the absentee voting law relating to general state~~
9 ~~elections. However, it is optional with the electors to return their ballots by ordinary mail or by~~
10 ~~registered or certified mail and either with or without special delivery postage.~~

11 Section 149. That § 46A-7A-31 be repealed.

12 ~~—46A-7A-31. Prior to publication of notice, the board shall appoint, from the electors of each~~
13 ~~precinct participating in the election, one clerk and two judges, who shall constitute a board of~~
14 ~~election for the precinct in any election not conducted under a district system of voting by mail.~~
15 ~~If the board fails to appoint a board of election or the members appointed do not attend at the~~
16 ~~opening of the polls on the morning of election, the electors of the precinct present at the hour~~
17 ~~may appoint a board or supply the place of an absent member thereof. The board, in its order~~
18 ~~appointing the board of election, shall designate the hour and place in the precinct where the~~
19 ~~election shall be held.~~

20 Section 150. That § 46A-7A-32 be repealed.

21 ~~—46A-7A-32. One of the judges appointed under § 46A-7A-31 shall be chairman of the~~
22 ~~election board and shall appoint any judge or clerk if during the progress of the election any~~
23 ~~judge or clerk ceases to act. Any member of the board of election or any clerk may administer~~
24 ~~and certify oaths required to be administered during the progress of an election. Before opening~~

1 the polls, each member of the election board shall take an oath faithfully to perform the duties
2 imposed by law. Any elector of the precinct may administer and certify the oath.

3 Section 151. That § 46A-7A-33 be repealed.

4 ~~—46A-7A-33. The board shall meet at its usual place of meeting on the first Monday after~~
5 ~~each election to canvass the return. If, at the time of meeting, the returns from each precinct in~~
6 ~~the district have been received, the board shall proceed to canvass the returns but if all returns~~
7 ~~have not been received, the canvass shall be postponed from day to day until all returns have~~
8 ~~been received. The canvass shall be made in public by opening the returns, ascertaining the vote~~
9 ~~of the district for each nominee and declaring the results thereof. No list, tally paper, or~~
10 ~~certificate returned from any election may be set aside or rejected for want of form if it can be~~
11 ~~satisfactorily understood.~~

12 Section 152. That § 46A-7A-34 be repealed.

13 ~~—46A-7A-34. The board shall declare elected the person having the highest number of votes~~
14 ~~cast for each vacancy. The secretary of the board shall immediately deliver to that person a~~
15 ~~certificate of election, signed by him and authenticated with the seal of the district.~~

16 Section 153. That § 46A-7A-35 be repealed.

17 ~~—46A-7A-35. The secretary of the board, as soon as the result is declared, shall enter upon the~~
18 ~~records of the board and file with the state board a statement of such results. The statement shall~~
19 ~~contain:~~

20 ~~—(1)—The total number of votes cast in the district and in each division of the district;~~

21 ~~—(2)—The names of the persons receiving votes;~~

22 ~~—(3)—The office for which each nominee received votes;~~

23 ~~—(4)—The number of votes cast in each precinct for each nominee; and~~

24 ~~—(5)—The number of votes cast in the division for each nominee.~~

1 Section 154. That § 46A-7A-36 be repealed.

2 ~~46A-7A-36. In case of a vacancy in the office of a member of the board, the vacancy shall~~
3 ~~be filled by appointment by a majority of the remaining members of the board. Any director so~~
4 ~~appointed shall hold office until the next election of the division and until the director's~~
5 ~~successor is elected and qualified.~~

6 Section 155. That § 46A-7A-37 be repealed.

7 ~~46A-7A-37. Any director elected in compliance with § 46A-7A-24 shall enter immediately~~
8 ~~into the duties of the office upon qualifying as provided in § 46A-7A-38 and shall hold office~~
9 ~~until the next regular election of the district, when a successor is elected and qualified. Any~~
10 ~~director elected thereafter shall assume the duties of the office on the last Tuesday in November~~
11 ~~after the election and shall hold office until a successor is elected and qualified.~~

12 Section 156. That § 46A-7A-38 be repealed.

13 ~~46A-7A-38. Before assuming the duties of the office, any director or officer shall take and~~
14 ~~subscribe an official oath. The district treasurer shall execute an official bond, approved by the~~
15 ~~board of directors, in the sum of not less than one thousand dollars, plus such additional~~
16 ~~amounts as determined by the board. Any official bond shall be in the form prescribed by law~~
17 ~~for official bonds of county officers. However, the obligee named in the bond shall be the~~
18 ~~district, and if approved surety company bonds are furnished, the cost of the bonds shall be paid~~
19 ~~by the district.~~

20 Section 157. That § 46A-7A-39 be repealed.

21 ~~46A-7A-39. Upon certification of board members' election by the secretary of state, the~~
22 ~~initial board shall promptly convene and elect from its numbers a president, vice-president,~~
23 ~~secretary, and treasurer. The secretary and treasurer may be one position.~~

24 Section 158. That § 46A-7A-41 be repealed.

1 ~~46A-7A-41. At the board's regular November meeting in each year, the directors shall~~
2 ~~organize as a board for the ensuing year, elect a president, a vice president, a secretary, and a~~
3 ~~treasurer or secretary-treasurer from their numbers.~~

4 Section 159. That § 46A-7A-42 be repealed.

5 ~~46A-7A-42. The board, as soon as practicable, shall establish regular meeting times and~~
6 ~~places. It shall hold a regular meeting each month on a day specified in the bylaws of the district~~
7 ~~at such time and at such place as the president shall designate. The board may hold such special~~
8 ~~meetings as are required for proper transaction of business. All special meetings shall be ordered~~
9 ~~by the president of the board, the order to be entered of record and five days' notice thereof shall~~
10 ~~be given to each member unless notice is either waived in writing or by the presence of the~~
11 ~~director at the special meeting. The president also shall order a special meeting upon the request~~
12 ~~of any two directors. The order shall specify the business to be transacted and no other business~~
13 ~~than that specified may be transacted. Any meetings of the board shall be public. A majority of~~
14 ~~board members shall constitute a quorum for transaction of business. Upon any question~~
15 ~~requiring a vote, there shall be a concurrence of at least a majority of the members present to~~
16 ~~affirm the decision.~~

17 Section 160. That § 46A-7A-43 be repealed.

18 ~~46A-7A-43. Any record of the board shall be maintained and open to inspection during~~
19 ~~regular business hours.~~

20 Section 161. That § 46A-7A-44 be repealed.

21 ~~46A-7A-44. For time actually employed in the duties of the office and in attending and~~
22 ~~returning from sessions of the board and other meetings approved by the board, any director~~
23 ~~shall receive compensation, per diem, and mileage allowances in an amount not to exceed state~~
24 ~~rates. Any exception may be granted by an affirmative vote of the board. The board shall fix the~~

1 compensation to be paid to district officers and employees. Such compensation shall be paid
2 from the district general fund.

3 Section 162. That § 46A-7A-45 be repealed.

4 ~~46A-7A-45. The board shall manage and conduct the business affairs of the district; make
5 and execute all necessary contracts; employ such agents, officers and employees as may be
6 required and prescribe their duties; adopt a seal for the district; accept gifts to the district;
7 establish equitable bylaws and regulations for the conduct of business and for the equitable
8 distribution and use of water; and generally perform any acts as necessary to carry out the
9 purposes of this chapter. Such bylaws and regulations shall be printed in convenient form for
10 distribution.~~

11 Section 163. That § 46A-7A-46 be repealed.

12 ~~46A-7A-46. The district may enter into any contract to supply water to users for purposes
13 other than irrigation if the contract does not compromise the ability of landowners in the district
14 to obtain the waters to which they are entitled. Any contract executed pursuant to this section
15 shall constitute the entire obligation of any such user to the district. The board shall obtain
16 approval of the state board before it may execute such contract for service to lands other than
17 district lands.~~

18 Section 164. That § 46A-7A-47 be repealed.

19 ~~46A-7A-47. No director or officer of the district may be interested in any manner, directly
20 or indirectly, in any contract awarded by the district or in the profits to be derived from the
21 contract, nor may the director or officer receive any gratuity or bribe. Any director or officer
22 who is interested in any manner, directly or indirectly, in any contract awarded by the board or
23 in the profits derived from the contract, or who receives any gratuity or bribe, is guilty of a Class
24 5-felony.~~

1 Section 165. That § 46A-7A-48 be repealed.

2 ~~46A-7A-48. The remaining balance of any state study loan funds advanced or not disbursed~~
3 ~~to any nonprofit corporation located within the district for the purpose of studying and~~
4 ~~advancing an irrigation project within the district shall transfer to the district upon an affirmative~~
5 ~~majority vote at any election at which the question is presented to the electorate of the district.~~

6 Section 166. That § 46A-7A-49 be repealed.

7 ~~46A-7A-49. Except as provided in § 46A-7A-163, liability for obligations shall run to each~~
8 ~~acre of land in the district as originally established and not exempted or excused prior to one~~
9 ~~hundred eighty days following the validation election, and also to any lands annexed to the~~
10 ~~district subsequent to July 1, 1985.~~

11 Section 167. That § 46A-7A-51 be repealed.

12 ~~46A-7A-51. Employees of the district, at the discretion of the board, may be enrolled in the~~
13 ~~state employees retirement system or may be granted other pension and retirement benefits~~
14 ~~selected by the board.~~

15 Section 168. That § 46A-7A-52 be repealed.

16 ~~46A-7A-52. Use of any water required for irrigation of lands of the district and all canals~~
17 ~~and ditches already constructed, rights-of-way for canals and ditches, sites for reservoirs and~~
18 ~~pumping plants, wells and sites for wells and any other property required to carry out the~~
19 ~~pertinent provisions of this chapter are hereby declared to be public use, subject to regulation~~
20 ~~and control of the state in the manner prescribed by law.~~

21 Section 169. That § 46A-7A-53 be repealed.

22 ~~46A-7A-53. The board may undertake surveys, investigations and related activities to be~~
23 ~~used to prepare a plan of its proposed operations, in which plan works or other property proposal~~
24 ~~for purchase or construction and proposals to raise funds for carrying out such plans shall be~~

1 stated:

