AN ACT

ENTITLED, An Act to make form and style revisions to certain statutes related to natural resources.

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

Section 1. That § 1-40-6 be amended to read as follows:

1-40-6. The Board of Water and Natural Resources shall annually elect from its members such officers as it deems advisable. A majority of the board members constitutes a quorum. The members are removable for cause only.

Section 2. That § 1-40-17 be amended to read as follows:

1-40-17. A majority of the appointed members of the Water Management Board constitutes a quorum. A majority of those present and voting is sufficient to perform official functions of the board.

Section 3. That § 1-40-25 be amended to read as follows:

1-40-25. The Board of Minerals and Environment consists of nine members appointed by the Governor, not all of whom may be from the same political party. The terms of the members of the board are for four years. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Section 4. That § 1-40-26 be amended to read as follows:

1-40-26. The Board of Minerals and Environment shall annually elect from its members such officers as it deems advisable. A majority of the board members constitutes a quorum. The board shall hold meetings at the call of the chair or a majority of the members, but at least one meeting shall be held every three months.

Section 5. That § 34-44-22 be amended to read as follows:

34-44-22. In addition to the requirements under § 34-44-21, the person providing a training course for which approval is sought shall demonstrate the person's ability and proficiency to conduct

the training to the department's satisfaction.

Section 6. That § 34A-1-4 be amended to read as follows:

34A-1-4. The secretary may secure necessary scientific, technical, administrative, and operational services, including laboratory facilities by contract or otherwise.

Section 7. That § 34A-1-5 be amended to read as follows:

34A-1-5. The administration of this chapter is the responsibility of the secretary except that the Board of Minerals and Environment shall perform any quasi-judicial, quasi-legislative, advisory, and special budgetary functions set out in this chapter. The board, with the concurrence of the secretary may enforce those regulations promulgated pursuant to chapter 34-21 which pertain to the release of radioactive substances into the atmosphere.

Section 8. That § 34A-1-9 be amended to read as follows:

34A-1-9. The department may:

(1) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement, and control;

(2) Determine by means of field studies and sampling the degree of air pollution in the state;

(3) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to such effects; and

(4) Collect and disseminate information and conduct educational and training programs relating to air pollution.

Section 9. That § 34A-1-10 be amended to read as follows:

34A-1-10. The department may:

(1) Advise, consult, and cooperate with agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with

interested persons or groups;

(2) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and provide them with technical and consultative assistance;

(3) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter; and

(4) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control of the source, device, or system, concerning the efficacy of the device or system, or the air pollution problem that may be related to the source, device, or system. Nothing in any such consultation relieves any person from compliance with this chapter, any rules in force pursuant to this chapter, or any other provisions of law.

Section 10. That § 34A-1-13 be amended to read as follows:

34A-1-13. The board may require access to records relating to emissions which cause or contribute to air pollution.

Section 11. That § 34A-1-19 be amended to read as follows:

34A-1-19. If the board finds that there are methods, machines, devices, or construction features which are reasonably feasible that will prevent or significantly reduce the emission of air resulting in pollution and that the public interest will be served by preventing or reducing the emission, it may require the use of such methods and the installation of such features, machines, or devices. However, the owner or operator of an air contaminant source may use any methods, construction features, machines, or devices which are as effective as those required by the board. The owner or operator of an air contaminant source may apply to the board for permission to use alternative methods, construction features, machines, or devices upon a showing by the owner or operator that the

alternative methods, construction features, machines, or devices are as effective as those required by the board. Any person who violates this section is subject to § 34A-1-39.

Section 12. That § 34A-1-23 be amended to read as follows:

34A-1-23. Nothing in § 34A-1-19 or 34A-1-21 authorizes the board to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

Section 13. That § 34A-1-25 be amended to read as follows:

34A-1-25. No variance may be granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive, until the board has considered the relative interests of the applicant, the owners of property likely to be affected by the discharges, and the general public.

Section 14. That § 34A-1-26 be amended to read as follows:

34A-1-26. In determining whether to grant a variance the board shall consider whether the facility was in existence on July 1, 1970. If the facility was constructed after July 1, 1970, the board shall consider whether the facility was in compliance at the time of its construction.

Section 15. That § 34A-1-29 be amended to read as follows:

34A-1-29. A variance or renewal is not a right of the applicant or holder of the variance or renewal but is at the discretion of the board.

Section 16. That § 34A-1-30 be amended to read as follows:

34A-1-30. Any variance or renewal of the variance shall be granted within the requirements of § 34A-1-27, for time periods and under conditions consistent with the reasons for the variance or renewal, and within the limitations set forth in §§ 34A-1-31 to 34A-1-33, inclusive. Any violation of a variance granted pursuant to this section is subject to § 34A-1-39.

Section 17. That § 34A-1-33 be amended to read as follows:

34A-1-33. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in §§ 34A-1-31 and 34A-1-32, the variance may not be for more than three years.

Section 18. That § 34A-1-34 be amended to read as follows:

34A-1-34. Any variance granted pursuant to §§ 34A-1-24 to 34A-1-35, inclusive, may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the board on account of the variance, no renewal may be granted, unless following proceedings under chapter 1-26, the board finds the renewal is justified. No renewal may be granted except on application for a renewal. Any such application shall be made before the expiration of the variance.

Section 19. That § 34A-1-35 be amended to read as follows:

34A-1-35. Nothing in §§ 34A-1-24 to 34A-1-34, inclusive, and no variance or renewal granted pursuant to §§ 34A-1-24 to 34A-1-34, inclusive, prevents or limits the application of the emergency provisions and procedures of §§ 34A-1-45 and 34A-1-46 to any person or the person's property.

Section 20. That § 34A-1-36 be amended to read as follows:

34A-1-36. Each municipality and each county may, with the approval of the Board of Minerals and Environment, establish and thereafter administer within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and rules issued under this chapter, or, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section applies to state facilities located within the boundaries of the municipality or county if the municipality or county has been found to be in violation of National Ambient Air Quality Standards.

Section 21. That § 34A-1-39 be amended to read as follows:

34A-1-39. Any person subject to this section, as provided in this chapter, is liable for a civil penalty not to exceed ten thousand dollars per day of violation or for damages to the environment of the state, or both. An action for the recovery of a civil penalty shall, upon demand, be tried to a jury.

Section 22. That § 34A-1-41 be amended to read as follows:

34A-1-41. Any duly authorized officer, employee, or representative of the department may enter and inspect that part of any property, premise, or place in which the officer, employee, or representative has reasonable grounds to believe is the source of air pollution at any reasonable time for the purpose of investigating the air pollution or of ascertaining the state of compliance with this chapter and rules promulgated pursuant to this chapter. No person may refuse entry or access to any authorized representative of the department who requests entry for the purpose of investigation, and who presents appropriate credentials; nor may any person obstruct, hamper, or interfere with any such investigation.

Section 23. That § 34A-1-43 be amended to read as follows:

34A-1-43. In addition to any other powers conferred on it by law the board may hold hearings relating to any aspect of or matter in the administration of this chapter, and in connection with the hearings, exercise the powers granted by chapter 1-26.

