

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

345M0063

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1077** - 02/06/2006

Introduced by: Representatives Boomgarden, Deadrick, Dykstra, Gillespie, Hargens, Hunhoff, Jerke, Kroger, Pederson (Gordon), Rausch, Rave, Schafer, and Sebert and Senators Kooistra, Koskan, Lintz, Moore, Nesselhuf, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to authorize water user districts to establish and operate
2 wastewater systems.

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

4 Section 1. That § 46A-9-1 be amended to read as follows:

5 46A-9-1. Conservation of the state's water resources is hereby declared to be a state
6 function, and the public interest, welfare, convenience, and necessity require the creation of
7 water user districts and the construction of systems of works, ~~in the manner hereinafter provided~~
8 as provided in this chapter, for the conservation, storage, distribution, and utilization of water
9 and the collection, treatment, and disposal of wastewater. The construction of ~~said~~ systems of
10 works by such districts, as ~~herein provided for~~ provided in this chapter, is hereby declared to be
11 in all respects for the welfare and benefit of the people of South Dakota. It is the intention of the
12 Legislature of South Dakota that this chapter shall be liberally construed to effectuate ~~the~~
13 ~~purposes herein provided for~~ these purposes.

14 Section 2. That § 46A-9-2 be amended to read as follows:



46A-9-2. Terms used in this chapter mean:

- (1) "Board," ~~shall mean~~ the board of directors of a district organized under this chapter;
- (2) "City" or "town," ~~shall mean~~ a municipal corporation as classified in §§ 9-2-1 and 9-2-2; ~~and "city" shall also mean.~~ The term, city, also means a city organized under special territorial charter;
- (3) "Landowner," ~~shall mean~~ any resident of South Dakota who is an owner of land in any county containing any proposed or existing water user district as evidenced by records in the office of the register of deeds or director of equalization; ~~provided, however, that.~~ However, if land is sold under a contract for deed, which is of record in the office of the register of deeds or director of equalization, both the vendor and vendee shall be treated as ~~a landowner~~ landowners;
- (4) "Project," ~~shall mean~~ any one of the works ~~hereinafter~~ defined in this section, or any combination of such works which are physically connected or jointly managed and operated as a single unit;
- (5) "Water Management Board," the state board created in § 1-40-15;
- (6) "Water user district" or "district," ~~shall mean a~~ any district organized under this chapter, either as originally organized or as the ~~same may be from time to time~~ district is reorganized, altered, or extended;
- (7) "Works" and "system," ~~shall be deemed to include~~ all lands, property, rights, rights-of-way, easements, and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with ~~such the works, and shall embrace or system.~~ The terms, works and system, include all means of conserving, controlling, and distributing water, including, ~~without limiting the generality of the foregoing,~~ reservoirs, dams, feeder

1 canals, diversion canals, distributing canals, lateral ditches, structures, pumping units,
2 mains, pipelines, and waterworks systems, ~~and shall~~. The terms include all such
3 works for the conservation, development, storage above or under the ground,
4 spreading, distribution, utilization, and drainage of water, including, ~~without limiting~~
5 ~~the generality of the foregoing~~, works for the purpose of irrigation, drainage, flood
6 control, ~~watering of stock~~, stock watering, and supplying of water for public,
7 domestic, industrial, and other uses. The terms include any plant or system for the
8 collection, treatment, or disposal of wastewater, including sanitary sewers and
9 sewage and sewage treatment plants and systems.

10 Section 3. That § 46A-9-23.1 be amended to read as follows:

11 46A-9-23.1. If the board of directors of a water user district finds that there are lands within
12 the district not utilizing the ~~water supply~~ services of the district and that it is not feasible or
13 necessary to retain those lands within the district, the board shall adopt a resolution stating its
14 findings and declaring its intention to exclude the lands. The board shall, within ten days
15 following the adoption of the resolution, file it with the Board of Water and Natural Resources.
16 Upon receipt of the resolution, the Board of Water and Natural Resources shall determine
17 whether the resolution complies with the requirements to exclude the lands, and if so, shall
18 establish a hearing date on the issue no later than ninety days from the date of the filing of the
19 resolution. Following the hearing, the Board of Water and Natural Resources may approve or
20 disapprove the action proposed by the resolution. Upon approval and filing by the district board
21 of a certificate of approval in the Office of the Secretary of State, together with a copy of the
22 resolution, and after filing by the district board of a copy certified by the secretary of state in the
23 office of the county auditor of each county in which any lands to be excluded are located, the
24 lands shall be excluded from the water user district.

