

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

792W0132

SENATE BILL NO. 3

Introduced by: Senators Vehle, Frerichs, and White and Representatives Gosch, Feickert, Hawley, and Heinemann (Leslie) at the request of the Regional Watershed Advisory Task Force

1 FOR AN ACT ENTITLED, An Act to provide for mediation of certain drainage disputes.

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

3 Section 1. The Department of Agriculture shall establish and administer a statewide
4 mediation program to provide assistance to property owners who seek to use mediation as a
5 method to resolve disputes over the surface or subsurface drainage of water.

6 The secretary of the Department of Agriculture shall promulgate rules pursuant to chapter
7 1-26 necessary for mediation, including the establishment of fees, training requirements for
8 mediators, mediation request forms, mediation timeline, notification and intervention
9 procedures, and any other mediation procedures as may be necessary for the prompt and
10 expeditious mediation of drainage disputes.

11 Section 2. All staff services required by the drainage mediation program shall be provided
12 by the Department of Agriculture. The secretary of agriculture may employ a director of
13 drainage mediation services and any other agents and employees as the secretary deems
14 necessary. The director shall serve at the pleasure of the secretary of agriculture. The mediation



1 services shall be administered under the direction and supervision of the Department of
2 Agriculture. All expenses incurred in carrying on the work of the drainage mediation program,
3 including the per diem and expenses of the staff, salaries, contract payments, and any other
4 items of expense shall be paid out of funds appropriated or otherwise made available to the
5 drainage mediation operating fund.

6 Section 3. Any fees incurred in the mediation process provided under this Act and by rule
7 shall be borne equally between the parties to the drainage dispute. The fees shall be deposited
8 in the drainage mediation operating fund which is hereby created. All money in the drainage
9 mediation operating fund created by this section is continuously appropriated for the purposes
10 of administering the drainage mediation program. All funds received by the drainage mediation
11 program shall be set forth in an informational budget as described in § 4-7-7.2 and be annually
12 reviewed by the Legislature. Any disbursements from the drainage mediation operating fund
13 shall be by authorization of the secretary of agriculture.

14 Section 4. The Department of Agriculture, in the administration of this Act, may contract
15 with one or more governmental entities, nonprofit corporations, individuals, or other entities as
16 determined by the Department of Agriculture to provide mediation services of drainage disputes.

17 Section 5. The director of the drainage mediation program shall promptly, upon the request
18 of either party for mediation services, send a mediation meeting notice to the parties to the
19 drainage dispute and to any property owner and any county, municipality, township, or any
20 agency of state or federal government reasonably determined by the director to be affected by
21 the drainage activity, setting a time and place for an initial mediation meeting between the
22 parties to the dispute and a mediator. The unintentional failure to notify any party who may
23 potentially be impacted by the drainage activity may not prevent the mediation from being
24 scheduled or completed. No notice is necessary to any property owner within the boundaries of

1 a municipality.

2 Section 6. Any agreement reached between the parties to the drainage dispute as a result of
3 mediation shall be drafted into a written agreement. If signed by the parties, the agreement
4 constitutes a binding contract, and the mediator shall so certify.

5 Section 7. Information relating to the dispute between the parties to the drainage dispute
6 which is disclosed to the mediator or which is created, collected, or maintained by the director
7 of the drainage mediation program pursuant to the terms of this Act is confidential to the extent
8 agreed by the parties or provided by state law.

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

11 Section 8. Any person serving as a mediator pursuant to this Act is immune from civil
12 liability in any action brought in any court in this state on the basis of any act or omission
13 resulting in damage or injury if the person was acting in good faith, in a reasonable and prudent
14 manner, and within the scope of such person's official functions and duties as a mediator.

15 Section 9. Any person or party that claims to be impacted by the planned drainage activities,
16 upon timely notice, is allowed to intervene in the mediation process if the person's or party's
17 claim of impact is supported by a claim that the person or party owns or administers real
18 property impacted by the planned drainage. The request for intervention shall be supported by
19 evidence that the intervention is necessary to protect the person's or party's property interests or
20 the drainage and that those interests will not be adequately represented by the existing parties.
21 In considering the application for intervention, the mediator shall determine whether an
22 applicant may intervene and whether the interest of the applicant presents a property, health, or
23 safety issue impacted by the mediation and whether the interests of the potential interveners will
24 not be protected by the existing parties.