Section 24. That § 34A-1-44 be amended to read as follows:

34A-1-44. In addition to any other powers conferred on it by law the board may issue orders necessary to effectuate the purposes of this chapter and enforce the provisions of this chapter by all appropriate administrative and judicial proceedings.

Section 25. That § 34A-1-45 be amended to read as follows:

34A-1-45. If the secretary finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and

requires immediate action to protect human health or safety, the secretary shall order the person to reduce or discontinue immediately the emission of air contaminants. The emergency order is effective immediately on service upon the person responsible for the emission, and any person to whom such an order is directed shall comply with the order immediately.

Section 26. That § 34A-1-47 be amended to read as follows:

34A-1-47. If the secretary has reason to believe that a violation of any provision of this chapter or rule promulgated pursuant to this chapter has occurred, the secretary may cause written notice to be served upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, and the facts alleged to constitute a violation of this chapter, and may include an order that necessary corrective action be taken within a reasonable time. Any person who violates an order pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment, or both.

Section 27. That § 34A-1-48 be amended to read as follows:

34A-1-48. Any order issued pursuant to § 34A-1-47 becomes final unless, no later than twenty days after the date the notice and order are served, the person named in the order requests in writing a hearing before the board. Upon such request, the board shall proceed in compliance with chapter 1-26.

Section 28. That § 34A-1-49 be amended to read as follows:

34A-1-49. In lieu of an order, the board chair may schedule a contested case under chapter 1-26 before the board. Nothing in this chapter prevents the department from notifying an alleged violator of violations and negotiating a consent agreement instead of initiating proceedings under § 34A-1-47. Any consent agreement shall be approved by the board.

Section 29. That § 34A-1-52 be amended to read as follows:

34A-1-52. Action pursuant to § 34A-1-39 or the second paragraph of § 34A-1-14 is not a bar to

enforcement of this chapter or rules in force pursuant to this chapter, and orders made pursuant to this chapter by injunction or other appropriate remedy.

Section 30. That § 34A-1-53 be amended to read as follows:

34A-1-53. Nothing in this chapter prevents the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Section 31. That § 34A-1-54 be amended to read as follows:

34A-1-54. Nothing in this chapter abridges, limits, or otherwise impairs the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings for damages or other relief.

Section 32. That § 34A-1-55 be repealed.

Section 33. That § 34A-1-58 be amended to read as follows:

34A-1-58. Concurrent with the submittal of a permit application pursuant to this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee not to exceed twenty-five dollars per ton of each regulated pollutant as determined by the provisions of Title V of the Federal Clean Air Act, 42 U.S.C. 7401 et seq. as amended to January 1, 2011, or a lesser amount as set by the secretary by rules promulgated pursuant to chapter 1-26. The secretary may exclude any amount of regulated pollutant emitted by any source in excess of four thousand tons per year in determining the amount of fee required for any operating source. The secretary shall develop a fee structure which equitably assesses an annual fee for administration costs and an annual fee based on emissions, the sum of which covers the estimated total costs of administering a delegated state air quality program. The secretary shall, by rules promulgated pursuant to chapter 1-26, annually adjust the fee, if necessary, in accordance with the consumer price index for that calendar year. The fee shall be used to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable

costs of:

(1) Reviewing and acting on any application for a permit or permit revision;

(2) Implementing and enforcing the terms and conditions of the permit if the permit is issued. This amount does not include any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis, or demonstrations;

(6) Preparing inventories and tracking emissions; and

(7) Providing support to sources under the small business stationary source technical and environmental compliance assistance program.

For any existing source of air contaminants that is subject to Title V of the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended to January 1, 2011, and that is not required to hold an air quality permit from the department as of January 1, 1992, the board may, as a condition of continued operation, require by rules promulgated pursuant to chapter 1-26 that the owner or operator of the source pay the annual fee provided for in this section. Nothing in this section allows the department to charge any one source of air contaminants more than one annual fee that is designed to cover the costs identified in this section. The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment under this section to the owner or operator of the air contaminant source. The fee levied in this section is in addition to all other fees and taxes levied by law.

Section 34. That subdivision (6) of § 34A-2-2 be amended to read as follows:

(6) "Pollution," such contamination, or other alteration of the physical, chemical or biological

properties, of any waters of the state as exceeds that permitted by state effluent or water quality standards, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life;

Section 35. That § 34A-2-6 be amended to read as follows:

34A-2-6. The secretary may establish and conduct a continuing planning process consistent with the requirements of the Federal Water Pollution Control Act, as amended to January 1, 2011, including the establishment and application of maximum daily loads of pollutants.

Section 36. That § 34A-2-11 be amended to read as follows:

34A-2-11. The Water Management Board shall promulgate rules pursuant to chapter 1-26 to establish water quality standards and to classify water according to its beneficial uses. The board shall consider environmental, technical, social, and economic factors and present use, persons adversely affected, natural background waters in relationship to the contaminants and pollutants contained in the waters, existing degradation, and irretrievable man-induced conditions placed on those waters. The standards shall protect the public health and welfare and the use of the waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses in accordance with the Federal Water Pollution Control Act as amended to January 1, 2011. A violation of standards promulgated pursuant to this section is subject to § 34A-2-75.

Section 37. That § 34A-2-13 be amended to read as follows:

34A-2-13. The board shall promulgate rules pursuant to chapter 1-26 to formulate effluent

standards, which include as a minimum all categories for which the federal government has set standards pursuant to the Federal Water Pollution Control Act, as amended to January 1, 2011. The state standards shall be at least as stringent as the standards adopted by the federal government. Any person who violates these standards is subject to § 34A-2-75.

Section 38. That § 34A-2-15 be amended to read as follows:

34A-2-15. Any industrial user of publicly owned treatment works who violates pretreatment standards is subject to § 34A-2-75. The secretary or the owner of a publicly owned treatment works shall implement all provisions of section 307 of the Federal Water Pollution Control Act as amended to January 1, 2011, including issuing pretreatment industrial user permits to significant industrial users in accordance with §§ 34A-2-30 and 34A-2-36.

Section 39. That § 34A-2-24 be amended to read as follows:

34A-2-24. Notwithstanding § 34A-2-22, discharge of wastes into waters of the state which reduce the quality of such waters below the water quality level existing on March 27, 1973, will be allowed if it is affirmatively demonstrated to the board and the board finds by a majority vote of its members, after a public hearing on such request, that there may be a discharge, if the discharge will not result in the violation of applicable water standards, and if the discharge is found justifiable as a result of necessary economic or social development. The board may not allow a discharge if the discharge results in a violation of the existing water standards.

Section 40. That § 34A-2-29 be amended to read as follows:

34A-2-29. The secretary, under such conditions as the secretary may prescribe, may require the submission of such plans, specifications, and other information as the secretary deems necessary to carry out the provisions of this chapter or to carry out rules promulgated pursuant to the provisions of this chapter.

