

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

381J0464

HOUSE BILL NO. 1175

Introduced by: Representatives Madsen, Cutler, Haverly, Michels, and O'Brien and Senators Earley, Bogue, McCracken, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to establish the brownfields economic development
2 program and to provide for the continuous appropriation of certain federal funds.

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

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

6 Terms used in this Act mean:

- 7 (1) "Brownfields program," a program to prevent, assess, safely remediate, and
8 sustainably reuse brownfields sites;
- 9 (2) "Brownfields site," real property that is abandoned, idled, or under-used, and the
10 expansion, redevelopment, or reuse of which may be complicated or hindered by the
11 presence or potential presence of a hazardous substance, pollutant, or contaminant;
- 12 (3) "Controlled substance," a drug or other substance, or immediate precursor, included
13 in schedule I, II, III, IV, or V of part B of 21 USC § 812, as amended to January 1,
14 2004;
- 15 (4) "Mine scarred lands," lands, associated waters, and surrounding watersheds where



1 extraction, beneficiation, or processing of ores and minerals, including coal, has
2 occurred;

3 (5) "Petroleum," crude oil or any portion or fraction of crude oil that is not otherwise
4 specifically listed or designated as a hazardous substance under the Comprehensive
5 Environmental Response, Compensation, and Liability Act of 1980, as amended to
6 January 1, 2004;

7 (6) "Petroleum contaminated site," any site that the United States Environmental
8 Protection Agency or the state determines is of relatively low risk compared with
9 other petroleum-only sites in the state, and for which there is no viable responsible
10 party and will be assessed, investigated, or cleaned up by a person that is not
11 potentially liable for cleaning up the site, which are not subject to a corrective action
12 order under the Resource Conservation and Recovery Act (RCRA) § 9003(h), as
13 amended to January 1, 2004;

14 (7) "Real property," residential, commercial, and industrial properties.

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

17 The state brownfields economic development program is hereby established. A program
18 subfund is created within the water and environment fund established pursuant to § 46A-1-60.
19 The subfund shall be maintained separately; and all money for use in the program shall be
20 deposited into the subfund, including all federal grants for capitalization of a brownfields
21 economic development fund, all repayments of assistance awarded from the subfund, interest
22 on investments made on money in the subfund, proceeds of discretionary bond issues allowed
23 by § 46A-1-31, and principal and interest on loans made from the fund. Money in the subfund
24 may be used only for purposes authorized under federal law. The subfund may be pledged or

1 assigned by the district to or in trust for the holders of the bonds of the district and may be
2 transferred to and held by a trustee or trustees pursuant to § 46A-1-39.

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

5 Money from the brownfields economic development program subfund shall be disbursed
6 and administered according to rules promulgated by the Board of Water and Natural Resources
7 pursuant to chapter 1-26, § 46A-1-65, and the provisions of this Act. The provisions of §§
8 46A-1-61 to 46A-1-69, inclusive, do not apply to the brownfields economic development
9 program subfund of the water and environment fund or grants and loans from the subfund made
10 under the brownfields economic development program described in sections 2 to 5 of this Act,
11 inclusive.

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

14 The Board of Water and Natural Resources shall promulgate rules pursuant to chapter 1-26
15 to implement the provisions of this Act consistent with the requirements of federal law in order
16 for an approved brownfields economic development program to become eligible for grant funds
17 from the United States Environmental Protection Agency. The rules shall include criteria and
18 procedures for the selection of projects to receive funds from the brownfields economic
19 development program and for the administration of the program.

20 Section 5. That chapter 46A-1 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The brownfields economic development program subfund is hereby continuously
23 appropriated to the South Dakota Board of Water and Natural Resources. Money received for
24 these programs may be used only for purposes authorized by the federal Small Business

1 Liability Relief and Brownfields Revitalization Act (P.L. 107-118) as amended to January 1,
2 2004.

3 Section 6. That chapter 46A-1 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any indemnity-eligible entity may establish a brownfields program to prevent, assess, safely
6 clean up, and sustainably reuse eligible brownfields sites, including sites contaminated by
7 controlled substances, sites contaminated by petroleum or a petroleum product, or mine-scarred
8 lands as authorized in the Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980, as amended to January 1, 2004, and in the Small Business Liability Relief
10 and Brownfields Revitalization Act, P.L. 107-118 as amended to January 1, 2004.

11 Section 7. That chapter 46A-1 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any indemnity-eligible entity establishing a brownfields program may exercise all powers
14 necessary or appropriate to carry out the purposes of this Act, including the following:

- 15 (1) To acquire by lease, purchase, gift, condemnation, or other lawful means and hold
16 in its corporate name or use and control as provided by law both real and personal
17 property and easements and rights-of-way within or without the corporate limits for
18 all purposes authorized by this Act or necessary to the exercise of any power granted
19 in this Act;
- 20 (2) To convey, sell, give, dispose of, or lease both the personal and real property of the
21 municipality or county as provided by this Act;
- 22 (3) To exercise the power of eminent domain only as necessary to carry out its purposes
23 and duties as provided in this Act;
- 24 (4) To borrow money and to issue certificates, warrants, general obligation bonds and

- 1 non-ad valorem tax bonds for purposes of this Act;
- 2 (5) To accept funds, property, and services or other assistance, financial or otherwise,
3 from federal, state, and other public and private sources to carry out the purposes of
4 this Act;
- 5 (6) To contract or cooperate with any person, the state, or any political subdivision of the
6 state, any federal agency, or any private or public entity to carry out the purposes of
7 this Act;
- 8 (7) To plan, develop, construct, acquire, operate, clean, maintain, repair, alter, renovate,
9 salvage, demolish, secure, abandon, consolidate, reclaim, or gather data and
10 information concerning any brownfields site, or any related development, structure,
11 or facility necessary to carry out the purposes of this Act; and
- 12 (8) To do and perform all acts authorized in this Act and all other acts necessary and
13 proper for carrying out and exercising the powers granted by this Act.