

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0346

HOUSE BILL NO. 1013

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Environment and Natural Resources

1 FOR AN ACT ENTITLED, An Act to repeal certain obsolete statutes regarding the Department
2 of Environment and Natural Resources.

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

4 Section 1. That § 46-3A-1 be repealed.

5 ~~46-3A-1. As used in this chapter:~~

6 ~~(1) The term, weather modification, means performing any activity with the intention of~~
7 ~~producing artificial changes in the composition, behavior, or dynamics of the~~
8 ~~atmosphere;~~

9 ~~(2) The terms, experimentation, and, research and development, mean theoretical~~
10 ~~exploration and experimentation and the extension of investigative findings and~~
11 ~~theories of a scientific or technical nature in the practical application for experimental~~
12 ~~and demonstrative purposes, including the experimental producing and testing of~~
13 ~~model devices, equipment, materials, and processes;~~

14 ~~(3) The term, person, means any person, firm, association, organization, partnership,~~
15 ~~company, corporation, private or public, county, first or second class municipality,~~



1 trust, or other public agencies;

2 ~~— (4) — The term, operation, means the performance of weather modification activities~~
3 ~~entered into for the purpose of producing, or attempting to produce, a certain~~
4 ~~modifying effect within one geographical area over one continuing time interval not~~
5 ~~exceeding one year.~~

6 Section 2. That § 46-3A-2 be repealed.

7 ~~— 46-3A-2. It is hereby declared that the State of South Dakota claims its sovereign right to~~
8 ~~the use for the best interests of its residents of the moisture contained in the clouds and~~
9 ~~atmosphere within its sovereign state boundaries.~~

10 Section 3. That § 46-3A-3 be repealed.

11 ~~— 46-3A-3. It is hereby declared that weather modification techniques for precipitation~~
12 ~~management should be used to augment precipitation and decrease hailfall damage in South~~
13 ~~Dakota. The application of weather modification techniques shall be carried out under proper~~
14 ~~safeguards to supply sufficient data and accurate information in order to provide a net economic~~
15 ~~benefit and enhance knowledge concerning weather modification and to protect life, property,~~
16 ~~and the public interest.~~

17 Section 4. That § 46-3A-4.1 be repealed.

18 ~~— 46-3A-4.1. The Weather Modification Commission is abolished. All functions exercised by~~
19 ~~the former Weather Modification Commission are transferred to the Water Management Board.~~

20 Section 5. That § 46-3A-5 be repealed.

21 ~~— 46-3A-5. The weather modification activities of the Water Management Board shall be~~
22 ~~administered under the direction and supervision of the Department of Environment and Natural~~
23 ~~Resources and the secretary thereof, but the board shall retain the quasi-judicial, quasi-~~
24 ~~legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-~~

1 ~~32-1) otherwise vested in it and shall exercise those functions independently of the secretary of~~
2 ~~water and natural resources. The board shall have the function of setting the terms of and~~
3 ~~approving the contracts with other units of government for the sharing of the costs of weather~~
4 ~~modification operations.~~

5 Section 6. That § 46-3A-8 be repealed.

6 ~~—46-3A-8. The Department of Environment and Natural Resources, in order to carry into~~
7 ~~effect the provisions of this chapter, is authorized and empowered to appoint a qualified~~
8 ~~individual, organization, or institution to evaluate and publish the effects of all operations~~
9 ~~conducted in the state, and employ such clerical help as necessary; and to employ a director and~~
10 ~~such other staff members for the Water Management Board as are needed to carry out the intent~~
11 ~~of the chapter.~~

12 Section 7. That § 46-3A-9 be repealed.

13 ~~—46-3A-9. The Water Management Board shall carry on operations and research on a~~
14 ~~statewide basis, by its own staff, or by contract with approved cloud seeding organizations or~~
15 ~~in cooperation with other agencies as provided by law.~~

16 Section 8. That § 46-3A-10 be repealed.

17 ~~—46-3A-10. The Department of Water and Natural Resources shall cooperate with the federal~~
18 ~~government and its agents and contractors, and with other states, in the conduct of artificial~~
19 ~~weather modification operations.~~