Section 41. That § 34A-2-33 be amended to read as follows:

34A-2-33. The secretary may certify, in accordance with rules promulgated by the board pursuant to chapter 1-26, that an applicant for a federal license or permit necessary to conduct any activity which may result in a discharge into waters of the state has satisfactorily shown that the applicant will comply with sections 301, 302, 306, and 307 of the Federal Water Pollution Control Act as amended to January 1, 2011. This section and § 34A-2-34 shall be interpreted to implement the purposes of section 401 of the Federal Water Pollution Control Act as amended to January 1, 2011.

Section 42. That § 34A-2-35 be amended to read as follows:

34A-2-35. Before issuing any permit pursuant to § 34A-2-36, the secretary shall provide an opportunity for public hearing, with notice of the opportunity for hearing, in accordance with applicable laws, rules, and regulations. If the recommendation of the department pursuant to § 34A-2-24, 34A-2-27, or 34A-2-36, is not contested, that recommendation shall become a final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with the recommendation.

Section 43. That § 34A-2-37 be amended to read as follows:

34A-2-37. The secretary shall require as permit conditions under § 34A-2-36 the achievement of:

(1) Effluent limitations based upon the application of such levels of treatment, technology, and processes as are required under the Federal Water Pollution Control Act, as amended to January 1, 2011;

(2) Any more stringent effluent limitations necessary to meet water quality criteria established pursuant to any state or federal law, rule, or regulation.

Effluent limitations prescribed under this section shall be achieved in the shortest reasonable period of time consistent with state or federal law, and any regulations or rules promulgated

thereunder.

Section 44. That § 34A-2-39.1 be amended to read as follows:

34A-2-39.1. The secretary may issue an extension to a point source or nonpoint source discharger, in which to meet state water quality standards or effluent standards if the extension is not in conflict with federal law, and if it is determined that:

(1) The violation was the result of actions or conditions outside the control of the discharger;

(2) The discharger has acted in good faith;

(3) There has been a commitment of necessary resources to achieve compliance at the earliest date probable;

(4) The extension would not result in imposition of any additional controls on any other point or nonpoint source;

(5) Facilities necessary for compliance are under construction and will be completed at the earliest date probable.

Section 45. That § 34A-2-43 be amended to read as follows:

34A-2-43. No permit may be issued authorizing any of the following discharges:

(1) The discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;

(2) Any discharge which the secretary of the army, acting through the chief of engineers, finds would substantially impair anchorage and navigation of any waters of the United States;

(3) Any discharge to which the administrator of the Environmental Protection Agency has objected, pursuant to any right provided to the administrator under the Federal Water Pollution Control Act, as amended to January 1, 2011;

(4) Any discharge which is in conflict with an areawide waste treatment management plan,

approved under the Federal Water Pollution Control Act, as amended to January 1, 2011.

Section 46. That § 34A-2-48 be amended to read as follows:

34A-2-48. The secretary shall issue orders to any person to clean up any material which the person or the person's employee, agent, or subcontractor had accidentally or purposely dumped, spilled, or otherwise deposited in or in such proximity to state waters that they may pollute state waters. A violation of an order issued pursuant to this section is subject to § 34A-2-75.

Section 47. That § 34A-2-49 be amended to read as follows:

34A-2-49. Any permit issued pursuant to this chapter may be revoked, modified, or suspended, in whole or in part, during its term for cause, including the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Section 48. That § 34A-2-50 be amended to read as follows:

34A-2-50. If the secretary recommends denial of an application for a permit, or revokes, suspends, or modifies a permit, the secretary shall give written notice of the action to the applicant or holder, who may request a hearing before the secretary. The hearing shall be held within thirty days after receipt of written request. The secretary may affirm, modify, or reverse the secretary's initial decision based upon the evidence presented at the hearing.

Section 49. That § 34A-2-53 be amended to read as follows:

34A-2-53. If the secretary has reason to believe that a violation of this chapter or any rule made or permit issued under it is threatened or has occurred, the secretary shall cause written notice to be served personally or by mail upon the alleged violator or the alleged violator's agent. The notice shall state the provisions alleged to be violated, the facts alleged to constitute a violation, the nature of any

corrective action proposed to be required, and the time within which such action is to be taken. For the purpose of this chapter, service by mail is deemed complete on the date of mailing.

Any person who violates an order issued pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 50. That § 34A-2-54 be amended to read as follows:

34A-2-54. In a notice given under § 34A-2-53, the secretary may also require the alleged violator to appear for a public hearing to be conducted before the board, and to answer the charges made against the alleged violator. In such event, the notice shall also meet the requirements of § 1-26-17, and notice shall be given in a manner which will reasonably inform the public.

Section 51. That § 34A-2-70 be amended to read as follows:

34A-2-70. Upon issuing an order pursuant to § 34A-2-68, the secretary shall fix a place and time for a hearing before the board, not later than five days thereafter, unless the person to whom the order is directed requests a later time. The secretary may deny a request for a later time if the secretary finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted by the board in the manner specified in §§ 34A-2-53 to 34A-2-60, inclusive.

Section 52. That § 34A-2-75 be amended to read as follows:

34A-2-75. Any person subject to this section, as provided in this chapter, is guilty of a Class 1 misdemeanor. In addition to a jail sentence authorized by § 22-6-2, a Class 1 misdemeanor imposed by this chapter is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 53. That § 34A-2-79 be amended to read as follows:

34A-2-79. A purpose of this chapter is to provide additional and cumulative remedies to prevent,

abate, and control the pollution of state waters. Nothing in this chapter abridges or alters any rights or action of remedies in equity or under the common law or statutory law, criminal or civil, nor may any provision of this chapter be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Section 54. That § 34A-2-80.1 be amended to read as follows:

34A-2-80.1. Municipalities, counties, conservation districts, and other political subdivisions of the state may join together under chapter 1-24 to form a separate agency to act as a waste treatment management agency under § 34A-2-80 and for the purpose of planning, consulting, and coordinating their efforts to implement area-wide waste treatment under the Federal Water Pollution Control Act, as amended to January 1, 2011, within designated water quality management areas.

Section 55. That § 34A-2-86 be amended to read as follows:

34A-2-86. The secretary shall establish a project priority list of municipalities, sewer or sanitary districts, state institutions, and other political subdivisions, that are eligible for federal water pollution project grants for the purpose of the secretary certifying to the federal government that allotted federal grant funds are, or will be, available for a project and that a particular project is higher than other projects on the project priority list eligible for such funds.

Section 56. That § 34A-2-87 be amended to read as follows:

34A-2-87. The Board of Water and Natural Resources shall promulgate pursuant to chapter 1-26 and the secretary shall implement rules for the effective administration of such federally allotted funds in conjunction with state grants, for such projects including the determination of need, priority of construction, and standards for construction consistent with the requirements of the Federal Water Pollution Control Act as amended to January 1, 2011. The secretary and Board of Water and Natural Resources shall seek to achieve expeditious approval and certification of grant applications, sound

environmental planning, cost effectiveness in distribution of grant funds, and an appreciation of the numerous public pollution control needs in the state as allowed under the federal act.