2 Section 170. That § 46A-7A-54 be repealed.

3 ~~—46A-7A-54. The board may enter into any obligation or contract with the United States for~~
4 ~~construction, operation, and maintenance of all or any part of necessary works for delivery and~~
5 ~~distribution of water from the works under the provisions of federal reclamation acts, as~~
6 ~~amended to January 1, 2011, any acts supplementary to the reclamation acts, and any rules and~~
7 ~~regulations established under the reclamation acts or supplementary acts. The board may~~
8 ~~contract with the United States for water and power supplies under any act of Congress~~
9 ~~providing for or permitting such contracts. Any contract with the United States shall be~~
10 ~~approved by district electors in the same manner as approval of a bond issue.~~

11 Section 171. That § 46A-7A-54.1 be repealed.

12 ~~—46A-7A-54.1. If the district has not executed a contract with the United States for the~~
13 ~~purpose of constructing an irrigation project by the due date of any water project study loan~~
14 ~~made pursuant to chapter 46A-1 to the district or to a nonprofit corporation located within the~~
15 ~~district for the purpose of studying and advancing an irrigation project within the district or~~
16 ~~assumed by the district pursuant to § 46A-7A-48, the water project study loan payment shall be~~
17 ~~deferred until the electorate of the district approves a contract with the United States as provided~~
18 ~~for in § 46A-7A-54. Repayment of such study loan shall be included in the contract approval~~
19 ~~submitted to the electorate. Nothing in this section may be construed to relieve the district of~~
20 ~~any of its obligations under the provisions of chapter 46A-7A.~~

21 Section 172. That § 46A-7A-55 be repealed.

22 ~~—46A-7A-55. The board may accept any provision of any act of Congress of the United States~~
23 ~~applicable to the district and may obligate itself to comply with such laws, rules, and regulations~~
24 ~~as may be promulgated by any department of the United States in pursuance of such act.~~

1 Section 173. That § 46A-7A-56 be repealed.

2 ~~46A-7A-56. The board, if it deems it in the best interests of the district, may enter into any~~
3 ~~contract with the United States supplementing or amending any original contract with the United~~
4 ~~States, if the supplementary or amendatory contract does not increase the amount of principal~~
5 ~~indebtedness of the district to the United States as it exists at that date.~~

6 Section 174. That § 46A-7A-57 be repealed.

7 ~~46A-7A-57. If any supplementary or amendatory contract is made with the United States~~
8 ~~under § 46A-7A-56, no election is necessary, nor may the board be required to request judicial~~
9 ~~confirmation of such contract and the terms thereof. It is sufficient for such contract that the~~
10 ~~board authorize the execution of the contract by its president and secretary by appropriate~~
11 ~~resolution adopted at any regular or special meeting of the board.~~

12 Section 175. That § 46A-7A-58 be repealed.

13 ~~46A-7A-58. To estimate the cost of any construction work, the board shall have surveys,~~
14 ~~examinations, and plans made to demonstrate the practicability of the plan and to furnish the~~
15 ~~proper basis for an estimate of the cost of construction. Any surveys, examinations, maps, plans,~~
16 ~~and estimates shall be made under the direction of, and certified by, a registered professional~~
17 ~~engineer. The board of directors shall file a copy of the surveys, examinations, maps, plans, and~~
18 ~~estimates with the state board.~~

19 Section 176. That § 46A-7A-59 be repealed.

20 ~~46A-7A-59. The board shall estimate the amount of money necessary for construction and,~~
21 ~~if a bond issue is desirable, shall call a special election at which the question of whether or not~~
22 ~~bonds of the district should issue in the amount so determined shall be submitted to the electors~~
23 ~~of the district. No bonds may be issued for more than the actual estimated cost of formulating~~
24 ~~the general plan of proposed operation, including surveys, examinations, and plans to~~

1 ~~demonstrate the practicality of the plan and the actual estimated cost of the purchases and~~
2 ~~construction work described in the general plan of proposed operation, as finalized. However,~~
3 ~~estimated expenses relating to issuance and sale of bonds, including bond printing expenses,~~
4 ~~bond registration fees, legal fees, fiscal agency fees, publication costs and election expenses,~~
5 ~~bond reserve funds and capitalized interest during the estimated construction period and for one~~
6 ~~year thereafter may be paid out of the proceeds of the bond issue.~~

7 Section 177. That § 46A-7A-60 be repealed.

8 ~~—46A-7A-60. If any contract for construction is made with the United States as provided in~~
9 ~~§ 46A-7A-54 and bonds are required to raise funds in addition to the amount of the contract,~~
10 ~~they may be issued only in the amount needed.~~

11 Section 178. That § 46A-7A-61 be repealed.

12 ~~—46A-7A-61. Within the district, or on land outside the district with approval of the state~~
13 ~~board, the board, its agents and employees may enter upon any land to make surveys and to~~
14 ~~locate the line of any canal and necessary branches and other water facilities. The board may~~
15 ~~acquire, either by purchase or condemnation, all lands and water rights and other property~~
16 ~~necessary for construction, use, maintenance, repair, and improvement of any canals, pipelines,~~
17 ~~power plants, pumping stations; lands for reservoirs for storage of water; wells and all necessary~~
18 ~~appurtenances and related works; lands and easements for drainage; and lands and easements~~
19 ~~for mitigation of project effects upon wildlife habitat. The board of directors also may acquire~~
20 ~~by purchase or condemnation, for the use of the district, any irrigation works, power plant,~~
21 ~~pumping station, ditch, canal, reservoir, or well already constructed. In the case of purchase and~~
22 ~~upon agreement of the parties, bonds of the district provided under the provisions of this chapter~~
23 ~~may be used at their par value in payment.~~

24 Section 179. That § 46A-7A-62 be repealed.

1 ~~46A-7A-62. The board may construct necessary dams, reservoirs, pumping stations,~~
2 ~~conveyance facilities, and related works for collection and distribution of water for the district,~~
3 ~~may perform any lawful act necessary for sufficient water and drainage to be furnished to each~~
4 ~~tract of land in the district for irrigation purposes, and may provide mitigation and~~
5 ~~environmental enhancement measures.~~

6 Section 180. That § 46A-7A-63 be repealed.

7 ~~46A-7A-63. The board may make all necessary acquisitions of right-of-way to provide~~
8 ~~service to each tract of land subject to assessment and may exercise its right of eminent domain~~
9 ~~to procure right-of-way for conveyance facilities. This section does not deprive any person from~~
10 ~~exercising the person's right of eminent domain.~~

11 Section 181. That § 46A-7A-64 be repealed.

12 ~~46A-7A-64. Right-of-way is granted to plan, construct, and maintain works over and~~
13 ~~through any lands which are property of the state.~~

14 Section 182. That § 46A-7A-65 be repealed.

15 ~~46A-7A-65. The board may construct works across any stream, watercourse, street, avenue,~~
16 ~~highway, railway, canal, ditch, or flume which such works may intersect in a manner to afford~~
17 ~~security to life and property but the board shall restore property intersected to its former state~~
18 ~~as near as can be or in such manner as to not unnecessarily impair its usefulness. Any company~~
19 ~~whose railroad is intersected by such works shall assist the board in forming such intersections,~~
20 ~~but if the board and the owners of the property to be crossed cannot agree upon an amount of~~
21 ~~compensation or the points or manner of the intersection, those shall be established in~~
22 ~~condemnation proceedings.~~

23 Section 183. That § 46A-7A-66 be repealed.

24 ~~46A-7A-66. Legal title to any property acquired under the provisions of this chapter shall~~

1 immediately vest in the name of the district and shall be held by the district in trust for the uses
2 and purposes set forth in this chapter. Any board may hold, use, acquire, manage, occupy, and
3 possess such property as herein provided. Title to, easements on or rights-of-way through lands
4 upon which district facilities will be constructed by the United States or the district using funds
5 provided by the United States may be transferred to the United States if so required by any
6 contract between the district and the United States.

7 Section 184. That § 46A-7A-67 be repealed.

8 ~~46A-7A-67. The board may take conveyance or other assurance for any property acquired~~
9 ~~by it under the provisions of this chapter in the name of the district for the uses and purposes~~
10 ~~herein expressed; may institute and maintain any action and proceeding at law or in equity as~~
11 ~~necessary or proper in order to carry out fully the provisions of this chapter; and may enforce,~~
12 ~~maintain, protect, or preserve any rights, privileges, and immunities created by this chapter or~~
13 ~~acquired in pursuance thereof. In any action or proceeding, the board may sue, appear, or~~
14 ~~defend, in person or by attorney, in the name of the district.~~

15 Section 185. That § 46A-7A-68 be repealed.

16 ~~46A-7A-68. Before entering any contract in excess of twenty-five thousand dollars for~~
17 ~~construction or improvement of works as part of any project, the board shall advertise for bids.~~
18 ~~If less than the entire contract provided for in plans and specifications is to be completed, the~~
19 ~~portion to be completed shall be particularly described in the notice. The notice shall set forth~~
20 ~~that:~~

21 ~~(1) Plans and specifications of the project can be seen at the office of the board;~~

22 ~~(2) The board will receive sealed bids;~~

23 ~~(3) The contract will be let to the lowest responsible bidder; and~~

24 ~~(4) The bids will be opened in public at a stated time and place.~~

1 ~~The board may:~~

2 ~~(1) Let the work to the lowest responsible bidder;~~

3 ~~(2) Reject all bids and readvertise for proposals; or~~

4 ~~(3) Proceed to construct the project under its own superintendency.~~

5 Section 186. That § 46A-7A-69 be repealed.

6 ~~46A-7A-69. If there exists an emergency or urgent necessity, the board, by unanimous vote~~
7 ~~of those present at any regular or special meeting, may award contracts without advertising for~~
8 ~~bids.~~

9 Section 187. That § 46A-7A-70 be repealed.

10 ~~46A-7A-70. Contracts for purchase of materials only shall be awarded to the lowest~~
11 ~~responsible bidder, except that the board may reject all bids for furnishing of materials only and~~
12 ~~either readvertise for bids or solicit offers from not less than three responsible persons to furnish~~
13 ~~materials. Upon receipt of an offer for a lower price than that specified in the lowest rejected~~
14 ~~bid, the board may enter into a contract for furnishing of materials with the person who offered~~
15 ~~the lowest price.~~