20 Section 9. That § 46-3A-11 be repealed.

21 ~~—46-3A-11. In carrying out the purposes of this chapter, the Department of Water and Natural~~
22 ~~Resources shall utilize to the extent possible the facilities and technical resources of the public~~
23 ~~and private educational institutions of the state.~~

24 Section 10. That § 46-3A-12 be repealed.

1 ~~46-3A-12. The Department of Environment and Natural Resources, in order to carry into~~
2 ~~effect the provisions of this chapter, may enter into any contracts or memoranda of agreement~~
3 ~~as are necessary and may accept funds from the state Legislature and from private and public~~
4 ~~sources.~~

5 Section 11. That § 46-3A-13 be repealed.

6 ~~46-3A-13. The Department of Environment and Natural Resources may, at its discretion,~~
7 ~~cooperate with county programs of weather modification in carrying out the purposes of this~~
8 ~~chapter, and in addition to the powers of counties specified in § 10-12-18, counties may~~
9 ~~contribute to and participate in any weather modification program carried out by the state.~~

10 Section 12. That § 46-3A-14 be repealed.

11 ~~46-3A-14. The board of county commissioners, before contributing to or participating in any~~
12 ~~weather modification program pursuant to § 46-3A-13, may submit the question of whether the~~
13 ~~county should participate in any operational weather modification program to the voters of the~~
14 ~~county at any primary, general, or special election in accordance with all other election laws of~~
15 ~~this state.~~

16 Section 13. That § 46-3A-15 be repealed.

17 ~~46-3A-15. It is a Class 2 misdemeanor for any person to engage in activities for weather~~
18 ~~modification without a weather modification license and a weather modification permit issued~~
19 ~~by the Water Management Board or in violation of any term or condition of the license or the~~
20 ~~permit except as the Water Management Board shall provide by rules promulgated pursuant to~~
21 ~~chapter 1-26 and § 46-3A-16.~~

22 Section 14. That § 46-3A-16 be repealed.

23 ~~46-3A-16. The Water Management Board, to the extent it considers exemptions practical,~~
24 ~~shall provide for exempting laboratory research and experiments and activities of an emergency~~

1 ~~nature against fire, frost, sleet, or fog from the license and permit requirements of this chapter.~~

2 Section 15. That § 46-3A-17 be repealed.

3 ~~—46-3A-17. The Water Management Board, in accordance with its regulations, shall issue a~~
4 ~~weather modification license to each applicant who pays the license fee and who demonstrates,~~
5 ~~to the satisfaction of the Water Management Board, competence in the field of meteorology~~
6 ~~which is reasonably necessary to engage in weather modification activities. If the applicant is~~
7 ~~an organization, the competence must be demonstrated by the individual or individuals who are~~
8 ~~to be in control and in charge of the operation for the applicant. Each application shall be~~
9 ~~accompanied by a fee of twenty-five dollars.~~

10 Section 16. That § 46-3A-18 be repealed.

11 ~~—46-3A-18. Any person issued an original license or a renewal license under this chapter shall~~
12 ~~pay a fee of one hundred dollars. The money collected from such fees shall be deposited with~~
13 ~~the state treasurer in the environment and natural resources fee fund established pursuant to § 1-~~
14 ~~40-30.~~

15 Section 17. That § 46-3A-19 be repealed.

16 ~~—46-3A-19. Each original license or renewal license issued under this chapter shall expire on~~
17 ~~December thirty-first of the year for which it was issued.~~

18 Section 18. That § 46-3A-20 be repealed.

19 ~~—46-3A-20. At the expiration of the license period, the Water Management Board shall issue~~
20 ~~a renewal license to each applicant who pays the license fee and who has the qualifications~~
21 ~~necessary for issuance of an original license.~~

22 Section 19. That § 46-3A-21 be repealed.

23 ~~—46-3A-21. The Water Management Board, in accordance with this chapter and its rules, shall~~
24 ~~issue a weather modification permit to each applicant who holds a valid weather modification~~