Section 57. That § 34A-2-93 be amended to read as follows:

34A-2-93. The board may promulgate rules pursuant to chapter 1-26:

(1) To establish surface and ground water quality standards;

(2) To establish design and installation requirements for on-site wastewater systems;

(3) To establish criteria for water pollution control facilities, to include facilities constructed for the protection and monitoring of groundwater;

(4) To establish the present and future beneficial uses of all waters under this chapter;

(5) To establish procedures for granting variances from water quality standards;

(6) To establish procedures for conducting inspections;

(7) To establish contested case procedures;

(8) To establish secondary treatment standards for wastewater facilities;

(9) To establish standards for surface water discharge permits;

(10) To establish pretreatment standards and requirements for local pretreatment programs;

(11) To establish standards for aboveground and underground storage tanks;

(12) To establish financial responsibility requirements for owners of underground and aboveground storage tanks;

(13) To establish standards for the remediation and cleanup of contaminated soils. The standards relating to cleanup of petroleum contamination shall be based upon risk to human health and safety as determined by the board. The board may adopt standards relating to cleanup of contamination consistent with the American Society for Testing and Materials Standard ES38-94, entitled Emergency Standard Guide for Risk Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, 2011, or

other generally accepted risk-based cleanup methods;

(14) To establish standards for bulk chemical storage facilities;

(15) To establish requirements for underground injection control;

(16) To establish a groundwater discharge permit program;

(17) To establish a delegated national pollutant discharge elimination system program as provided for under 40 CFR Part 123 as amended to January 1, 2011, and wastewater pretreatment program as provided for under 40 CFR Part 403 as amended to January 1, 2011;

(18) To establish a priority listing for projects funded under the construction grant program; and

(19) To establish requirements for approval of plans for water pollution control facilities and water supply systems.

The board shall also hold any hearings necessary for the proper administration of this chapter and initiate any action in court for the enforcement of this chapter.

Section 58. That § 34A-2-94 be amended to read as follows:

34A-2-94. Any records, reports, or information obtained under this chapter shall, in the case of effluent data, be related to any applicable effluent limitations, pretreatment, or new source performance standards, and shall be available to the public. However, upon a showing satisfactory to the secretary by any person that records, information, or particular part thereof (other than effluent data, permit applications, and permits) to which the secretary has access under this chapter, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the secretary shall consider the record, report, or information, or particular portion of the record, report, or information, confidential, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the state or federal government concerned with

carrying out this chapter, or when relevant, in any proceeding under this chapter.

Section 59. That § 34A-2-95 be repealed.

Section 60. That § 34A-2-98 be amended to read as follows:

34A-2-98. Terms used in this section and § 34A-2-99 mean:

(1) "Department," Department of Environment and Natural Resources;

(2) "Local designated agencies," agencies of subdivisions of state government which are designated by the Governor to carry out specific portions of this section and § 34A-2-99;

(3) "Nonoperational storage tank," any underground storage tank in which regulated substances may not be deposited or from which regulated substances may not be dispensed;

(4) "Regulated substance," any substance defined in section 101(4) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended to January 1, 2011, but not including any substance regulated as a hazardous waste under subtitle (C), and petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, 60 degrees fahrenheit and 14.7 pounds per square inch absolute;

(5) "Underground storage tank," any tank or combination of tanks including connected underground pipes which contains an accumulation of regulated substances, and the volume of which, including the volume of the connected underground pipes, is ten percent or more beneath the surface of the ground. This term does not include:

(a) A farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(b) A tank used for storing heating oil for consumptive use on the premises where stored;

(c) A septic tank;

(d) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 2011, the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 2011, or a pipeline which is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to above;

(e) A surface impoundment, pit, pond or lagoon;

(f) A storm water or wastewater collection system;

(g) A flow-through process tank;

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor; and

(j) Any pipes connected to any tank which is described in subsections (a) to (i), inclusive, of this subdivision.

Section 61. That § 34A-2-99 be amended to read as follows:

34A-2-99. The board shall promulgate rules, pursuant to chapter 1-26 to develop:

(1) Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) Requirements for the reporting of any releases and corrective action taken in response to

a release from an underground storage tank;

(4) Requirements for taking corrective action in response to a release from an underground storage tank. The standards relating to cleanup of petroleum contamination shall be based upon risk to human health and safety as determined by the board. The board may adopt standards relating to cleanup of contamination consistent with the American Society for Testing and Materials Standard ES38-94, entitled Emergency Standard Guide for Risk Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, 2011, or other generally accepted risk-based cleanup methods;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) Standards of performance for new underground storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational underground storage tank;

(9) Requirements for providing the information required on the form issued pursuant to section 9002(b)(2) of the Federal Resource Conservation Recovery Act reauthorization of 1984, as amended to January 1, 2011.

A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Section 62. That § 34A-2-100 be amended to read as follows:

34A-2-100. The term, above ground stationary storage tank, as used in this section and §§ 34A-2-101 and 34A-2-102 means any stationary tank or combination of stationary tanks above ground,

including connected pipes, which stores an accumulation of regulated substances as defined in § 34A-2-98.

This term does not include:

(1) Any farm or residential tank used for storing motor fuels for noncommercial purposes;

(2) Any tank used for storing heating oil or motor fuels for consumptive use on the premises where stored;

(3) Any septic tank;

(4) Any pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 2011;

(5) Any surface impoundment, pit, pond, or lagoon;

(6) Any storm water or wastewater collection system;

(7) Any flow-through process tank;

(8) Any liquid trap or associated gathering lines directly related to oil and gas production and gathering operations;

(9) Any storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor;

(10) Any pipes connected to any tank which is exempted in this subdivision; and

(11) Any tanks used for storing pesticides regulated under chapter 38-21, except those regulated pursuant to Subtitle I of the Federal Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), as amended to January 1, 2011.

Section 63. That § 34A-2-101 be amended to read as follows:

34A-2-101. The board shall promulgate rules pursuant to chapter 1-26 to develop procedures necessary to safeguard the public health and welfare and prevent pollution of the waters of the state

from the leakage, spillage, release, or discharge of regulated substances from above ground stationary storage tanks. These rules shall be exercised in substantial conformity with the current codes and standards recommended by the National Fire Protection Association for the storage of flammable and combustible liquids as contained in NFPA30 in effect on January 1, 2011. The rules shall provide the following:

(1) Requirements for maintaining a leak detection system, an inventory system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system;

(3) Requirements for the reporting of any releases and corrective action taken in response to a release from any above ground stationary storage tank;

(4) Requirements for taking corrective action in response to a release from any above ground stationary storage tank;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating any above ground stationary storage tank;

(7) Standards of performance, including design, construction, installation, and compatibility standards for new above ground stationary storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational above ground stationary storage tank; and

(9) Requirements for providing tank information required on the form provided by the department.

A violation of these rules is subject to § 34A-2-75.