16 Section 188. That § 46A-7A-71 be repealed.

17 ~~46A-7A-71. Any person to whom a contract for construction of works is awarded shall enter~~
18 ~~into a bond, with sufficient sureties, to be approved by the board and payable to the district for~~
19 ~~its use, for one hundred percent of the amount of the contract price, conditioned on full and~~
20 ~~faithful performance of the contract. The work shall be done under the direction of and to the~~
21 ~~satisfaction and approval of the board.~~

22 Section 189. That § 46A-7A-72 be repealed.

23 ~~46A-7A-72. Any contract or other document executed by the board shall be signed by the~~
24 ~~president and by the secretary.~~

1 Section 190. That § 46A-7A-73 be repealed.

2 ~~46A-7A-73. If the amount of a contract to perform work or services or to furnish materials~~
3 ~~or equipment is less than twenty-five thousand dollars in total, the board may waive the~~
4 ~~requirement to advertise the contract, may solicit offers from not less than three responsible~~
5 ~~persons to provide such work, services, materials, or equipment and may award the contract to~~
6 ~~the person submitting the lowest responsible bid.~~

7 Section 191. That § 46A-7A-74 be repealed.

8 ~~46A-7A-74. Any construction and related work of the district shall be done under the~~
9 ~~direction and to the satisfaction of a registered professional engineer and shall be approved by~~
10 ~~the board.~~

11 Section 192. That § 46A-7A-75 be repealed.

12 ~~46A-7A-75. The board shall establish policies and procedures for the most economical and~~
13 ~~efficient distribution and use of water and power within the district and may enter into long-term~~
14 ~~water service contracts with landowners in the district. The contracts, at the discretion of the~~
15 ~~board, may provide that the obligations form a lien on the land with the same force, effect, and~~
16 ~~priority as an assessment lien if the contract is recorded in the office of the register of deeds in~~
17 ~~the county in which the land is situated. The policies, procedures, and contracts shall recognize~~
18 ~~and shall be subject to priorities in the right to water between different consumers of the water~~
19 ~~as may legally exist. The board may establish a procedure for fixing tolls and charges and may~~
20 ~~provide for equitable apportionment of assessments. The contracts also may provide that if a~~
21 ~~landowner is delinquent in payment of any toll, charge, or assessment or has failed to meet other~~
22 ~~contract provisions, the district may immediately suspend delivery of water to the landowner~~
23 ~~until the delinquency or other default is rectified.~~

24 Section 193. That § 46A-7A-76 be repealed.

1 ~~46A-7A-76. Upon adoption of a resolution establishing or amending policies and~~
2 ~~procedures, a certified copy of the resolution shall be recorded with the county register of deeds~~
3 ~~of each affected county. Until so recorded, no resolution may be enforceable against any person~~
4 ~~not having actual knowledge thereof. A copy of resolutions in effect in the district shall be~~
5 ~~maintained and open for inspection at the district office.~~

6 Section 194. That § 46A-7A-77 be repealed.

7 ~~46A-7A-77. If the volume of water under control of the district is diminished below normal~~
8 ~~by reason of water shortage or otherwise to make it probable that all land cannot receive the full~~
9 ~~amount of water which it may need and to which it would otherwise be entitled, the board may~~
10 ~~by resolution adopt policies and procedures to provide for distributing the burden of deficiency~~
11 ~~and for the most economical and efficient use of the water which is or probably will be~~
12 ~~available.~~

13 Section 195. That § 46A-7A-78 be repealed.

14 ~~46A-7A-78. The board may enter into contracts with any interested parties for acquisition~~
15 ~~or settlement of any water rights on any stream system or groundwater system which affects the~~
16 ~~district or for administration of water rights or of waters of any stream system or groundwater~~
17 ~~system, whether by watermaster or otherwise. If, to make such contract efficiently operable for~~
18 ~~the benefit of the district, the board expressly finds that the district also should act for others,~~
19 ~~whether their lands and water rights are within or without the district, the district, with the~~
20 ~~written approval of any interested party for whom the district undertakes to act, may do so under~~
21 ~~the terms which are expressed in any such contract.~~

22 Section 196. That § 46A-7A-79 be repealed.

23 ~~46A-7A-79. In addition to levying assessments and in lieu, in whole or in part, of calling~~
24 ~~such assessments, the board may fix tolls or charges for use of water, the right to the use of~~

1 ~~which is owned or controlled by the district, including the use of groundwater, stand-by charges~~
2 ~~for making water service available or for any other service of any type or nature, whether or not~~
3 ~~related to water use, rendered by the district and may collect the same from all persons receiving~~
4 ~~the benefit of the water or other services. Such tolls or charges may be levied and collected in~~
5 ~~order to provide, in whole or in part, for payment of amounts due to the state, any state agency,~~
6 ~~any other district or the United States, whether for capital charges or service charges or~~
7 ~~otherwise, or in order to provide, in whole or in part, for payment of the costs of a project or the~~
8 ~~principal of and interest on bonds of the district, to provide a bond reserve fund to secure bonds~~
9 ~~of the district, to provide for operation and maintenance of a project or to obtain funds for any~~
10 ~~lawful purpose of the district. If tolls or charges are levied and collected to provide for payment~~
11 ~~of amounts due under more than one contract, such tolls and charges may be fixed, levied, and~~
12 ~~collected in a manner to charge, as nearly as practicable, the lands served under a particular~~
13 ~~contract with the amounts due under that contract.~~

14 Section 197. That § 46A-7A-80 be repealed.

15 ~~—46A-7A-80. If any tolls or charges for the use of the water or for other services rendered by~~
16 ~~the district have been fixed by the board, they may be made payable in advance.~~

17 Section 198. That § 46A-7A-81 be repealed.

18 ~~—46A-7A-81. If any tolls or charges remain unpaid for a period of thirty days after they~~
19 ~~become payable, they become delinquent, a late charge of ten percent shall be added thereto and~~
20 ~~they shall bear interest at a rate determined by the board each year.~~

21 Section 199. That § 46A-7A-82 be repealed.

22 ~~—46A-7A-82. After any toll or charge becomes delinquent, the board may file, in the office~~
23 ~~of the auditor of the county in which is situated the land to which tolls or charges are delinquent,~~
24 ~~a list showing:~~

1 ~~— (1) — The names of the owners of the land, if known, and, if not known, a statement of that~~
2 ~~fact;~~

3 ~~— (2) — A description of the land sufficient for identification; and~~

4 ~~— (3) — The amounts of delinquent tolls and charges.~~

5 ~~— Upon filing of a list, the tolls and charges, together with the penalties and interest thereon,~~
6 ~~shall become a lien upon the land in the same manner as a lien of a district assessment.~~

7 Section 200. That § 46A-7A-83 be repealed.

8 ~~— 46A-7A-83. The board, at any time after any toll or charge has become delinquent, may~~
9 ~~direct by resolution filed with the county auditor that proceedings not be taken to enforce the~~
10 ~~lien and, in place of such proceedings, to bring suit in the name of the district to enforce~~
11 ~~collection of the delinquent toll or charge. In the suit the district may recover the amount of the~~
12 ~~toll or charge, together with penalties, interest, and costs of suit.~~

13 Section 201. That § 46A-7A-84 be repealed.

14 ~~— 46A-7A-84. Prior to completion of the district's irrigation water distribution system, the~~
15 ~~board may levy and call an annual benefit assessment for the general fund of the district. Such~~
16 ~~assessment shall be the amount required in the approved budget provided in § 46A-7A-155 plus~~
17 ~~ten percent to cover delinquencies in collections and costs of collection.~~

18 Section 202. That § 46A-7A-85 be repealed.

19 ~~— 46A-7A-85. A certified copy of the general fund benefit assessment roll adopted by~~
20 ~~resolution of the board shall be filed with the auditor and treasurer of each affected county on~~
21 ~~or before the first day in May of each year.~~

22 Section 203. That § 46A-7A-86 be repealed.

23 ~~— 46A-7A-86. Collection of general fund benefit assessments shall be made under the~~
24 ~~provisions of §§ 46A-7A-124 to 46A-7A-126, inclusive. Delinquent assessments levied under~~

1 ~~§ 46A-7A-84 carry a penalty of ten percent plus interest at a rate of fifteen percent per annum.~~

2 Section 204. That § 46A-7A-87 be repealed.

3 ~~—46A-7A-87. A general fund benefit assessment may be allocated equally over all irrigable~~
4 ~~land in the district or by such other allocation as the board holds equitable. The authority of the~~
5 ~~board to levy and call such general fund benefit assessments shall lapse upon completion of the~~
6 ~~irrigation component providing surface water delivery of the district's project.~~

7 Section 205. That § 46A-7A-88 be repealed.

8 ~~—46A-7A-88. Prior to approval and sale of district bonds as provided under the provisions of~~
9 ~~§ 46A-7A-120, the board by resolution may make temporary borrowings to finance planning~~
10 ~~and any other district activities. Such borrowings shall be payable from an initial bond sale or,~~
11 ~~if no bonds are sold, from benefit assessments levied on all lands in the district under the~~
12 ~~provisions of § 46A-7A-84 or from other funds available to the district. The terms and~~
13 ~~conditions of borrowings shall be set by the board. The borrowings may not exceed a total of~~
14 ~~ten dollars times the number of assessable acres of the district.~~

15 Section 206. That § 46A-7A-89 be repealed.

16 ~~—46A-7A-89. After approval of district bonds at a district election but prior to initial sale of~~
17 ~~any bonds as provided under the provisions of § 46A-7A-120, the district may make temporary~~
18 ~~borrowings to be repaid from the initial bond sale, but such borrowings may not exceed fifty~~
19 ~~percent of the total amount of bonds authorized.~~

20 Section 207. That § 46A-7A-90 be repealed.

21 ~~—46A-7A-90. Within any fiscal year of the district the board, by resolution, may borrow~~
22 ~~against revenues anticipated to be received during that fiscal year and not otherwise~~
23 ~~encumbered. The borrowings shall mature not later than the first day of the following fiscal year.~~
24 ~~The borrowings may be made either by public notice or may be negotiated, as the board may~~

1 prescribe:

2 Section 208. That § 46A-7A-91 be repealed.

3 ~~46A-7A-91. Principal and interest on fiscal year borrowings are payable by single payment~~
4 ~~on or before the due date.~~

5 Section 209. That § 46A-7A-92 be repealed.

6 ~~46A-7A-92. The board, by resolution approved by three-quarters of the directors, may~~
7 ~~decide to issue revenue bonds to obtain funds for any lawful purpose of the district, including~~
8 ~~repayment of indebtedness of the district or payment on contracts with the United States.~~
9 ~~However, no revenue bonds may be issued or sold until issuance has been approved by the state~~
10 ~~board.~~

11 Section 210. That § 46A-7A-93 be repealed.

12 ~~46A-7A-93. Revenue bonds shall be secured by all or any part of the revenues received by~~
13 ~~the district from tolls and charges levied pursuant to this chapter. In the resolution authorizing~~
14 ~~revenue bonds, the board may subject revenues it specifies to a lien or charge to secure payment~~
15 ~~of the principal and interest on the revenue bonds, but such bonds may not be secured by any~~
16 ~~lien or charge upon any assessments.~~

17 Section 211. That § 46A-7A-94 be repealed.

18 ~~46A-7A-94. Revenue bonds may be issued subject to redemption prior to their fixed~~
19 ~~maturity date upon such terms, conditions, and notice and at such times and prices as the board~~
20 ~~may establish prior to issuance of the bonds.~~

21 Section 212. That § 46A-7A-95 be repealed.

22 ~~46A-7A-95. Revenue bonds may be sold at either public or private sale at such rate or rates~~
23 ~~and upon terms and conditions as the board may establish. The bonds may be sold at less than~~
24 ~~par or face value, but no revenue bond may be sold at less than ninety-five percent of its face~~

1 value:

2 Section 213. That § 46A-7A-96 be repealed.

3 ~~—46A-7A-96. The board may establish the form and denomination of revenue bonds, manner~~
4 ~~of their execution, registration, and exchange privileges and the place or places of payment.~~

5 Section 214. That § 46A-7A-97 be repealed.

6 ~~—46A-7A-97. The board, in any resolution authorizing issuance of revenue bonds, may~~
7 ~~provide special funds for deposit and application of the proceeds of the bonds and for deposit~~
8 ~~and application of revenues pledged to secure their payment. The board may provide for~~
9 ~~establishment of a reserve fund from the proceeds of the revenue bonds or from revenues~~
10 ~~pledged to their payment. The board may appoint a fiscal agent to hold such funds in trust for~~
11 ~~holders of revenue bonds and for the district.~~

12 Section 215. That § 46A-7A-98 be repealed.

13 ~~—46A-7A-98. The board, in a resolution authorizing issuance of revenue bonds, may covenant~~
14 ~~to operate and maintain facilities producing the revenues pledged for security of the revenue~~
15 ~~bonds; may covenant to set and collect tolls, charges, rates, or fees which will produce revenues~~
16 ~~sufficient to provide for payment of the principal and interest on the revenue bonds; and to~~
17 ~~provide additional sums for further security of the revenue bonds as the resolution may~~
18 ~~prescribe. The board may make other covenants with respect to insurance, investment of funds,~~
19 ~~accounting records, independent audits, events of default, limitations upon competitive~~
20 ~~facilities, and any other matters relating to the bonds and their security as the board deems~~
21 ~~necessary, convenient, or desirable to secure the bonds or make them more marketable.~~

22 Section 216. That § 46A-7A-99 be repealed.

23 ~~—46A-7A-99. The board, in a resolution authorizing issuance of revenue bonds, may provide~~
24 ~~for payment of interest on the revenue bonds for not more than one year from proceeds of the~~

1 sale.

2 Section 217. That § 46A-7A-100 be repealed.

3 ~~—46A-7A-100. Except as otherwise provided in any resolution authorizing issuance of~~
4 ~~revenue bonds, the holder of any revenue bond, by mandamus or other appropriate proceeding,~~
5 ~~may require performance of any of the duties imposed upon the board or upon any officer or~~
6 ~~employee of the district in connection with collection, deposit, investment, application, or~~
7 ~~disbursement of any revenues pledged for the security of the bonds or in connection with any~~
8 ~~covenants contained in the resolution authorizing issuance of the bonds. The enumeration of~~
9 ~~such rights and remedies does not, however, exclude exercise of any other rights or remedies~~
10 ~~available to the holders of revenue bonds.~~

11 Section 218. That § 46A-7A-101 be repealed.

12 ~~—46A-7A-101. Revenue bonds may not be issued in any amount that would make the total~~
13 ~~amount of such bonds outstanding exceed two-thirds of the prior year's district revenue or two~~
14 ~~million dollars, whichever is greater, nor may they have a maturity exceeding twelve years.~~

15 Section 219. That § 46A-7A-102 be repealed.

16 ~~—46A-7A-102. Upon a board resolution approved by at least three-quarters of the directors,~~
17 ~~the board may issue bonds to any landowner of the district as compensation to the landowner~~
18 ~~for services by the landowner which had prior approval and consent of the board or which were~~
19 ~~undertaken by the landowner at the request of the board. Such services shall include dedication~~
20 ~~of lands or permanent easements thereto for mitigation of impacts on wildlife habitat, deeding~~
21 ~~of land or rights-of-ways to the district, and expenditures by the landowner in connection with~~
22 ~~environmental preservation and improvement. Such bonds to landowners shall be payable solely~~
23 ~~from credits to the landowner holding the land against future tolls and charges by the district and~~
24 ~~are transferable only to a new owner or inheritor of the affected land.~~

1 Section 220. That § 46A-7A-103 be repealed.

2 ~~46A-7A-103. Any landowner bond shall have a maturity not to exceed forty years, shall bear~~
3 ~~interest as set by the board at the time of issuance and shall have equal annual debt service~~
4 ~~during each year of its life.~~

5 Section 221. That § 46A-7A-104 be repealed.

6 ~~46A-7A-104. Capital benefit assessments may be levied by the district only for the following~~
7 ~~purposes:~~

8 ~~(1) To provide security and a source of funds for payment of principal and interest on~~
9 ~~bonds issued to fund a project; or~~

10 ~~(2) To provide security and a source of funds for payment of principal and interest on a~~
11 ~~loan for construction of a project made to the district by the United States or by the~~
12 ~~State of South Dakota, or both.~~

13 Section 222. That § 46A-7A-105 be repealed.

14 ~~46A-7A-105. The board, subject to the limitations of § 46A-7A-104, may levy a capital~~
15 ~~benefit assessment, at which time the board shall determine a service area to be benefited. The~~
16 ~~service area may be subdivided by the board into separate zones or subareas that benefit solely~~
17 ~~from corresponding parts of the total project.~~

18 Section 223. That § 46A-7A-106 be repealed.

19 ~~46A-7A-106. The board by resolution shall have prepared an estimated cost of a project and~~
20 ~~the board may amend or correct the report. When the board is satisfied with the report, it shall~~
21 ~~approve by resolution and adopt the report.~~

22 Section 224. That § 46A-7A-107 be repealed.

23 ~~46A-7A-107. The board shall apportion the total benefits in accordance with the benefit that~~
24 ~~will accrue to each tract of land held in separate ownership.~~

1 Section 225. That § 46A-7A-108 be repealed.

2 ~~46A-7A-108. If the project provides that all costs of the project are to be borne by certain~~
3 ~~designated lands within the district and there is on file with the board a written agreement~~
4 ~~executed by all the holders of title of such lands stating landowner consent to apportionment of~~
5 ~~costs of the project on their lands in a particular manner, all such costs shall be apportioned in~~
6 ~~accordance with such agreement.~~

7 Section 226. That § 46A-7A-109 be repealed.

8 ~~46A-7A-109. Land within the district that is owned by another political subdivision is~~
9 ~~subject to apportionment of costs to the extent it will benefit from a project.~~

10 Section 227. That § 46A-7A-110 be repealed.

11 ~~46A-7A-110. Upon completion of apportionment of costs, the director of equalization shall~~
12 ~~prepare and certify to the board an apportionment roll which shall contain the following:~~

13 ~~(1) A description of each tract held in separate ownership by legal subdivision,~~
14 ~~governmental survey, or other boundary description sufficient to identify it. If any~~
15 ~~area composed of more than one tract held in separate ownership is not apportioned~~
16 ~~benefits because the land therein will not be benefited, a description of the area as a~~
17 ~~whole without description of each tract is sufficient;~~

18 ~~(2) The number of acres in each tract;~~

19 ~~(3) The name and address of the owner of each tract, if known, and, if unknown, that~~
20 ~~fact. A mistake or error in the name of the owner of the property assessed or a~~
21 ~~mistake in any other particular may not render the apportionment invalid;~~

22 ~~(4) The amount of benefit to each tract or, if no benefit is apportioned upon any tract or~~
23 ~~area composed of more than one tract, a statement of that fact; and~~

24 ~~(5) The total amount of the apportionment benefit as computed.~~

1 Section 228. That § 46A-7A-111 be repealed.

2 ~~46A-7A-111. When completed, the roll shall be accompanied by a written report of the~~
3 ~~director of equalization setting out the exact nature and amount of the benefits apportioned and~~
4 ~~allocated to each tract of land in respect to each separable component of the proposed project.~~
5 ~~It shall be certified by the director of equalization and filed with the board.~~

6 Section 229. That § 46A-7A-112 be repealed.

7 ~~46A-7A-112. The board shall file a copy of the roll and report in its records and give notice~~
8 ~~of filing of the report and roll by publication at least once a week for two successive weeks in~~
9 ~~each affected county and by mailing copies of such notice to each affected landowner, as shown~~
10 ~~on the last equalized assessment roll of the district or as known to the district. The notice shall~~
11 ~~state the time and place of a special meeting which may be not less than fifteen days after~~
12 ~~completion of publication and mailing.~~