Section 4. That § 46A-9-26 be amended to read as follows:

46A-9-26. Every owner of land and entryman within the district, and every person or corporation which is a party to a contract with the district for the purchase of water, for the collection, treatment, or disposal of wastewater, or other services to be furnished by the district, may cast one vote at each election for each director to be elected for whom the voter is entitled to vote. However, the vote which a voter is entitled to cast by reason of being a party to any such contract with the district ~~shall be~~ is in addition to the vote to which the voter may be entitled by reason of being a landowner or entryman within the district. ~~In case~~ If election divisions are provided for, each person or corporation entitled to vote by reason of being a party to a contract, as ~~above provided in this section,~~ shall select the division in which ~~he or it shall vote, which the person or corporation will vote.~~ The selection shall be made under procedures established by resolution by the board of directors.

Section 5. That § 46A-9-42 be amended to read as follows:

46A-9-42. Any nonprofit corporation, cooperative, or association engaged in the treatment, distribution, ~~and~~ or sale of water or the collection, treatment, or disposal of wastewater to a rural area may, by majority vote of the membership voting in an election ~~thereon~~ on the question, transfer all of its assets, liabilities, contracts, and other obligations to a water user district as defined in § 46A-9-2, sanitary district authorized to operate a water system under § 34A-5-41, or a municipality. ~~Such action must also be~~ No such action may be taken unless approved by majority vote of the water user district or sanitary district membership voting in an election ~~thereon~~ on the action.

Section 6. That § 46A-9-43 be amended to read as follows:

46A-9-43. In connection with the powers provided by §§ 46A-9-40 and 46A-9-41, ~~such the~~ water user district ~~shall have the right and power to~~ may enter into any contract, lease,

1 agreement, or arrangement with any state, county, municipality, district, governmental, or public
2 corporation or association, or with any person, firm, or corporation, public or private, or with
3 the government of the United States, or with any officer, department, bureau, or agency thereof
4 of the government of the United States, or with any corporation organized under federal law for
5 the purpose of exercising or utilizing. The contract, lease, agreement, or arrangement may be
6 for any of the following purposes:

- 7 (1) Exercising or using any one or more of the ~~above enumerated powers, or for the sale~~
8 powers authorized in §§ 46A-9-40 and 46A-9-41;
- 9 (2) Selling, leasing, or otherwise furnishing or establishing of water rights, water supply,
10 conveyance and distribution of water, water service, or water storage, ~~for irrigation;~~
- 11 (3) Irrigation or flood control ~~or for domestic;~~
- 12 (4) Domestic, industrial, municipal, or stock-watering purposes, ~~or for the drainage;~~
- 13 (5) Drainage of lands, ~~or for the financing;~~
- 14 (6) Provision of services or systems for the collection, treatment, or disposal of
15 wastewater;
- 16 (7) Provision of billing, collection, hookup, or termination services for entities that
17 provide services for the collection, treatment, or distribution of water or wastewater;
- 18 (8) Financing or payment of the cost and expenses incident to the construction,
19 acquisition, or operation of such works, or incident to any obligation or liability
20 entered into or incurred by ~~such~~ the district.

21 Section 7. That chapter 46A-9 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 No portion of any plant or system that is operated by a water user district for the collection,
24 treatment, or disposal of wastewater, including sanitary sewers and sewage and sewage

1 treatment plants and systems, may be located within a zone that extends ten miles outward from
2 the corporate limits of any municipality without the approval of the municipality. However, if
3 the ten-mile zones of more than one municipality overlap, the jurisdiction of each municipality
4 over any such plant or system terminates at a boundary line equidistant from the respective
5 corporate limits of the municipalities; and the water user district shall obtain the approval of
6 each municipality that would have jurisdiction over any portion of the plant or system to be
7 operated by the water user district. The restrictions provided in this section do not apply to any
8 portion of any such plant or system if the portion was in existence on the effective date of this
9 Act or if the portion predates any expansion by a municipality that would otherwise cause the
10 plant or system to be in violation of this section.

11 Section 8. That § 46A-9-48 be amended to read as follows:

12 46A-9-48. No person, irrigation district, municipality, county, or other governmental
13 subdivision, irrigation company, or other public or private corporation or association ~~shall be~~
14 is liable for the payment of any rent or charge for water storage; ~~water supply; for the~~
15 collection, treatment, or disposal of wastewater; or for any of the costs of operation of ~~such a~~
16 water user district, unless a contract ~~therefor~~ for such services has been entered into between
17 ~~such the~~ person or public or private organization and the water user district furnishing ~~such~~
18 ~~water storage or water supply~~ the services.