Section 64. That § 34A-2-114 be amended to read as follows:

34A-2-114. In order to enhance economic development, provide improved coordination between governmental agencies, and safeguard the public health, safety, welfare, and the environment of this state through a customer service approach, the department is delegated authority to administer the national pollutant discharge elimination system permit program for all direct and indirect pretreatment surface water discharge systems as provided in section 402 of the Federal Water Pollution Control Act as amended to January 1, 2011. A reasonable fee upon these systems shall be imposed, as provided in §§ 34A-2-117 to 34A-2-120, inclusive, in order to defray the department's costs of administering this program.

Section 65. That § 34A-2-115 be amended to read as follows:

34A-2-115. For purposes of administering the provisions of this chapter, the term, sewage sludge, means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

For purposes of administering the provisions of this chapter, the term, toxic pollutants, means any pollutant listed as toxic under section 307(a) of the Federal Water Pollution Control Act as amended to January 1, 2011, or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the Federal Water Pollution Control Act as amended to January 1, 2011.

For purposes of administering the provisions of this chapter, the term, significant industrial user, means any discharger subject to categorical pretreatment standards and any other industrial user that discharges an average of twenty-five thousand gallons per day or more of process wastewater, excluding sanitary, noncontact cooling and boiler blowdown wastewaters, to the publicly owned treatment works or that contributes a process wastestream which makes up more than five percent of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or one that is designated as such by the secretary on the basis that the industrial user has a reasonable chance of adversely affecting the publicly owned treatment works operation or violating a pretreatment standard or requirement.

Section 66. That § 34A-2-116 be amended to read as follows:

34A-2-116. A pretreatment program shall be developed for any publicly owned treatment works or combination of publicly owned treatment works operated by the same authority as required by section 307 of the Federal Water Pollution Control Act as amended to January 1, 2011. The owner of any publicly owned treatment works that is required to develop a program may request the secretary to assume local pretreatment responsibilities for that publicly owned treatment works.

Section 67. That § 34A-2-117 be amended to read as follows:

34A-2-117. There is hereby imposed an annual fee upon all facilities permitted under the national pollutant discharge elimination system program provisions of section 402 of the Federal Water Pollution Control Act, 33 U.S.C. 1342, as amended to January 1, 2011, except for feedlot facilities, stormwater discharge systems and construction dewatering activities. The fee shall be assessed as provided in §§ 34A-2-118 to 34A-2-120, inclusive.

Section 68. That § 34A-2-119 be amended to read as follows:

34A-2-119. For industrial and governmental treatment works with significant water quality loadings, the fee imposed in § 34A-2-117 is as follows:

(1) Meat products processing as defined by 40 CFR 432 as amended to January 1, 2011:

(a) Process water (0.50 mgd or greater)--$30,000 per year;

(b) Process water (0.25 mgd or greater and less than 0.50 mgd)--$10,000 per year;

(c) Process water (less than 0.25 mgd)--$600 per year; and

(d) Noncontact cooling water--$600 per year;

(2) Corn wet milling as defined by 40 CFR 406 Subpart A as amended to January 1, 2011:

(a) Process water (0.50 mgd or greater)--$30,000 per year;

(b) Process water (0.25 mgd or greater and less than 0.50 mgd)--$10,000 per year;

(c) Process water (less than 0.25 mgd)--$600 per year; and

(d) Noncontact water--$600 per year;

(3) Ore mining and dressing as defined by 40 CFR 440 as amended to January 1, 2011:

(a) Large scale gold and silver mines:

(i) Process water--$30,000 per year; and

(ii) Mine drainage water--$5,000 per year; and

(b) Gold placer mining process water--$5,000 per year;

(4) Mineral mining and processing as defined by 40 CFR 436 as amended to January 1, 2011:

(a) Dimension stone--$600 per year;

(b) Crushed stone--$600 per year;

(c) Sand and Gravel--$600 per year;

(d) Mineral pigments--$600 per year; and

(e) Small scale mines--$600 per year;

(5) Federal treatment works, excluding Ellsworth Air Force Base--$600 per year;

(6) Steam electric power generating as defined by 40 CFR 423 as amended to January 1, 2011:

(a) 0.50 mgd or greater--$17,500 per year;

(b) Less than 0.50 mgd–$6,250 per year; and

(c) Noncontact cooling water--$600 per year; and

(7) Electrical transformer reclamation--$5,000 per year.

The secretary pursuant to the procedures contained in chapter 1-26 may establish the fee for any industrial or governmental treatment works with significant water quality loadings or that discharges toxic pollutants and is not included in the categories above, not to exceed thirty thousand dollars per year.

Section 69. That § 34A-2-122 be amended to read as follows:

34A-2-122. The obligation to pay the annual fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a surface water discharge or pretreatment system and accrues on July first, for all nonpublicly-owned facilities. The fee is due and payable by July thirty-first and shall be remitted to the Department of Revenue and Regulation along with such forms as may be prescribed by the secretary of revenue and regulation in rules promulgated pursuant to chapter 1-26.

The obligation to pay the annual fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a surface water discharge or pretreatment system and accrues on January first for all publicly-owned facilities. The fee is due and payable by January thirty-first and shall be remitted to the Department of Revenue and Regulation along with such forms as may be prescribed by the secretary of revenue and regulation in rules promulgated pursuant to chapter 1-26.

The obligation to pay the application fee imposed by §§ 34A-2-117 to 34A-2-120, inclusive, is on the owner or operator of a facility requesting either coverage under a general permit or water quality certification under section 401 of the Federal Water Pollution Control Act as amended to January 1, 2011. The application fee for such water quality certification does not apply to treatment

works already required to submit a fee under other provisions of §§ 34A-2-117 to 34A-2-120, inclusive. The fee is due and payable and shall be remitted to the Department of Environment and Natural Resources along with such application forms as may be prescribed by the secretary of environment and natural resources in rules promulgated pursuant to chapter 1-26.

Section 70. That § 34A-3-8 be amended to read as follows:

34A-3-8. If a vacancy occurs in the appointed membership of the board, the secretary may appoint a member for the remaining portion of the unexpired term created by the vacancy. The membership of any board member who leaves his or her field of employment or who moves from the State of South Dakota automatically terminates.

Section 71. That § 34A-3-11 be amended to read as follows:

34A-3-11. The secretary shall:

(1) Hold at least one examination each year at the designated time and place for the purpose of examining candidates for certification;

(2) Advertise and promote the program of certification of water and wastewater works operators;

(3) Encourage other operators to become certified other than those required to do so by law;

(4) Distribute applications and notices;

(5) Receive and evaluate applications;

(6) Collect fees, not exceeding ten dollars for both initial and an annual renewal fee;

(7) Prepare, conduct, and grade examinations;

(8) Maintain records of operator qualifications and certification, and maintain a register of certified operators;

(9) Promote and schedule regular training schools and programs.

