

AN ACT

ENTITLED, An Act to create an equitable process to handle water right applications submitted for aquifers determined to be fully appropriated by the Water Management Board.

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

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

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

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

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

hold for future consideration applications to appropriate water from the ground water source specified in the public notice.

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

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

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

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

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

From the list of complete applications submitted pursuant to section 2 of this Act and assigned a common priority date, the board shall create a priority list using a random selection process to be

determined by the board. The priority list determines the order of eligibility for any unappropriated water the board may determine is available at a future date. Establishing the priority of each application by the board shall be scheduled no later than the second regularly scheduled board meeting following expiration of the thirty day application period.

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

For any ground water source determined to be fully appropriated pursuant to § 46-6-3.1, the board shall hold a public hearing to review the ground water source, all permits appropriating water from that source, and all held applications at least once every five years to determine whether unappropriated water is available. The chief engineer shall publish notice of the hearing at least once in at least one official newspaper in each county where the ground water source is located. If the official newspaper is a weekly newspaper, the notice shall also be published at least once in a daily newspaper serving the general area where the ground water source is located and posted on the department's website until the public hearing is completed. The chief engineer shall also provide notice of the five-year review and hearing to the address included in each applicant's file. Each applicant shall notify the chief engineer in writing within thirty days of receipt of the notice whether the applicant desires to retain eligibility to appropriate any water that the board may determine is available through its review of the aquifer. A fee equal to ten percent of their original application fee shall also be remitted to the chief engineer to retain eligibility. Failure of the applicant to notify the chief engineer in writing or remit the fee constitutes withdrawal of the held application.

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

If the board determines that unappropriated water has become available from a fully appropriated ground water source during the five-year review under section 6 of this Act, the board shall make

the unappropriated water available to the applications being held by the chief engineer based on the priority established in sections 3 and 5 of this Act. The chief engineer shall process held applications in accordance with the notice provisions pursuant to chapter 46-2A until such time the board determines the ground water source to again be fully appropriated in accordance with § 46-6-3.1. Any remaining applications shall continue to be held by the chief engineer for future five-year reviews by the board. If there is remaining unappropriated water available after processing all held applications, the remaining unappropriated water is subject to general appropriation as provided by law.

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

No water permit application approved by the board pursuant to section 7 of this Act may be transferred until the water has been placed to beneficial use as specified in the permit. For a permit to irrigate, no transfer of water or acreage may be approved for an amount of water or acres greater than the amount developed at the original site.

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

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I certify that the attached Act originated in the

HOUSE as Bill No. 1015

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1015
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State