1 ~~license, pays the permit fee, publishes such notice of intention as the Water Management Board~~
2 ~~shall require by rule and submits proof of publication, and furnishes proof of financial~~
3 ~~responsibility.~~

4 Section 20. That § 46-3A-22 be repealed.

5 ~~—46-3A-22. Proof of financial responsibility is made by showing, to the satisfaction of the~~
6 ~~Water Management Board, that the licensee has the ability to respond in damages for liability~~
7 ~~which might reasonably result from the operation for which the permit is sought.~~

8 Section 21. That § 46-3A-23 be repealed.

9 ~~—46-3A-23. Before a permit may be issued, the Water Management Board shall hold a public~~
10 ~~hearing on the proposed project. The hearing shall be held in a place within a reasonable~~
11 ~~proximity of the area expected to be affected by the proposed operation.~~

12 Section 22. That § 46-3A-24 be repealed.

13 ~~—46-3A-24. No permit may be issued unless the Water Management Board determines, based~~
14 ~~on the information provided in the operational plan and on the testimony provided at the public~~
15 ~~hearing, that the proposed weather modification operation is in the public interest.~~

16 Section 23. That § 46-3A-25 be repealed.

17 ~~—46-3A-25. Any person issued a permit under this chapter shall pay a fee of one hundred~~
18 ~~dollars. The money collected from such fees shall be deposited with the state treasurer in the~~
19 ~~environment and natural resources fee fund established pursuant to § 1-40-30.~~

20 Section 24. That § 46-3A-26 be repealed.

21 ~~—46-3A-26. A separate permit is required for each operation. The Water Management Board~~
22 ~~shall not issue a permit for operations in an area for a period to exceed one year.~~

23 Section 25. That § 46-3A-27 be repealed.

24 ~~—46-3A-27. The Water Management Board may suspend or revoke a license or permit if it~~

1 ~~appears that the licensee no longer has the qualifications necessary for the issuance of an~~
2 ~~original license or permit or has violated any provision of this chapter. The Water Management~~
3 ~~Board may refuse to renew the license of, or to issue another permit to, any applicant who has~~
4 ~~failed to comply with any provision of this chapter.~~

5 Section 26. That § 46-3A-28 be repealed.

6 ~~—46-3A-28. The Water Management Board may modify the terms and conditions of a permit~~
7 ~~if the licensee is first given notice and reasonable opportunity for a hearing on the need for a~~
8 ~~modification and it appears to the Water Management Board that a modification is necessary~~
9 ~~to protect the health or property of any person.~~

10 Section 27. That § 46-3A-29 be repealed.

11 ~~—46-3A-29. The Water Management Board may promulgate rules, pursuant to chapter 1-26,~~
12 ~~governing the weather modification program, including procedures for licensing, acquiring~~
13 ~~permits, renewal of permits, permit waivers, revocation of licenses, conducting hearings, and~~
14 ~~submitting reports and records.~~

15 Section 28. That § 46-3A-30 be repealed.

16 ~~—46-3A-30. The Department of Environment and Natural Resources shall administer and~~
17 ~~enforce the provisions of this chapter. However, the Water Management Board retains the~~
18 ~~authority and policy powers reserved to it by § 46-3A-5.~~

19 Section 29. That § 1-40-42 be repealed.

20 ~~—1-40-42. By January first of each year, the Department of Environment and Natural~~
21 ~~Resources shall submit a report to the Governor and to the Legislature summarizing all of the~~
22 ~~following subjects concerning the source reduction and recycling program under §§ 1-40-40 and~~
23 ~~1-40-41:~~

24 ~~—(1)—Past activities of the program;~~

1 ~~—(2)—~~ Accomplishments of the program; and
2 ~~—(3)—~~ Proposed goals of the program for the state agencies and local governmental units.
3 ~~—~~ By July first of each even-numbered year, each agency and participating local governmental
4 unit shall submit recommendations to the Department of Environment and Natural Resources
5 regarding the operation of the resource recovery and recycling program under §§ 1-40-40 and
6 ~~1-40-41.~~

