

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

400V0259

## HOUSE BILL NO. 1015

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 create an equitable process to handle water right  
2 applications submitted for aquifers determined to be fully appropriated by the Water  
3 Management Board.

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

5 Section 1. That § 46-2A-7 be amended to read as follows:

6 46-2A-7. If the Water Management Board determines, based upon the evidence presented  
7 at the hearing, that the applicable requirements for the permit, license, or amendment have been  
8 met, it shall approve the permit, license, or amendment. If the board determines that ~~such~~ the  
9 requirements have not been met or that the evidence is insufficient to support a determination,  
10 it shall disapprove the application or defer it for further study. The chief engineer shall hold an  
11 application submitted on or after July 1, 2014, to appropriate water from a ground water source  
12 determined to be fully appropriated by the board pursuant to § 46-6-3.1 only as provided in  
13 sections 2 to 8, inclusive, of this Act.

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



1        If the board determines a ground water source to be fully appropriated pursuant to  
2 § 46-6-3.1, the chief engineer shall publish a notice within thirty days of the board's final  
3 decision at least once in at least one official newspaper in each county where the ground water  
4 source is located. For any ground water source determined to be fully appropriated by the board  
5 prior to July 1, 2014, notice shall also be published as provided by this section. If the official  
6 newspaper is a weekly newspaper, the notice shall also be published at least once in a daily  
7 newspaper serving the general area where the ground water source is located and posted on the  
8 department's website until the thirty day application period is completed. The public notice shall  
9 describe the decision of the board and provide notice of a thirty day application period during  
10 which the chief engineer shall accept and hold for future consideration applications to  
11 appropriate water from the ground water source specified in the public notice.

12        Section 3. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
13 follows:

14        The date of receipt affixed to any application submitted pursuant to section 2 of this Act  
15 shall be the date of the thirtieth day of the thirty day application period. An incomplete  
16 application will be returned to the applicant with notification of the deficiencies. The applicant  
17 has thirty days from the date the application is returned to complete and resubmit the application  
18 to retain the common priority date assigned to all of the applications. Any application received  
19 after the date of the board's decision and prior to the commencement of the thirty day application  
20 period shall assume the same priority date assigned to applications submitted during the thirty  
21 day application period. The chief engineer shall also accept and hold any application submitted  
22 after the thirty day application period but such an application shall take a priority date as of the  
23 date of receipt of the application. No more than one irrigation permit application may be  
24 accepted for the same acreage.

1 Section 4. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 Any application submitted prior to the board's decision that an aquifer is fully appropriated  
4 pursuant to § 46-6-3.1 or prior to July 1, 2014, is not eligible to be included in the process  
5 established by this Act and shall be considered by the board for final action. The board may  
6 approve, deny, or defer those applications for further study.

7 Section 5. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 From the list of complete applications submitted pursuant to section 2 of this Act and  
10 assigned a common priority date, the board shall create a priority list using a random selection  
11 process to be determined by the board. The priority list determines the order of eligibility for  
12 any unappropriated water the board may determine is available at a future date. Establishing the  
13 priority of each application by the board shall be scheduled no later than the second regularly  
14 scheduled board meeting following expiration of the thirty day application period.

15 Section 6. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 For any ground water source determined to be fully appropriated pursuant to § 46-6-3.1, the  
18 board shall hold a public hearing to review the ground water source, all permits appropriating  
19 water from that source, and all held applications at least once every five years to determine  
20 whether unappropriated water is available. The chief engineer shall publish notice of the hearing  
21 at least once in at least one official newspaper in each county where the ground water source is  
22 located. If the official newspaper is a weekly newspaper, the notice shall also be published at  
23 least once in a daily newspaper serving the general area where the ground water source is  
24 located and posted on the department's website until the public hearing is completed. The chief

1 engineer shall also provide notice of the five-year review and hearing to the address included  
2 in each applicant's file. Each applicant shall notify the chief engineer in writing within thirty  
3 days of receipt of the notice whether the applicant desires to retain eligibility to appropriate any  
4 water that the board may determine is available through its review of the aquifer. A fee equal  
5 to ten percent of their original application fee shall also be remitted to the chief engineer to  
6 retain eligibility. Failure of the applicant to notify the chief engineer in writing or remit the fee  
7 constitutes withdrawal of the held application.

8 Section 7. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 If the board determines that unappropriated water has become available from a fully  
11 appropriated ground water source during the five-year review under section 6 of this Act, the  
12 board shall make the unappropriated water available to the applications being held by the chief  
13 engineer based on the priority established in sections 3 and 5 of this Act. The chief engineer  
14 shall process held applications in accordance with the notice provisions pursuant to chapter  
15 46-2A until such time the board determines the ground water source to again be fully  
16 appropriated in accordance with § 46-6-3.1. Any remaining applications shall continue to be  
17 held by the chief engineer for future five-year reviews by the board. If there is remaining  
18 unappropriated water available after processing all held applications, the remaining  
19 unappropriated water is subject to general appropriation as provided by law.

20 Section 8. That chapter 46-2A be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 No water permit application approved by the board pursuant to section 7 of this Act may be  
23 transferred until the water has been placed to beneficial use as specified in the permit. For a  
24 permit to irrigate, no transfer of water or acreage may be approved for an amount of water or

1 acres greater than the amount developed at the original site.