13 Section 230. That § 46A-7A-113 be repealed.

14 ~~46A-7A-113. At the special meeting, the board shall hear evidence on the correctness of the~~
15 ~~roll and may modify, amend, or approve the apportionment in any particular. When~~
16 ~~modifications, adjustments, or amendments by the board do not increase the apportionment on~~
17 ~~any particular tract by a significant amount, the notice given in accordance with § 46A-7A-112~~
18 ~~is adequate. When modifications, adjustments, or amendments by the board increase the~~
19 ~~apportionment on any particular tract by a significant amount, the board shall notify the affected~~
20 ~~landowner by registered or certified mail concerning the adjusted assessment apportionment on~~
21 ~~that tract and shall continue the special meeting for not less than fifteen days from the date of~~
22 ~~mailing of such notice.~~

23 Section 231. That § 46A-7A-114 be repealed.

24 ~~46A-7A-114. If no objections are presented to the board to a particular roll, the secretary of~~

1 ~~the board shall execute a certificate certifying to that fact and shall file it in the district records.~~

2 Section 232. That § 46A-7A-115 be repealed.

3 ~~—46A-7A-115. After hearing objections, the board by resolution may approve the roll as~~
4 ~~finally fixed or modified. A certified copy of the roll as finally fixed shall be filed in the district~~
5 ~~records.~~

6 Section 233. That § 46A-7A-116 be repealed.

7 ~~—46A-7A-116. After the secretary files the certificate or, if objections are raised, after the~~
8 ~~board approves the roll as finally fixed, the board shall call a district election to submit to the~~
9 ~~electors the question whether or not the board shall be authorized to levy a capital benefit~~
10 ~~assessment in accordance with the roll as certified and in accordance with the limitations set~~
11 ~~forth in § 46A-7A-104 to utilize the benefit assessment as security for and as a source of funds~~
12 ~~for payments for bonds to be issued to fund the project, or to repay loans to fund the project.~~

13 Section 234. That § 46A-7A-117 be repealed.

14 ~~—46A-7A-117. At the election the ballots shall contain the words "benefit assessment levy and~~
15 ~~bonds" or "benefit assessment levy and loan contract" or "benefit assessment levy and bonds and~~
16 ~~loan contract," as appropriate, and "yes" and "no." Notice of the election shall be given at least~~
17 ~~twenty days prior by publication once a week for at least two consecutive weeks in an official~~
18 ~~newspaper in each county that contains a portion of the district.~~

19 Section 235. That § 46A-7A-118 be repealed.

20 ~~—46A-7A-118. If a majority of the votes cast are "yes," the board shall transmit certified~~
21 ~~copies of the roll to the auditor and treasurer in each affected county. The roll, upon recordation,~~
22 ~~shall constitute a lien upon the land in each county. Approval by the electorate constitutes~~
23 ~~approval of the project and gives full authority for the board to issue bonds, execute a loan~~
24 ~~agreement, or both, as specified on the election ballot.~~

1 Section 236. That § 46A-7A-119 be repealed.

2 ~~46A-7A-119. The assessment roll, as approved by the board, is conclusive evidence before~~
3 ~~any court or tribunal that the assessment has been made and levied according to law.~~

4 Section 237. That § 46A-7A-120 be repealed.

5 ~~46A-7A-120. All unpaid assessments bear interest at a rate not to exceed fifteen percent per~~
6 ~~year. Interest starts thirty days after the board has adopted a resolution calling for sale of bonds~~
7 ~~secured by the assessment or has adopted a resolution to accept a loan secured by the~~
8 ~~assessment. If the rate of interest on bonds secured by assessment is less than fifteen percent,~~
9 ~~the board may set the rate of interest on delinquent assessments at a rate of less than fifteen~~
10 ~~percent, but no lower than the interest rate paid on outstanding bonds.~~

11 ~~Any time after certification of the assessment roll, the board by resolution may call for sale~~
12 ~~of bonds secured by such assessment. The form and substance of such bonds and their sale shall~~
13 ~~be governed by the provisions of §§ 46A-7A-139 to 46A-7A-142, inclusive. The total par value~~
14 ~~of bonds sold against any benefit assessment may not exceed the total assessment.~~

15 Section 238. That § 46A-7A-121 be repealed.

16 ~~46A-7A-121. Any resolution calling for sale of bonds shall be submitted to the state board~~
17 ~~and shall become effective if it is approved by the state board. When such resolution has been~~
18 ~~approved by the state board, a copy thereof shall be filed with the treasurer of each affected~~
19 ~~county.~~

20 Section 239. That § 46A-7A-122 be repealed.

21 ~~46A-7A-122. Collection of assessments shall be by the auditor and treasurer of each county~~
22 ~~in which the district is situated.~~

23 Section 240. That § 46A-7A-123 be repealed.

24 ~~46A-7A-123. On or before the first day in May of each year, the board shall determine by~~

1 ~~resolution the percentage of any assessment theretofore levied to be called and collected. Interest~~
2 ~~due on unpaid assessments may be called without calling any installment of the assessment. Any~~
3 ~~uncalled interest is cancelled each year. Certified copies of the resolution shall be filed by the~~
4 ~~secretary of the board with the auditor and treasurer of each affected county on or before the first~~
5 ~~day in May of each year.~~

6 Section 241. That § 46A-7A-124 be repealed.

7 ~~—46A-7A-124. The county auditor, on receipt of assessment rolls, shall compute the amount~~
8 ~~to be collected from each parcel of land in the district held in separate ownership as shown on~~
9 ~~the rolls and shall enter in a separate column in the assessment books, headed Cendak Irrigation~~
10 ~~District, the sum in dollars and cents to be collected against each respective parcel of land.~~

11 Section 242. That § 46A-7A-125 be repealed.

12 ~~—46A-7A-125. Any assessment called pursuant to this chapter shall be collected at the same~~
13 ~~time and in the same manner as county taxes. When collected, the net amount, as provided by~~
14 ~~this chapter, shall be paid to the treasurer of the district under the general requirements and~~
15 ~~penalties provided by law for settlement of county taxes.~~

16 Section 243. That § 46A-7A-126 be repealed.

17 ~~—46A-7A-126. Each county auditor, treasurer, and director of equalization shall file annually~~
18 ~~with the county commissioners of the county an itemized statement showing additional expenses~~
19 ~~to his or her office caused by performance of the duties imposed upon the office by this chapter.~~
20 ~~Upon filing of the statement, the county commissioners, by order in its minutes, shall deduct~~
21 ~~such expenses from the assessment money of the district and transfer it into the county general~~
22 ~~fund.~~

23 Section 244. That § 46A-7A-127 be repealed.

24 ~~—46A-7A-127. If any real property situated in the district has been sold for taxes and has been~~

1 redeemed, the money paid for redemption shall be apportioned and paid by the county treasurer
2 receiving it to the district in the proportion which the benefit assessment due to the district bears
3 shares to the total tax assessment for which the property was sold.

4 Section 245. That § 46A-7A-128 be repealed.

5 ~~46A-7A-128. The board shall levy an amendatory assessment in the manner provided for~~
6 ~~original assessments if any of the following occurs:~~

7 ~~(1) Any land within the district is omitted from any assessment roll;~~

8 ~~(2) Land appears in the assessment roll, but is neither assessed nor stated not to be~~
9 ~~assessed; or~~

10 ~~(3) A final judgment of a court has held that any assessment is invalid as to any part of~~
11 ~~the land assessed.~~

12 ~~An amendatory assessment shall be based on a determination of the amount the original~~
13 ~~assessment on the land would have been, except for the omission or invalidity. Amendments~~
14 ~~made to the roll shall apply only to the parcels specified.~~

15 Section 246. That § 46A-7A-129 be repealed.

16 ~~46A-7A-129. If any tract of land on which any assessment has been levied is subdivided into~~
17 ~~smaller parcels, the board, upon its own motion or upon written application signed by a holder~~
18 ~~of title within the subdivided tract, after a hearing noticed and held as provided in §§ 46A-7A-~~
19 ~~112 and 46A-7A-113, shall reapportion the assessment upon that tract to charge each of the~~
20 ~~smaller parcels with a just portion of the assessment. Such reapportionment shall be entered in~~
21 ~~the minutes of the board and shall be final after entry. The board shall file with the auditor of~~
22 ~~any county in which any portion of the tract affected is situated any amendatory or reapportioned~~
23 ~~assessments relating to land in that county.~~

24 Section 247. That § 46A-7A-130 be repealed.

1 ~~—46A-7A-130. Upon inclusion of any land within the district, an assessment shall be levied~~
2 ~~on the land, the amount of assessment against each tract or parcel to be the amount of all~~
3 ~~assessments which would have been levied against the tract or parcel if it had been included in~~
4 ~~the district from the time of the original levy of such assessments.~~

5 Section 248. That § 46A-7A-131 be repealed.

6 ~~—46A-7A-131. If the district has levied an assessment and the board determines that the~~
7 ~~assessment, together with interest on the assessment, will provide an amount greater than is~~
8 ~~required to meet all obligations incurred for the purposes for which the assessment was levied,~~
9 ~~the board, if no bonds are outstanding, by resolution may declare its intention to cancel all or~~
10 ~~any portion of the assessment balance. For purposes of this section, the term, assessment~~
11 ~~balance, means the assessment and the interest on the assessment. The board, subject to~~
12 ~~limitations provided in this chapter, may cancel the assessment balance, including the interest~~
13 ~~thereon, a part of the assessment and the interest thereon, all of the interest on the assessment~~
14 ~~or a part of the interest on the assessment.~~

15 Section 249. That § 46A-7A-132 be repealed.

16 ~~—46A-7A-132. The board, pursuant to a resolution entered in its minutes, may distribute~~
17 ~~among landowners of the district any funds belonging to the district collected by an assessment~~
18 ~~on which no bonds are outstanding or collected as interest or penalties on the assessment or by~~
19 ~~rental, sale, or redemption of delinquent land under the assessment, which appear to the board~~
20 ~~to be greater than required to meet obligations incurred for the purposes for which the~~
21 ~~assessment was levied. Such distribution to the landowners shall be made in the proportion that~~
22 ~~it was assessed.~~

23 Section 250. That § 46A-7A-133 be repealed.

24 ~~—46A-7A-133. At any time after filing of the roll as provided in § 46A-7A-111, the board may~~

