

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

742T0733

SENATE ENGROSSED NO. **HB 1230** - 2/23/2012

Introduced by: Representatives Nelson (Stace), Brunner, Feickert, Hansen (Jon), Hickey, Hoffman, Hubbel, Hunhoff (Bernie), Kirschman, Kloucek, Kopp, Liss, Magstadt, Olson (Betty), Rozum, Russell, Tornow, Tulson, Van Gerpen, and Venner and Senators Adelstein, Frerichs, Hundstad, and Maher

1 FOR AN ACT ENTITLED, An Act to modify the publication requirements for water rights
2 applications.

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

4 Section 1. That § 46-2A-4 be amended to read as follows:

5 46-2A-4. Except in the case of an application for a well driller license or a well pump
6 installer license, if a recommendation is to approve or defer an application or if an applicant has
7 filed a petition to oppose a recommendation to deny an application, the applicant shall publish
8 notice of the application and recommendation at least once ~~a week for two successive weeks~~ in
9 at least one official newspaper in each county where the water will be diverted or used or where
10 project works will be located. The official newspaper shall be selected by the chief engineer and
11 shall be a newspaper designated as an official newspaper pursuant to § 7-18-3. ~~If the official~~
12 newspaper is a weekly newspaper, then the notice shall also be published at least once in a daily
13 newspaper. The daily newspaper selected by the chief engineer shall be located as near as
14 possible to the location where the water will be diverted or used. Public notice of the application



1 shall also be posted on the department's website until final action is taken on the application.

2 The ~~second~~ publication shall be at least twenty days before the first day of the Water
3 Management Board meeting at which the matter is noticed to be heard. No application for a
4 permit, license, or amendment may be considered and approved by the board until proof of all
5 required publications has been filed with the chief engineer. The notice, which shall be provided
6 by the chief engineer to the applicable newspapers, shall include the following, as applicable:

- 7 (1) The name and address of the applicant;
- 8 (2) A brief description of the project, including, where applicable, the proposed place or
9 places of use of the water or facilities, including the point of diversion, the amount
10 of water to be used and the purpose for which the water or facility is to be used;
- 11 (3) A brief statement describing the recommendation and the reasons for the
12 recommendation;
- 13 (4) A statement that any interested person who intends to participate in the hearing shall
14 file a petition to oppose or support the application and that the petition shall be filed
15 with the chief engineer and applicant at least ten days before the published date for
16 hearing;
- 17 (5) A statement that a petition to oppose or support an application may be informal, but
18 shall be in writing and shall contain the following:
 - 19 (a) A statement describing the petitioner's interest in the application;
 - 20 (b) The reasons for the petitioner's opposition to or support for the application;
 - 21 and
 - 22 (c) The signature and mailing address of the petitioner or the petitioner's legal
23 counsel;
- 24 (6) A statement telling where copies of the recommendation, application, or other

1 information may be obtained;

2 (7) The time when and the place where the application will be considered by the board;

3 (8) A statement that the recommendation of the chief engineer is not final or binding
4 upon the board and is subject to the approval of the board after it reaches a
5 conclusion based on facts at the public hearing;

6 (9) A statement that the time of hearing will be automatically extended for at least twenty
7 days upon written request of the applicant or any person who has filed a petition to
8 oppose or support the application and a statement that any such request by the
9 applicant or person filing a petition shall be made at least ten days before the
10 published date for hearing; and

11 (10) A statement that if the applicant does not contest the recommendation of the chief
12 engineer and no petition to oppose the application is received, the chief engineer shall
13 act on the application pursuant to the chief engineer's recommendation and no
14 hearing may be held before the board, unless the chief engineer makes a finding that
15 an application, even if uncontested, presents important issues of public policy or
16 public interest that should be heard by the board.

17 Section 2. That § 46-2A-23 be amended to read as follows:

18 46-2A-23. Following the issuance of a recommendation to approve an application pursuant
19 to § 46-2A-2, the chief engineer may publish, at the expense of the applicant, a notice to
20 determine whether any person opposes the application or recommendation of the chief engineer.
21 The notice shall be published as provided for in § 46-2A-4, and the notice shall contain the
22 information provided for in subdivisions 46-2A-4(1), (2), (3), (5), (6), and (10). The notice is
23 not required to refer to a board meeting or hearing date. In addition, the notice shall include a
24 statement that if the applicant intends to contest the recommendation, the applicant shall file a

1 petition with the chief engineer, and any interested person who intends to oppose or support the
2 application or recommendation shall file a petition with the chief engineer and the applicant.
3 Any petition shall be filed within ten days of the ~~second~~ published notice.

4 If no petition to contest the recommendation or to oppose an application is timely filed, the
5 chief engineer, following receipt of proof of publication, shall act on the application consistent
6 with the chief engineer's recommendation as provided by rules promulgated by the Water
7 Management Board pursuant to chapter 1-26 delegating authority to the chief engineer to issue
8 uncontested permits pursuant to §§ 46-1-16 and 46-2-3.1, without hearing by the board.

9 If a petition to contest the recommendation or to oppose the application is timely filed, the
10 chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The notice shall
11 also include a statement that the recommendation of the chief engineer is not final or binding
12 upon the board and is subject to the decision of the board based on evidence and record of the
13 public hearing. A statement shall also be included in the notice that the applicant or any
14 interested person who has filed a petition to oppose or support an application, may file a written
15 notice with the chief engineer requesting postponement of the original hearing date. The written
16 notice requesting postponement shall be filed within twenty days of the date of the notice
17 scheduling the board hearing, but not less than ten days before the date the application is
18 scheduled for hearing. Upon timely receipt of a written notice, the chief engineer shall cancel
19 the original hearing and reschedule the hearing not less than twenty days after the original
20 hearing date. Notice of hearing shall be provided by personal service or by first class mail to the
21 applicant and parties of record.