Section 72. That § 34A-3-13 be amended to read as follows:

34A-3-13. It is a Class 2 misdemeanor for any person, firm, or corporation, municipal or private, operating a water supply system or wastewater system to operate the water treatment plant, wastewater treatment plant, water distribution and wastewater collection systems unless the competency of the operator who is in direct responsible charge is certified by the secretary. Each operator who is in direct responsible charge shall, within one year from the date of his or her employment, become certified under the provisions of this chapter. It is a Class 2 misdemeanor for any person to perform the duties of an operator without being certified.

Section 73. That § 34A-3-15 be amended to read as follows:

34A-3-15. Each applicant shall be examined by the department. The examination shall consist of such questions and such phases of the practice as may be prescribed from time to time by the department.

If the applicant satisfactorily passes the examination required, and demonstrates possession of the necessary qualifications, the applicant shall be certified.

Section 74. That § 34A-3-19 be amended to read as follows:

34A-3-19. The secretary may charge each applicant a fee not to exceed ten dollars which shall accompany the application. The request of each person so certified for an annual renewal certification shall be accompanied by a fee which shall be established by the secretary but which may not exceed ten dollars. The fees shall be deposited in the state treasury to be credited to the Board of Certification fund, which shall be used to pay expenses of the board and to administer the provisions of this chapter. Any surplus at the end of the fiscal year shall be retained by the board for future expenditures.

Section 75. That § 34A-3-21 be amended to read as follows:

34A-3-21. The secretary may suspend or revoke a certificate issued under this chapter on violation of any of the provisions of this chapter or any rules promulgated pursuant to this chapter.

Section 76. That § 34A-3-22 be amended to read as follows:

34A-3-22. No certificate may be suspended or revoked except in compliance with chapter 1-26.

Section 77. That § 34A-3-25 be repealed.

Section 78. That § 34A-3A-1 be amended to read as follows:

34A-3A-1. It is hereby declared to be the public policy of the state to achieve and maintain safe drinking water for the public which will protect human health and safety and prevent the creation of public nuisances. To these ends it is the purpose of this chapter to ensure that public water systems in the state meet or exceed minimum standards for drinking water quality and to foster cooperation and coordination with other state and local agencies, other states, and the federal government pursuant to the Federal Safe Drinking Water Act, Public Law 93-523, as amended to January 1, 2011.

Section 79. That subdivision (8) of § 34A-3A-2 be amended to read as follows:

(8) "Public water system," a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year and as provided for in 40 CFR sections 141.2 and 142.2 as amended to January 1, 2011;

Section 80. That § 34A-3A-3 be amended to read as follows:

34A-3A-3. The Water Management Board shall promulgate rules, pursuant to chapter 1-26, establishing:

(1) Safe drinking water standards with maximum contaminant levels necessary to protect public health and safety. No maximum contaminant level may be more stringent than those established under the Federal Safe Drinking Water Act, as amended to January 1, 2011; and

(2) Procedures to ensure compliance with this chapter including quality control, testing, monitoring, record keeping, reporting, and public notice.

A violation of the rules adopted pursuant to this section is subject to a civil action by the State of South Dakota in circuit court for the recovery of a civil penalty not to exceed five hundred dollars for each day of violation.

Section 81. That § 34A-3A-19 be amended to read as follows:

34A-3A-19. In order to safeguard the public health, safety, and welfare of this state through a customer service approach, the state shall retain administration of the public water system supervision program as provided in the Federal Safe Drinking Water Act as amended to January 1, 2011. In order to meet the increasing delegation requirements the result of the 1986 amendments to the Federal Safe Drinking Water Act, a fee shall be imposed upon the users of drinking water facilities as provided in § 34A-3A-20 to defray the costs to the state of administering the program.

Section 82. That § 34A-3A-20 be amended to read as follows:

34A-3A-20. There is hereby imposed an annual fee upon all public water systems under the provisions of section 1411 of the Federal Safe Drinking Water Act, 42 U.S.C. 300F et seq. as amended to January 1, 2011. The fee is assessed as follows:

(1) For community water systems including municipalities, rural water systems, housing subdivisions, trailer parks, sanitary districts, religious colonies, and government operated water systems, the fee shall be based upon 1990 census data for municipalities, population served for nonmunicipalities, and the following fee table:

Population Range	Fee ($)
25 to 50	15
51 to 100	30
101 to 200	60

201 to 300	100
301 to 400	140
401 to 500	180
501 to 600	220
601 to 700	260
701 to 800	300
801 to 900	340
901 to 1,000	380
1,001 to 2,000	600
2,001 to 3,000	1,000
3,001 to 4,000	1,400
4,001 to 5,000	1,800
5,001 to 6,000	2,200
6,001 to 7,000	2,600
7,001 to 8,000	3,000
8,001 to 9,000	3,400
9,001 to 10,000	3,800
10,001 to 11,000	4,200
11,001 to 12,000	4,600
12,001 to 13,000	5,000
13,001 to 14,000	5,400
14,001 to 15,000	5,800
15,001 to 16,000	6,200
16,001 to 17,000	6,600
17,001 to 18,000	7,000
18,001 to 19,000	7,400
19,001 to 20,000	7,800
20,001 to 30,000	10,000
30,001 to 40,000	14,000

40,001 to 50,000	18,000
50,001 to 60,000	22,000
60,001 to 70,000	26,000
70,001 to 80,000	30,000
80,001 to 90,000	34,000
90,001 to 100,000	38,000
100,001 or more	41,000

(2) For noncommunity water systems including private campgrounds, government-operated campgrounds, interstate highway rest areas, tourist attractions, gas stations, motels, public and private schools, and other systems providing drinking water to the public--$10.00 minimum.

The fee imposed by this section is in addition to any other fee or tax.

Section 83. That § 34A-3A-21 be amended to read as follows:

34A-3A-21. From the amount recovered pursuant to § 34A-3A-20 and appropriated through § 34A-3A-22, the department shall expend such sums as are necessary to pay the cost of initial lead and copper monitoring as required by the Federal Safe Drinking Water Act as amended to January 1, 2011, and the rules promulgated by the U.S. Environmental Protection Agency thereunder.

Section 84. That § 34A-3A-25 be amended to read as follows:

34A-3A-25. In order to carry out the requirements of the Federal Safe Drinking Water Act as amended to January 1, 2011, the secretary of environment and natural resources shall promulgate rules, pursuant to chapter 1-26, establishing:

(1) Procedures for a supplier of water to demonstrate that a new system intended to be a public water system has the technical, managerial, and financial capacity to achieve and maintain compliance with all relevant local, state, and federal requirements;

(2) Procedures for the department to issue certificates of approval to new water suppliers

once a technical, managerial, and financial capacity review, consistent with provisions of this chapter, is completed. The rules shall provide that a new system intended to be a public water system, after October 1, 1999, may not operate until it has been issued a certificate of approval;

(3) The development and implementation of a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity to comply with all relevant local, state, and federal requirements; and

(4) Such other rules as may be necessary to implement the provisions of the Federal Safe Drinking Water Act as amended to January 1, 2011, in a state drinking water program approved by the United States Environmental Protection Agency.