1 ~~instruct the director of equalization to reexamine the apportionment of benefits and report to the~~
2 ~~board concerning any discrepancies between the original apportionment and the actual benefits~~
3 ~~now accruing to various tracts of land. If the board finds that sufficiently substantial~~
4 ~~discrepancies exist to require a reapportionment of the uncalled balance of the assessment, the~~
5 ~~board by resolution shall instruct the director of equalization to prepare an amended roll~~
6 ~~apportioning the uncalled balance of the total benefit assessment. The procedures and~~
7 ~~requirements of §§ 46A-7A-110 to 46A-7A-115, inclusive, shall be followed in establishing~~
8 ~~such reapportionment.~~

9 Section 251. That § 46A-7A-134 be repealed.

10 ~~—46A-7A-134. If, at any time after three years from filing of the original assessment roll,~~
11 ~~landowners liable for ten percent of the uncollected balance of the assessment file a petition so~~
12 ~~requesting, the board shall instruct the director of equalization to reexamine the apportionment~~
13 ~~and report to the board as provided in §§ 46A-7A-110 and 46A-7A-111.~~

14 Section 252. That § 46A-7A-135 be repealed.

15 ~~—46A-7A-135. Upon adoption of an amended roll, the board shall transmit certified copies~~
16 ~~of the roll to the auditor and treasurer in each affected county. An amended roll shall replace the~~
17 ~~prior roll in all respects and shall be used by the county auditor in computing amounts to be~~
18 ~~collected.~~

19 Section 253. That § 46A-7A-136 be repealed.

20 ~~—46A-7A-136. After any reapportionment of benefits is made by the district and if~~
21 ~~outstanding bonds are secured by the assessment, if the holders of ten percent of the outstanding~~
22 ~~bonds believe that such reapportionment has materially weakened the security of their bonds,~~
23 ~~or if the assessment is the security for a loan by a federal or state agency and the agency believes~~
24 ~~such reapportionment has jeopardized repayment of the loan, such bondholders or agency may~~

1 ~~object to the reapportionment and petition the state board. The board shall appoint three~~
2 ~~qualified, disinterested persons to constitute a board known as the "State Adjustment Board."~~
3 ~~Each member of the board shall be paid for services rendered by him such sum as the state~~
4 ~~board fixes. Compensation and expenses of the State Adjustment Board are a part of the cost~~
5 ~~of the project.~~

6 Section 254. That § 46A-7A-137 be repealed.

7 ~~—46A-7A-137. Upon appointment of a State Adjustment Board, the state board shall notify~~
8 ~~county officials that the amended roll filed under the provisions of § 46A-7A-135 is not valid~~
9 ~~and that they shall continue to use the prior roll until otherwise advised by the state board.~~

10 Section 255. That § 46A-7A-138 be repealed.

11 ~~—46A-7A-138. Any State Adjustment Board shall examine the objection and any modification~~
12 ~~that a board has made in the roll and may hold hearings on the objection as necessary. If any~~
13 ~~State Adjustment Board finds that an objection is without merit, it shall so report to the state~~
14 ~~board and the board and the amended roll as certified by the district board is confirmed as valid.~~
15 ~~The state board shall so notify the county officials. If any State Adjustment Board finds that an~~
16 ~~objection has merit, it shall order the board to modify or amend the assessment to protect the~~
17 ~~interest of the objector. The State Adjustment Board may assist or advise the director of~~
18 ~~equalization and the board in making such modifications or adjustments. Upon completion of~~
19 ~~a modified roll, the State Adjustment Board shall report to the state board, the board, and other~~
20 ~~parties its approval of the modified roll. The board shall adopt the modified roll and transmit~~
21 ~~copies to county officials as provided in § 46A-7A-135. The state board shall advise the county~~
22 ~~officials of the validity of the modified roll. Appeal may be taken as provided for contested~~
23 ~~cases in chapter 1-26.~~

24 Section 256. That § 46A-7A-139 be repealed.

1 ~~46A-7A-139. Bonds issued under the provisions of § 46A-7A-120 are payable in lawful~~
2 ~~money of the United States, may be in one or more series and shall mature at such time or times~~
3 ~~as the board shall determine. However, the final maturity date of any series of bonds may not~~
4 ~~be more than forty years from the date of its issue. The bonds shall bear interest at a rate or rates~~
5 ~~to be determined by the board, payable at a time the board may determine, but at least annually.~~
6 ~~Any principal and interest shall be payable at the office of the state treasurer, at any bank or~~
7 ~~financial center chosen by the board and specified in the bonds, or at both places. Bonds may~~
8 ~~be made callable prior to their stated maturities, with redemption premiums set by the board.~~

9 Section 257. That § 46A-7A-140 be repealed.

10 ~~46A-7A-140. Bonds shall be in denominations of five thousand dollars or multiples thereof,~~
11 ~~in fully registered form, executed in the name of the district and signed by the president or~~
12 ~~secretary or by manual signature of one official designated by the governing body and by~~
13 ~~facsimile signature of other officials. The seal of the district shall be affixed thereto. Bonds shall~~
14 ~~be numbered consecutively as issued and shall bear a date of time of issue. Any resolution~~
15 ~~authorizing issuance of bonds may contain covenants and agreements to protect and safeguard~~
16 ~~security and payment of such bonds, which shall be a part of the contract with holders of the~~
17 ~~bonds. The resolution may include agreements for setting aside reserves or debt service funds~~
18 ~~and regulation, investment, and disposition thereof; agreements as to the use of trustees to~~
19 ~~further protect the interest of bondholders; and any other agreements which in any way affect~~
20 ~~security or protection of bonds of the district.~~

21 Section 258. That § 46A-7A-141 be repealed.

22 ~~46A-7A-141. The board may sell bonds, after approval thereof by the state board, when and~~
23 ~~in quantities as necessary and most advantageous to raise money for formation of a general plan~~
24 ~~of its proposed operation, including surveys, examinations, and plans to be made that~~

1 ~~demonstrate the practicality of such plan, for construction of improvements, acquisition of~~
2 ~~property and rights and otherwise to carry out the purposes of this chapter. Bonds may be sold~~
3 ~~at public or private sale for any price the board of directors may establish, but the board may not~~
4 ~~sell any bonds for less than ninety-five percent of their face value. Before making any public~~
5 ~~sale, the board, by resolution, shall declare its intention to sell a specified number of bonds and~~
6 ~~shall set the day, hour, and place of such sale. The resolution shall be entered in the minutes and~~
7 ~~notices of the sale shall be given by publication at least twenty days before the date of sale in~~
8 ~~newspapers or journals selected by the board as most likely to reach investors. The notice shall~~
9 ~~state that sealed proposals will be received by the board for purchase of bonds until the day and~~
10 ~~hour named in the resolution at the place designated by the board. At the appointed time, the~~
11 ~~treasurer or secretary of the board shall open the proposals and report to the board. The board~~
12 ~~may award purchase of the bonds to the highest responsible bidder or may reject all bids.~~

13 Section 259. That § 46A-7A-142 be repealed.

14 ~~—46A-7A-142. To the extent funds are not otherwise available, bonds and the interest thereon~~
15 ~~shall be paid from revenue derived from an annual call on the capital benefit assessment of the~~
16 ~~district. All real property of the district is liable to be assessed for payments.~~

17 Section 260. That § 46A-7A-143 be repealed.

18 ~~—46A-7A-143. The board, by resolution approved by three-fourths of its members, may issue~~
19 ~~refunding bonds or advance refunding bonds for bonds issued under the provisions of § 46A-~~
20 ~~7A-120.~~

21 Section 261. That § 46A-7A-144 be repealed.

22 ~~—46A-7A-144. The amount of refunding bonds may not exceed the lesser of the amount of~~
23 ~~the uncalled capital benefit assessment for original bonds then remaining or the amount of bonds~~
24 ~~to be refunded plus premiums established for the call and redemption of the bonds and~~

1 ~~reasonable costs of issuance of the refunding bonds. Terms and conditions of refunding bonds~~
2 ~~shall be set by the board, but the maximum maturity period may not exceed forty years.~~

3 Section 262. That § 46A-7A-145 be repealed.

4 ~~—46A-7A-145. The board or other officers of the district may not incur any debt or liability,~~
5 ~~either by bonds or otherwise, in excess of the provisions of this chapter. Any debt or liability~~
6 ~~incurred in excess of such provisions is void.~~

7 Section 263. That § 46A-7A-146 be repealed.

8 ~~—46A-7A-146. All funds belonging to the district, other than funds deposited with trustees~~
9 ~~or fiscal agents for payment of the principal of and interest on bonds of the district, shall be~~
10 ~~deposited by the treasurer in any bank within the state. The bank shall be designated by the~~
11 ~~board. If no depository is designated, the treasurer shall select a bank as a depository for the~~
12 ~~funds. Deposit of the funds relieves the district treasurer from personal liability for loss of~~
13 ~~deposited funds through the insolvency or failure of the depository while funds are deposited~~
14 ~~pursuant to this section.~~

15 Section 264. That § 46A-7A-147 be repealed.

16 ~~—46A-7A-147. The board may draw from any district fund to deposit in the state treasury any~~
17 ~~sum in excess of twenty-five thousand dollars. The state treasurer shall receive and receipt the~~
18 ~~deposit and place it to the credit of the district or to any designated fund of the district. The state~~
19 ~~treasurer is responsible upon the state treasurer's official bond for investment, safekeeping, and~~
20 ~~disbursement of the funds as provided in this chapter. The state treasurer shall pay out funds~~
21 ~~only to the treasurer of the district upon an order of the board, signed by the president and~~
22 ~~attested by the secretary. The state treasurer shall report in writing each month on the amount~~
23 ~~of money in the state treasury credited to the district, the amount of receipts for the month~~
24 ~~preceding and the amount of money paid out. The report shall be verified and filed with the~~

1 ~~secretary of the board.~~

2 Section 265. That § 46A-7A-148 be repealed.

3 ~~—46A-7A-148. If revenue raised by sale of bonds is insufficient for the purposes for which~~
4 ~~such bonds were issued, additional bonds may be issued after submission of the question, at a~~
5 ~~general or special election, to the electors of the district. For issuance of additional bonds, the~~
6 ~~board shall set terms and conditions upon which additional bonds may be issued and secured.~~
7 ~~Any benefit assessment lien for payment of interest and principal of additional bonds may be~~
8 ~~on a parity with or subsequent to any lien of any prior bond issue.~~

