

AN ACT

ENTITLED, An Act to modify the publication requirements for water rights applications.

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

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

46-2A-4. Except in the case of an application for a well driller license or a well pump installer license, if a recommendation is to approve or defer an application or if an applicant has filed a petition to oppose a recommendation to deny an application, the applicant shall publish notice of the application and recommendation at least once in at least one official newspaper in each county where the water will be diverted or used or where project works will be located. The official newspaper shall be selected by the chief engineer and shall be a newspaper designated as an official newspaper pursuant to § 7-18-3. If the official newspaper is a weekly newspaper, then the notice shall also be published at least once in a daily newspaper. The daily newspaper selected by the chief engineer shall be located as near as possible to the location where the water will be diverted or used. Public notice of the application shall also be posted on the department's website until final action is taken on the application. The publication shall be at least twenty days before the first day of the Water Management Board meeting at which the matter is noticed to be heard. No application for a permit, license, or amendment may be considered and approved by the board until proof of all required publications has been filed with the chief engineer. The notice, which shall be provided by the chief engineer to the applicable newspapers, shall include the following, as applicable:

- (1) The name and address of the applicant;
- (2) A brief description of the project, including, where applicable, the proposed place or places of use of the water or facilities, including the point of diversion, the amount of water to be used and the purpose for which the water or facility is to be used;
- (3) A brief statement describing the recommendation and the reasons for the

recommendation;

- (4) A statement that any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and that the petition shall be filed with the chief engineer and applicant at least ten days before the published date for hearing;
- (5) A statement that a petition to oppose or support an application may be informal, but shall be in writing and shall contain the following:
 - (a) A statement describing the petitioner's interest in the application;
 - (b) The reasons for the petitioner's opposition to or support for the application; and
 - (c) The signature and mailing address of the petitioner or the petitioner's legal counsel;
- (6) A statement telling where copies of the recommendation, application, or other information may be obtained;
- (7) The time when and the place where the application will be considered by the board;
- (8) A statement that the recommendation of the chief engineer is not final or binding upon the board and is subject to the approval of the board after it reaches a conclusion based on facts at the public hearing;
- (9) A statement that the time of hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application and a statement that any such request by the applicant or person filing a petition shall be made at least ten days before the published date for hearing; and
- (10) A statement that if the applicant does not contest the recommendation of the chief engineer and no petition to oppose the application is received, the chief engineer shall act on the application pursuant to the chief engineer's recommendation and no hearing may be held before the board, unless the chief engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that

should be heard by the board.

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

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

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

If a petition to contest the recommendation or to oppose the application is timely filed, the chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The notice shall also include a statement that the recommendation of the chief engineer is not final or binding upon the board and is subject to the decision of the board based on evidence and record of the public hearing. A statement shall also be included in the notice that the applicant or any interested person who has filed a petition to oppose or support an application, may file a written notice with the chief engineer requesting postponement of the original hearing date. The written notice requesting postponement

shall be filed within twenty days of the date of the notice scheduling the board hearing, but not less than ten days before the date the application is scheduled for hearing. Upon timely receipt of a written notice, the chief engineer shall cancel the original hearing and reschedule the hearing not less than twenty days after the original hearing date. Notice of hearing shall be provided by personal service or by first class mail to the applicant and parties of record.

An Act to modify the publication requirements for water rights applications.

=====

I certify that the attached Act
originated in the

HOUSE as Bill No. 1230

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1230

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

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

Governor

=====

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