A violation of any rule adopted pursuant to this section is subject to the penalties provided for in § 34A-3A-3.

Section 85. That § 34A-5-1 be amended to read as follows:

34A-5-1. If any populated area outside the boundary of any municipality is situated so that the sewage of the populated area becomes, or may become, a menace to the residents of the populated area or to the residents of any municipality adjacent to the populated area, the populated area may be incorporated as a sanitary district as provided in this chapter.

Section 86. That § 34A-5-3 be amended to read as follows:

34A-5-3. Any person making application for the organization of a sanitary district shall first cause an accurate map to be made of the territory intended to be included in the sanitary district, showing the boundaries and area of the district. The accuracy of the map shall be verified by the affidavit of a surveyor. The map may be completed by reviewing records and legal descriptions at a county register of deeds office.

Section 87. That § 34A-5-7 be amended to read as follows:

34A-5-7. If the board of county commissioners is satisfied that the requirements of this chapter have been fully complied with, the board shall issue an order declaring that the territory shall, with the assent of the electors as specified in § 6-16-2, in an election as provided in §§ 6-16-4 to 6-16-6, inclusive, be an incorporated sanitary district by the name specified in the application. The name shall be different from that of any other sanitary district in this state.

Section 88. That § 34A-5-14 be amended to read as follows:

34A-5-14. Any sanitary district established under this chapter is a governmental subdivision of this state and a public body, corporate and politic.

Section 89. That § 34A-5-21.2 be amended to read as follows:

34A-5-21.2. A sanitary district trustee shall be a resident of the sanitary district the trustee represents.

Section 90. That § 34A-5-22 be amended to read as follows:

34A-5-22. The members of the board of trustees shall organize by electing one of the members to serve as president. The president shall preside over all meetings of the board and shall call all special meetings of the board if the president or a majority of the board deems such a meeting necessary. If the president fails or refuses to call a special meeting, a special meeting may be called by a majority of the board.

Section 91. That § 34A-5-27 be amended to read as follows:

34A-5-27. The board of trustees may employ and prescribe the duties and fix the compensation of all necessary officers and employees of the sanitary district, and may employ such additional engineering, legal, financial, and other professional assistance as the board deems necessary.

Section 92. That § 34A-5-28 be amended to read as follows:

34A-5-28. No trustee or employee of a sanitary district may be directly or indirectly interested in any contract, work, or business of the district, or the sale of any article, the expense, price, or cost

of which is paid by the district, nor in the purchase of any real, personal, or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the district.

Section 93. That § 34A-5-32 be amended to read as follows:

34A-5-32. If a sanitary district commences a condemnation action and files a declaration of taking and obtains an order of possession as provided in chapter 31-19, and later abandons the action when the property is no longer necessary for public purposes or the use of which the property was originally sought to be condemned no longer exists, the board of trustees of a sanitary district, upon order of the circuit court in which the condemnation action is pending, shall convey the property to the original owner and the original owner shall return the deposit on file with the clerk of courts. This section applies to any condemnation action abandoned by a sanitary district, organized under this chapter, prior to the effective date of this section.

Section 94. That § 34A-5-33 be amended to read as follows:

34A-5-33. The board of trustees of a sanitary district may sell and convey real property held by a sanitary district, the title to which has been obtained from any source, and which is not required for public purposes and has been or is about to be abandoned for public purposes. The sale and conveyance shall be conducted in accordance with chapter 6-13. In order to make the sale, the board of trustees may employ real estate agents and incur other necessary expenses.

Any real property which any sanitary district sells under the terms of this section shall first be offered for sale to the prior fee holder or the prior fee holder's heirs or assigns from whom the real property was originally purchased. The prior fee holder, heirs, and assigns have the right of first refusal to purchase the real property at its appraised value.

Section 95. That § 34A-5-34 be amended to read as follows:

34A-5-34. The board of trustees may enter into contracts with any municipality for the purpose

of using the facilities of the municipality for the treatment and disposal of sewage of the district or making the facilities of the district available to the municipality.

Section 96. That § 34A-5-36 be amended to read as follows:

34A-5-36. The board of trustees may:

(1) Fix reasonable rates and charges for services furnished and made available by the district to users of its facilities;

(2) Provide for the collection of the charges;

(3) Pledge the net revenues derived from the charges to the payment of bonds made payable wholly or partly from the revenues; and

(4) Make and enforce on behalf of the district all covenants relating to:

(a) The proper operation and maintenance of the facilities;

(b) Insurance against hazards of loss and liability;

(c) The administration, expenditure and auditing of the income and revenues of the district;

(d) The expenditure of the bond proceeds; and

(e) All other matters affecting the security of the bonds, which the board of trustees determines to be necessary or desirable for the purpose of selling the bonds upon terms advantageous to the district and maintaining its credit and ability to engage in further financing when and as necessary.

Section 97. That § 34A-5-37 be amended to read as follows:

34A-5-37. If revenue bonds are issued in accordance with the provisions of chapter 9-40, the sanitary district shall, until all such bonds and interest on the bonds are fully paid, fix such rates and charges and revise them from time to time in such manner that the collections of the charges will be adequate to:

(1) Pay all current, reasonable, and necessary expenses of the operation and maintenance of all facilities whose revenues are pledged for the payment of the bonds;

(2) Produce net revenues, in excess of such current costs of operation and maintenance, at all times sufficient to pay the principal and interest due on the bonds; and

(3) Accumulate and maintain reserves for the further security of the bonds in such amounts as are agreed in the resolutions authorizing the bonds.

Section 98. That § 34A-5-38 be amended to read as follows:

34A-5-38. If bonds are issued in lieu of special assessment certificates in accordance with the provisions of chapter 9-43, the sanitary district board of trustees may provide that rates and charges shall be fixed and from time to time revised to produce net revenues at all times sufficient, with special assessments and interest pledged to the bond fund and actually collected and received in the bond fund, to pay all principal and interest when due on the bonds and to create and maintain such further reserves for the security of the bonds as may be agreed in the resolutions authorizing the bonds. Bonds issued and secured as authorized in this section may be designated as special assessment and revenue bonds, and may be issued to finance an improvement or a group of improvements to the facilities of the district, if any portion of the cost of the improvement is to be paid by the levy of special assessments.

Section 99. That § 34A-5-39 be amended to read as follows:

34A-5-39. If a sanitary district has been established in accordance with the procedures provided in this chapter, no further proceedings are required under the provisions of §§ 9-48-26 to 9-48-31, inclusive, and funds derived from the district's sewer rates and charges are not subject to the limitations provided in those sections.

Section 100. That § 34A-5-40 be amended to read as follows:

34A-5-40. The board of trustees may cause the amount of any charges, and interest and penalties

on the charges, for sewer service rendered or made available to any land within the district, which are due and unpaid on the first day of October in each year to be certified by the clerk of the district to the county auditor in the manner provided in § 10-12-7 together with any taxes levied by the district for corporate purposes. All amounts so certified shall be inserted by the county auditor upon the tax list of the current year and shall be payable and delinquent at the same time and shall incur penalty and interest and shall be collected by the same procedure as real estate taxes on the same property. In the event of a tax sale or the issuance of a tax deed, the provisions of §§ 9-43-39 to 9-43-41, inclusive, shall apply to all amounts so certified and then delinquent, in the same manner as delinquent installments of special assessments.