9 Section 266. That § 46A-7A-149 be repealed.

10 ~~—46A-7A-149. All claims against the district shall be verified as required for claims filed~~
11 ~~against counties in this state. The district secretary may administer oaths to parties verifying~~
12 ~~such claims.~~

13 Section 267. That § 46A-7A-150 be repealed.

14 ~~—46A-7A-150. No claim may be paid by the district treasurer until it has been approved by~~
15 ~~the board and shall be paid upon warrants signed by two qualified members of the board. Any~~
16 ~~warrant shall be drawn and payable to the claimant or bearer. The board, by resolution, shall~~
17 ~~specify which of its members are qualified to sign district warrants.~~

18 Section 268. That § 46A-7A-151 be repealed.

19 ~~—46A-7A-151. The district treasurer shall report in writing at each monthly meeting of the~~
20 ~~board the amount of money in the district treasury, the amount of receipts for the month~~
21 ~~preceding and the amount of claims and expenditures. The report shall be verified and filed with~~
22 ~~the board secretary.~~

23 Section 269. That § 46A-7A-152 be repealed.

24 ~~—46A-7A-152. In October of each year at a regular meeting or at a special meeting called for~~

1 that purpose, the board shall hold a public hearing on its proposed budget for the following
2 fiscal year. Notice of the meeting shall be given at least five days and not more than thirty days
3 prior to the meeting by posting in the district office and once by publication. The meeting may
4 be adjourned from day to day as necessary without additional publication of notice. The notice
5 shall state the time and the place of the public hearing and give a summary of a budget of the
6 district as proposed by the board for the next fiscal year. The calendar year shall be the fiscal
7 year of the district.

8 Section 270. That § 46A-7A-153 be repealed.

9 ~~46A-7A-153. At a budget meeting, the proposed budget shall be presented in detail to~~
10 ~~identify all anticipated expenditures, including payments to the United States for water, for~~
11 ~~power, and on construction loans, payments to the state for obligations to the state, payments~~
12 ~~on bonds or other borrowings of the district, payments for water or power to other than the~~
13 ~~United States, compensation of directors, fees and charges of engineering and other consultants,~~
14 ~~salaries and benefits of district staff, operation and maintenance expense, insurance expense,~~
15 ~~deposits to reserve, or sinking funds for irrigation, drainage, environmental, or recreational~~
16 ~~purposes, construction expenses for such purposes, purchases of supplies and equipment, and~~
17 ~~any other proper expense of the district. Sources of funds to meet expenditures, including~~
18 ~~anticipated unexpended fund balances at the beginning of the year, anticipated loans or~~
19 ~~borrowings, anticipated income from tolls and charges and calls on assessments levied by the~~
20 ~~board for capital, drainage, or general fund purposes also shall be set forth.~~

21 Section 271. That § 46A-7A-154 be repealed.

22 ~~46A-7A-154. After presentation of a proposed budget, the budget meeting shall be open to~~
23 ~~any interested party for written or verbal questions, suggestions, proposals, or complaints~~
24 ~~regarding the budget.~~

1 Section 272. That § 46A-7A-155 be repealed.

2 ~~—46A-7A-155. After hearing all testimony on a proposed budget, the president of the board~~
3 ~~shall close the public hearing and continue the meeting as a meeting of the board. The board~~
4 ~~shall consider the testimony it has received on its proposed budget, make any changes in the~~
5 ~~proposed budget, and adopt the budget as finally fixed for the next fiscal year. The board shall~~
6 ~~employ an independent firm of certified public accountants to make an annual audit of its~~
7 ~~accounts. A copy of the adopted budget and a copy of the latest annual audit shall be filed with~~
8 ~~the state board prior to the end of the fiscal year.~~

9 Section 273. That § 46A-7A-156 be repealed.

10 ~~—46A-7A-156. If necessary or beneficial to drain any land within the district for benefit of the~~
11 ~~land requiring drainage or for protection of other land, whether or not irrigation works have~~
12 ~~been acquired or constructed, the district may have drainage canals and works constructed. For~~
13 ~~that purpose, the district may levy assessments or otherwise provide funds necessary to drain~~
14 ~~such land, may enter on land to make surveys, may exercise the right of eminent domain, may~~
15 ~~contract for construction of works and may extend drainage ditches outside the limits of the~~
16 ~~district to conduct drainage water to other land for use or return it to a natural watercourse. If~~
17 ~~district operations may have an adverse effect on water underlying lands outside the district, the~~
18 ~~district may construct drainage works on those lands to mitigate such effects. Such powers~~
19 ~~include power to enter into a contract with the United States to effectuate drainage of the district~~
20 ~~or any part thereof. The district and any unit of local government holding jurisdiction over~~
21 ~~drainage plans, works, or projects shall cooperate on drainage matters to the fullest extent~~
22 ~~possible.~~

23 Section 274. That § 46A-7A-157 be repealed.

24 ~~—46A-7A-157. If any contract between the district and the United States requires the district~~

1 ~~to provide for drainage of district land or to mitigate effects of district operations by~~
2 ~~constructing drainage of land outside the district, approval of the contract by the electors~~
3 ~~constitutes authority for the board to levy annual assessments or charges on all lands in the~~
4 ~~district to provide funds for drainage works or to make deposits into a segregated sinking fund~~
5 ~~for future drainage work expenditures. Provision for such charges may be included in water~~
6 ~~service contracts authorized by § 46A-7A-75. The assessments or charges so levied shall be in~~
7 ~~accordance with requirements of the federal contract.~~

8 Section 275. That § 46A-7A-158 be repealed.

9 ~~—46A-7A-158. The district shall be responsible for mitigation measures required in any~~
10 ~~contract with the United States for wildlife habitat losses on lands irrigated within the district.~~
11 ~~Any individual landowner obligation for mitigation, as established by the board, shall be~~
12 ~~incorporated in water service contracts with landowners. The board may terminate water service~~
13 ~~or take other appropriate enforcement action for nonperformance of such contract.~~

14 Section 276. That § 46A-7A-159 be repealed.

15 ~~—46A-7A-159. In developing plans for irrigation, landowners shall give primary consideration~~
16 ~~to avoiding adverse impacts on wildlife habitat. Mitigation plans developed by the district in~~
17 ~~cooperation with holders of title to district lands shall include evaluation of enhancement~~
18 ~~opportunities and possible methods of finance and implementation. The district may establish~~
19 ~~a pooling program through which the use of mitigation lands and mitigation costs may be shared~~
20 ~~by holders of title to district lands. Mitigation measures on private land shall be described in a~~
21 ~~recorded document if the land is retained in private ownership. Maximum practicable use shall~~
22 ~~be made of existing public lands through cooperative programs. Acquisition of private lands for~~
23 ~~mitigation shall be minimized and, if necessary, shall be from willing sellers. However,~~
24 ~~acquisition of land for mitigation may be by condemnation if determined to be necessary and~~

1 in the public interest by the state board.

2 Section 277. That § 46A-7A-160 be repealed.

3 ~~—46A-7A-160. The Department of Game, Fish and Parks shall cooperate with and assist the~~
4 ~~district in implementing wildlife habitat enhancement and mitigation measures commensurate~~
5 ~~with irrigation development.~~

6 Section 278. That § 46A-7A-161 be repealed.

7 ~~—46A-7A-161. The board by resolution may determine that a project or unit thereof likely will~~
8 ~~benefit only a portion of the district. If the board so determines, it shall provide a hearing to~~
9 ~~determine whether the project or unit will benefit only a portion of the district and whether an~~
10 ~~improvement district consisting of that portion should be established. The board shall set a time~~
11 ~~and place for such hearing and shall publish notice of the hearing, setting forth its purpose, time,~~
12 ~~and place, once a week for two successive weeks.~~

13 Section 279. That § 46A-7A-162 be repealed.

14 ~~—46A-7A-162. At the noticed time and place or at any time and place to which a hearing~~
15 ~~pursuant to § 46A-7A-161 is adjourned, the board shall hold the hearing. Any interested person,~~
16 ~~including any person owning land within the district, may appear at the hearing and present~~
17 ~~testimony material to the issues. At the conclusion of the hearing, the board by resolution shall~~
18 ~~determine whether the whole or only a portion of the district will be benefited by the project or~~
19 ~~unit. If the board determines that only a portion of the district will be benefited by the project~~
20 ~~or unit, the board by resolution may establish an improvement district consisting of that portion~~
21 ~~of the district. The resolution shall describe the territory within the improvement district in a~~
22 ~~manner sufficient for identification and shall designate the improvement district by a distinctive~~
23 ~~name. In accordance with the resolution, the portion of the district shall constitute and be known~~
24 ~~as "_____ Improvement District of Cendak Irrigation District." Any decision of the board~~

1 ~~establishing an improvement district is final.~~

2 Section 280. That § 46A-7A-163 be repealed.

3 ~~46A-7A-163. After establishment of an improvement district within the district:~~

4 ~~(1) Any proceeding with respect to the project or unit for which the improvement district~~
5 ~~was established shall apply only to the improvement district;~~

6 ~~(2) Any election with respect to the project or unit or bonds therefor or loans or contracts~~
7 ~~relating thereto shall be held only within the improvement district;~~

8 ~~(3) Any assessment for such project or unit shall be levied only upon the land within the~~
9 ~~improvement district; and~~

10 ~~(4) Any bonds issued with respect to such project or unit shall be bonds of the~~
11 ~~improvement district, secured by an assessment levied on the land within the~~
12 ~~improvement district only, or, if revenue bonds, secured only by specified revenues~~
13 ~~from lands within the improvement district. That fact shall be indicated on the face~~
14 ~~of each bond.~~

15 Section 281. That § 46A-7A-164 be repealed.

16 ~~46A-7A-164. An improvement district shall be governed and its business conducted by the~~
17 ~~board and officers of the district in the name of the improvement district. An improvement~~
18 ~~district may not have its own officers or employees. The board and each officer of the district~~
19 ~~shall hold all officers' rights, powers and privileges in an improvement district, its land and~~
20 ~~proceedings in relation to the improvement district as each has in the district.~~