7 Section 30. That § 45-6B-77 be repealed.

8 ~~—45-6B-77. The Department of Environment and Natural Resources shall maintain and keep~~
9 ~~current a master list of all permits, notices, and certificates required by state statutory law or~~
10 ~~rules adopted by state agencies for each type of mining operation. Such list shall be available~~
11 ~~to any person upon written request. The first master list shall be prepared not later than January~~
12 ~~20, 1983. On that date and annually thereafter, the department shall submit a copy to the~~
13 ~~Legislative Research Council.~~

14 Section 31. That § 34A-6-1.5 be repealed.

15 ~~—34A-6-1.5. The board shall adopt a statewide comprehensive solid waste management plan.~~
16 ~~The plan shall be prepared in cooperation with all municipalities and counties in the state and~~
17 ~~shall be approved pursuant to the rule-making procedure of chapter 1-26. The plan shall cover~~
18 ~~a fifteen-year time period and shall serve as the basis for the board's decisions on the need for~~
19 ~~additional facilities to be issued permits under § 34A-6-1.13. The plan shall include an analysis~~
20 ~~of the volume and composition of solid waste from all sources; projection of changes in volume~~
21 ~~and composition; an inventory of all existing and planned solid waste facilities and their permit~~
22 ~~status; an evaluation of the capacity of existing facilities; an assessment of special site or other~~
23 ~~facility characteristics which may affect the suitability of facilities for continued or future~~
24 ~~operation; an evaluation of the adequacy of existing capacity to handle the anticipated future~~

1 ~~volume and composition of waste; an evaluation of the feasibility and desirability of achieving~~
2 ~~waste stream volume or contaminant reductions through source reductions, recycling, waste type~~
3 ~~segregation, compaction, incineration, or other technology; an assessment of the need for new~~
4 ~~facilities on the basis of these analyses; and a facility plan for meeting these needs which shall~~
5 ~~consider among other things location, site suitability, appropriateness of facility type, and the~~
6 ~~utility and desirability of shared or regional facilities. The plan shall be updated from time to~~
7 ~~time as circumstances warrant. A comprehensive updating of the plan shall be undertaken no~~
8 ~~later than the tenth anniversary of the date on which the plan was approved by the board.~~

9 ~~—The board shall consider in its comprehensive solid waste management plan 40 CFR parts~~
10 ~~257 and 258 of the environmental protection agency solid waste disposal facility disposal~~
11 ~~criteria as proposed August 30, 1988, and as subsequently amended to January 1, 2011. Pending~~
12 ~~completion of the comprehensive solid waste management plan, the board shall continue to act~~
13 ~~on pending applications, new permit applications, and renewal applications.~~

14 Section 32. That § 34A-11-1.1 be repealed.

15 ~~—34A-11-1.1. Any rule adopted pursuant to this chapter may not be more stringent than those~~
16 ~~promulgated by the U.S. Environmental Protection Agency under authority of national laws~~
17 ~~governing the control of hazardous wastes except that the Board of Minerals and Environment~~
18 ~~shall promulgate rules for the treatment, storage, and disposal of polychlorinated biphenyls.~~

19 Section 33. That § 34A-7-5 be repealed.

20 ~~—34A-7-5. No beverage container may be sold or offered for sale in this state, subsequent to~~
21 ~~July 1, 1978, unless it is reusable, recyclable, or biodegradable. No beverage container may be~~
22 ~~sold or offered for sale in this state after January 1, 1992, if the beverage container is connected~~
23 ~~to another beverage container by a device constructed of a material that is not recyclable,~~
24 ~~biodegradable, or photodegradable.~~

1 ~~— A violation of this section is a Class 1 misdemeanor.~~

2 Section 34. That § 34A-7-5.1 be repealed.

3 ~~— 34A-7-5.1. No plastic garbage bag or plastic garbage can liner may be offered for sale in this~~
4 ~~state after January 1, 1992, if the bag or can liner is not recyclable, biodegradable,~~
5 ~~photodegradable, or otherwise degradable.~~

6 ~~— The secretary of environment and natural resources may, by rule, establish standards to~~
7 ~~implement the provisions of this section.~~