19 Section 9. That § 46A-9-53 be amended to read as follows:

20 46A-9-53. ~~Prior to such~~ Before publication of any advertisement pursuant to chapter 5-18,
21 plans and specifications for the proposed construction work or materials shall be prepared and
22 filed at the principal office or place of business of the water user district. ~~Such~~ The
23 advertisement shall be published as required by § 5-18-3 and, in the discretion of the board of
24 directors of the district, may be published in such additional newspapers or trade or technical

1 periodicals as may be selected by the board in order to give proper notice of the receiving of
2 bids. ~~Such~~ The advertisement shall designate the nature of construction work proposed to be
3 done or materials proposed to be purchased. ~~The Department of Water and Natural Resources~~
4 ~~shall supervise bid lettings by the board of directors of water user districts.~~

5 Section 10. That § 46A-9-57 be amended to read as follows:

6 46A-9-57. Any such water user district may pledge and put up as collateral security for a
7 loan any district obligations. Any district issuing district obligations under the provisions of this
8 chapter ~~is hereby specifically authorized and empowered to~~ may pledge all or any part of the
9 revenues which the district may derive from the sale, conveyance, ~~and or~~ or distribution of water
10 for irrigation, domestic, municipal, industrial, ~~and or~~ or stock-watering purposes, ~~or, from the~~
11 ~~storage of water; or from the collection, treatment, or disposal of wastewater,~~ as security for the
12 payment of the principal and interest ~~thereon~~ on the loan. Any such pledge of revenues shall be
13 made by the directors of the district by resolution or by agreement with the purchasers or holders
14 of ~~such~~ the district obligations. Any such resolution or agreement may specify the particular
15 revenues that are pledged and the terms and conditions to be performed by the district and the
16 rights of the holders of ~~such~~ the district obligations, and may provide for priorities of liens in
17 any such revenues as between the holders of district obligations issued at different times or
18 under different resolutions or agreements.

19 Section 11. That § 46A-9-60 be amended to read as follows:

20 46A-9-60. The directors of any water user district organized under the provisions of this
21 chapter ~~are authorized to agree~~ may enter into agreements with the holders of any such district
22 obligations as to the maximum or minimum amounts ~~which such districts shall~~ that the district
23 may charge and collect for water sold by the district or for the collection, treatment, or disposal
24 of wastewater or other services provided by the district.

Section 12. That § 46A-9-62 be amended to read as follows:

46A-9-62. Every contract made by the board of directors for the sale, conveyance, and distribution of water, use of water, water storage, or for the collection, treatment, or disposal of wastewater, or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in ~~such~~ the contract to be paid to the board, the board may, upon such notice as ~~shall be~~ prescribed in ~~such~~ the contract, terminate ~~such~~ the contract and all obligations ~~thereunder~~ under the contract. The act of the board in ceasing on any such default to furnish or deliver water, use of water, or water storage, ~~under such~~ or other services under the contract ~~shall~~ does not deprive the board of, or limit any remedy provided by ~~such~~ the contract or by law for the recovery of any ~~and all~~ moneys due or which may become due under ~~such~~ the contract.

Section 13. That § 46A-9-63 be amended to read as follows:

46A-9-63. The board of directors shall create ~~three~~ separate funds, one fund to be known as the construction fund, another fund to be known as the water fund, ~~and~~ another fund to be known as the debt service fund, ~~each such fund to~~ and, if the district provides services for the collection, treatment, or disposal of wastewater, a fund to be known as the wastewater fund. Each such fund shall be identified by the same series letter or letters as the bonds, warrants, notes, debentures, or other evidences of indebtedness of ~~such~~ the series. A separate account shall be kept ~~of for~~ for each construction fund ~~and of~~, each water fund ~~and of~~, each wastewater fund, and each debt service fund for each project.

Section 14. That § 46A-9-65 be amended to read as follows:

46A-9-65. All income or profit and revenue of the works and all moneys received from the sale, conveyance, distribution, or disposal of water, use of water, or water storage; from the collection, treatment, or disposal of wastewater; and from the operation, lease sale, or other

1 disposition of the works, property, and facilities acquired under the provisions of this chapter,
2 shall be paid to the credit of the appropriate water or wastewater fund. All costs of operation,
3 maintenance, and repairs of the works, and all administrative and clerical expenses of the water
4 user district, shall be paid from the appropriate water or wastewater fund.

5 Section 15. That § 46A-9-69 be amended to read as follows:

6 46A-9-69. No irrigation or other water supply works, ~~or~~ drainage works, or systems or
7 facilities for the collection, treatment, or disposal of wastewater owned by the district ~~shall~~ may
8 be sold, alienated, or mortgaged by the district, except under the circumstances described by
9 §§ 46A-9-70 to 46A-9-72, inclusive.

10 Section 16. That § 46A-9-76 be amended to read as follows:

11 46A-9-76. ~~This chapter shall not be construed as depriving~~ Nothing in this chapter deprives
12 any municipality within the State of South Dakota, located either wholly or partially within or
13 outside any water user district, ~~from~~ of the exercise of any rights with which it may be invested
14 by law to construct, acquire, operate, maintain, or dispose of waterworks, or systems or facilities
15 for the collection, treatment, or disposal of wastewater, or to perform any other of its lawful
16 functions. ~~Provided, that~~ However, any municipality may enter into any contract with any such
17 district for the storage, purchase, or distribution of water or for the collection, treatment or
18 disposal of wastewater, for municipal, domestic, or industrial purposes.