21 Section 282. That § 46A-7A-165 be repealed.

22 ~~46A-7A-165. The provisions of §§ 46A-7A-8 to 46A-7A-160, inclusive, apply to an~~
23 ~~improvement district in the same manner as they apply to the district. The improvement district~~
24 ~~and the board and officers of the district have all of the powers, with respect to the improvement~~

1 ~~district, that are stated in those provisions:~~

2 Section 283. That § 46A-7A-166 be repealed.

3 ~~—46A-7A-166. The board, before or after entering any contract with the United States or~~
4 ~~others, levying of any assessment or taking any particular action, may start a special proceeding~~
5 ~~in circuit court, in which the proceedings of any such contract and its terms, the levy of~~
6 ~~assessment or the taking of any action shall be judicially examined, approved and confirmed or~~
7 ~~disapproved and disaffirmed. Practice and procedure for confirmation of any action shall be as~~
8 ~~nearly as possible in conformity with practice and procedure provided for confirmation before~~
9 ~~issue and sale of bonds. The court may approve such proceedings in part and declare illegal or~~
10 ~~invalid other and subsequent parts of the proceedings and, as far as possible, the court shall~~
11 ~~remedy and cure all defects in the proceedings.~~

12 Section 284. That § 46A-7A-167 be repealed.

13 ~~—46A-7A-167. The board, before selling any bonds or, in its discretion, before entering any~~
14 ~~contract, levying any assessment, or taking any special action, shall start a special proceeding,~~
15 ~~in which the proceedings of the board and the district shall be judicially examined and approved~~
16 ~~or disapproved.~~

17 Section 285. That § 46A-7A-168 be repealed.

18 ~~—46A-7A-168. The board shall file in circuit court in a county in which some portion of the~~
19 ~~lands of the district are situated, a petition requesting that its proceedings be examined,~~
20 ~~approved, and confirmed by the court. The petition shall state the facts of the proceedings for~~
21 ~~issue and sale of the bonds, the entering of any contract, the levying of any assessment or taking~~
22 ~~of any special action and shall state generally that the irrigation district was duly organized and~~
23 ~~that the first board was duly elected. The petition need not state the facts showing organization~~
24 ~~of the district or the election of the first board.~~

1 Section 286. That § 46A-7A-169 be repealed.

2 ~~46A-7A-169. The court shall set a time for hearing of the petition and shall order the clerk~~
3 ~~of courts to publish notice of filing of the petition. The notice shall be published in the same~~
4 ~~manner and for the same length of time that notice of a special election on district bonds is~~
5 ~~required to be published. The notice shall state the time and place set for the hearing and that~~
6 ~~any person interested in the organization of the district or in proceedings for issue or sale of the~~
7 ~~bonds, may, on or before the day set for the hearing, answer or otherwise plead to the petition.~~
8 ~~The petition may be described in the notice as a petition of the district, asking that the~~
9 ~~proceedings set forth be examined, approved, and confirmed by the court.~~

10 Section 287. That § 46A-7A-170 be repealed.

11 ~~46A-7A-170. Any person interested in the district or the issue or sale of bonds may answer~~
12 ~~or otherwise plead to the petition. The provisions of law respecting pleading to a complaint are~~
13 ~~applicable to a pleading to the petition. Any person so pleading shall be the defendant to the~~
14 ~~special proceeding and the district shall be the plaintiff. Every material statement of the petition~~
15 ~~not controverted by the answer must, for the purpose of such special proceeding, be taken as~~
16 ~~true. Each person failing to answer the petition shall be deemed to admit as true all the material~~
17 ~~statements of the petition. Any rules of pleading and practice provided by law and not~~
18 ~~inconsistent with the provisions of this chapter are applicable to the special proceedings.~~

19 Section 288. That § 46A-7A-171 be repealed.

20 ~~46A-7A-171. Upon the hearing of special proceedings, the court may examine and~~
21 ~~determine the legality and validity of, and approve or disapprove any of the proceedings for~~
22 ~~organization of the district and all other matters which may affect the legality or validity of the~~
23 ~~proceedings and objects set forth in the petition, including any proceedings connected with~~
24 ~~voting and issue of bonds by the district. The court shall disregard any error, irregularity, or~~

1 ~~omission which does not affect the substantial rights of the parties and it may approve such~~
2 ~~proceedings in part and disapprove and declare illegal or invalid other parts of the proceedings.~~
3 ~~Insofar as possible, the court shall remedy and cure all defects in such proceedings. The court~~
4 ~~shall find and determine whether the notice of filing of the petition has been duly published for~~
5 ~~the time and in the manner prescribed by this chapter. Costs of the special proceeding may be~~
6 ~~allowed and apportioned between the parties, at the discretion of the court.~~

7 Section 289. That § 46A-7A-172 be repealed.

8 ~~—46A-7A-172. If the court holds the proceedings for organization of the district valid and the~~
9 ~~proceedings for voting and issue of the bonds valid, the board shall prepare a written statement,~~
10 ~~including the organization of the district, the voting and issue of such bonds or other objects of~~
11 ~~such petition, and concluding with the decree of the court finding the proceedings for the~~
12 ~~organization of the district and subsequent proceedings legal and valid. If the proceedings are~~
13 ~~for confirmation of a bond issue, the board shall present such written statement and bonds to the~~
14 ~~state board. The written statement shall be certified under oath by the board. The state board~~
15 ~~shall record the statement and register the bonds in its office. No bonds may be issued or valid~~
16 ~~unless they are registered and have endorsed thereon a certificate of the state board showing that~~
17 ~~the bonds are issued pursuant to law. The date of filing in the office of the state board is the~~
18 ~~basis of the certificate.~~

19 Section 290. That § 46A-7A-173 be repealed.

20 ~~—46A-7A-173. If a majority of the electors representing a majority of the acres of irrigable~~
21 ~~land within the district petitions the board to call a special election to submit to the qualified~~
22 ~~electors of the district a proposition to vote on discontinuance of the district and settlement of~~
23 ~~its bonded and other indebtedness, the board shall call an election, setting forth the object of the~~
24 ~~election. The board shall publish notice of such election for a period of thirty days prior to the~~

1 ~~election, setting forth the time and place for holding the election in each of the voting precincts~~
2 ~~in the district. It also shall post a printed notice of such election in some conspicuous place in~~
3 ~~each voting precinct.~~

4 Section 291. That § 46A-7A-174 be repealed.

5 ~~—46A-7A-174. If a contract has been made with the United States, no action may be taken by~~
6 ~~the board for dissolution of the district unless the assent of the secretary of the interior thereto~~
7 ~~in writing has been filed with the secretary of the board and a certified copy thereof filed with~~
8 ~~the register of deeds of each county where district lands are situated.~~

9 Section 292. That § 46A-7A-175 be repealed.

10 ~~—46A-7A-175. The board shall provide ballots to be used at the election on which shall be~~
11 ~~printed the words: "for dissolution, Yes," and "for dissolution, No." The ballots shall be~~
12 ~~distributed to the proper election officers in the voting precincts of the district prior to the~~
13 ~~opening of the polls on the day of the election. The election shall be conducted in the same~~
14 ~~manner as provided for an election of directors of the district.~~

15 Section 293. That § 46A-7A-176 be repealed.

16 ~~—46A-7A-176. If a majority of the votes are "for dissolution, No," there may not be another~~
17 ~~election on the question of dissolution of the district during the year in which the election was~~
18 ~~held.~~

19 Section 294. That § 46A-7A-177 be repealed.

20 ~~—46A-7A-177. If a majority of the votes are "for dissolution, Yes," the board shall~~
21 ~~immediately notify all persons having claims against the district of the result of the election and~~
22 ~~may adjust, settle, and compromise any claim.~~

23 Section 295. That § 46A-7A-178 be repealed.

24 ~~—46A-7A-178. To raise money to pay any indebtedness of the district, the board shall sell and~~

1 ~~dispose of all property belonging to the district. The board shall advertise the property for sale~~
2 ~~at least four weeks in a manner in the judgment of the board to be to the best interests of the~~
3 ~~district. The board shall state in the advertisement a description of the property and the time and~~
4 ~~place when bids in writing for the property shall be opened and considered. At the time designed~~
5 ~~in the notice, or as soon thereafter as the board can meet, it shall open and consider all bids~~
6 ~~received for purchase of the property.~~

7 Section 296. That § 46A-7A-179 be repealed.

8 ~~—46A-7A-179. The board may reject any bids which are not, in the judgment of the board, fair~~
9 ~~and just consideration for the property. If bids are rejected by the board, it may sell and convey~~
10 ~~by deed, executed by the board, all such property by private negotiations with any person.~~

11 Section 297. That § 46A-7A-180 be repealed.

12 ~~—46A-7A-180. After sale of the property and franchises of the district, the board, with the~~
13 ~~revenue realized from such sale, together with such other funds as the district may have, shall~~
14 ~~make settlement, payment, and redemption, if possible, of all outstanding bonded and other~~
15 ~~indebtedness of the district. It may not pay more than the par value of outstanding bonds with~~
16 ~~interest to the time of payment, plus any redemption premium established by the district at the~~
17 ~~time the bonds were issued.~~

18 Section 298. That § 46A-7A-181 be repealed.

19 ~~—46A-7A-181. If the revenue realized from the sale of district property, together with other~~
20 ~~funds of the district, is insufficient for payment of all indebtedness of the district, assessments~~
21 ~~and calls shall be made against the lands included in the district in the manner provided by this~~
22 ~~chapter for assessments to pay bonds and other indebtedness of the district until sufficient~~
23 ~~revenue is raised to pay in full all obligations of the district.~~

24 Section 299. That § 46A-7A-182 be repealed.

1 ~~46A-7A-182. After all property of the district is disposed of and all obligations of the district~~
2 ~~have been paid, the directors shall file, in the office of the auditor of each county in which the~~
3 ~~district is located and in the office of the state board, a report attested by the secretary and under~~
4 ~~the seal of the board. The report shall state that the district has disposed of its property and~~
5 ~~franchises and become disorganized and dissolved. The report shall be recorded in the~~
6 ~~miscellaneous record of the counties. If any person having any claim against the district not~~
7 ~~settled or disposed of at the time of the filing of the report fails to bring action upon the claim~~
8 ~~within five years from the time of filing of the report, the claim is forever barred against the~~
9 ~~district and against all persons and property in the district.~~