Section 101. That § 34A-5-41 be amended to read as follows:

34A-5-41. The board of trustees of any sanitary district incorporated under this chapter may submit to the voters of the district at an annual election or a special election called and held in accordance with chapter 9-13 the question whether the district shall be authorized to acquire and operate a water system, or the application for incorporation filed in accordance with § 34A-5-6 may request such authority. Upon approval of the grant of such authority by a majority of the qualified electors voting on the question, or upon entry of the order incorporating the district if the application has requested such authority, the board of trustees may:

(1) Acquire and operate water mains, hydrants, intakes, wells, storage tanks and reservoirs, treatment plants, and all other facilities used or useful for the supply and distribution of water;

(2) Acquire and operate any of such facilities; and

(3) Contract for the service of any such facilities owned by the adjacent municipality or for the use of district facilities by the municipality.

In connection with all such matters the district and its board of trustees have all powers granted

in this chapter with reference to sewer facilities. In the exercise of such powers the board of trustees may purchase any existing facilities used or useful in the exercise of such powers, or may contract for the construction of any such facilities in the manner provided in chapters 5-18 and 5-19.

Section 102. That § 34A-5-42 be amended to read as follows:

34A-5-42. On petition in writing signed by not less than twenty percent of the legal voters residing within the district, as shown by the vote for the member of the board of trustees receiving the highest vote at large at the last preceding annual election in the district or upon its own motion, the board of trustees by proper resolution may declare its intention to annex territory lying adjacent to the district or exclude territory being upon the border of the district. The resolution shall describe the property, the intended action, and the time and place the trustees will meet to consider the adoption of the resolution. The resolution shall be published once a week for two consecutive weeks before the time set for the hearing.

Section 103. That § 34A-5-43 be amended to read as follows:

34A-5-43. At the time of the hearing, or of any adjournment of the hearing, the trustees shall consider any objections to the proposed resolution and may adopt the resolution, with or without amendment, as it may deem proper. However, no amendment may be made affecting any property not described in the original resolution. No such resolution may be adopted unless the resolution has been approved by the board of county commissioners of the county in which the land is situated.

Section 104. That § 34A-5-44 be amended to read as follows:

34A-5-44. Upon failure of the board of trustees to grant the request contained in the petition of the voters, the petitioners or any party feeling aggrieved thereby may within thirty days after the decision of the board of trustees or county commissioners, or within ninety days after the filing of the petition if no action has been taken on the petition by the board, present their petition or appeal to the circuit court for the county in which the district or the greater portion of the district is situated

by filing the petition or appeal with the clerk of courts. Notice of the filing shall be served by the petitioners upon the president of the board of trustees together with a notice of the time and place, when and where a hearing will be held on the petition, at least ten days before the date of the hearing. If the court finds that the request of the petitioners ought to be granted and can be granted without injustice to the district, the court shall so order. If the court finds against the petitioners, the petition or appeal shall be dismissed at the cost of the petitioners.

Section 105. That § 34A-5-45 be amended to read as follows:

34A-5-45. If the limits of any district are changed by resolution or by decree of court, the president of the board of trustees shall cause an accurate map of the territory, together with a copy of the resolution or decree, duly certified, to be recorded in the office of the register of deeds of the county or counties in which the territory is situated and thereupon the territory becomes a part of the district or is excluded from the district, as the case may be.

Section 106. That § 34A-5-48 be amended to read as follows:

34A-5-48. If the voters of each corporation approve the formation of the consolidated sanitary district by a majority of their votes cast on the consolidation question, the governing body of each corporation shall so declare by resolution. Each governing body shall cause a certified copy of all proceedings taken for the consolidation to be filed with its auditor or clerk, with the secretary of state, and in the office of the register of deeds of the county, who shall record the copy. When the certified copies are filed, the consolidation is effective and complete, and the consolidated sanitary district has all of the powers conferred upon a sanitary district by this chapter, for the purpose of the construction or acquisition and operation of sewer facilities or both water and sewer facilities, as authorized by the voters.

Section 107. That § 34A-5-49 be amended to read as follows:

34A-5-49. The consolidated sanitary district may not, however, by virtue of its incorporation,

acquire any of the property or assume any of the debts, obligations, or liabilities of any municipality or sanitary district included within its boundaries.

Section 108. That § 34A-5-55 be repealed.

Section 109. That subdivision (17) of § 34A-6-1.3 be amended to read as follows:

(17) "Solid waste," any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 2011, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 2011;

Section 110. That § 34A-6-1.5 be amended to read as follows:

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

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

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

Section 111. That § 34A-6-1.13 be amended to read as follows:

34A-6-1.13. The board or the secretary, after public notice and opportunity for public hearing, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation, or abandonment of a solid waste facility. After publication of the secretary's recommendation on a permit application as provided for under § 34A-6-1.14, if no petition for contested case is timely filed, the recommendation of the secretary becomes the final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with the secretary's recommendation. The board may issue a permit in a contested case on the basis of information in the application itself or on the basis of evidence received at a hearing, if any, on the matter only if

the board finds that the facility will meet the requirements of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, and is in the public interest.

The board may deny any permit in a contested case if it finds that the applicant, or any officer, director, or manager of the applicant, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed permitted premises in whole or part:

(1) Has misrepresented a material fact in applying to the board for a permit;

(2) Has been convicted of a felony or other crime involving moral turpitude;

(3) Has violated the environmental laws of any state or the United States;

(4) Has had any permit revoked under the environmental laws of any state or the United States; or

(5) Has otherwise demonstrated through previous actions the lack of character or competency to reliably carry out the obligations imposed by §§ 34A-6-1.1 to 34A-6-1.38, inclusive.

For the purpose of this section, the conduct and reputation of any owner or proposed manager or operator may be imputed to the applicant.

Section 112. That § 34A-6-1.14 be amended to read as follows:

34A-6-1.14. The board shall promulgate rules pursuant to chapter 1-26 to specify the procedure for permit issuance, amendment, suspension, revocation, and reinstatement. The rules shall address application form and contents; application completeness review; departmental investigation and evaluation of applications; the form, content, and method and timing of publication or other service of the notice of application and departmental recommendation; intervention by interested parties; scheduling and conduct of hearings; prehearing discovery; continuances; and other matters as necessary to effectuate the permitting process. The secretary may recommend approval, denial, or approval with such terms, conditions, or modifications as the secretary deems necessary to comply

with §§ 34A-6-1.1 to 34A-6-1.38, inclusive, and to protect the public interest. A notice of application and the recommendation of the secretary shall be published in at least one official newspaper of the county in which the facility is located. A hearing may be held only if a petition requesting a hearing is filed by the secretary, any member of the board, the applicant, or an interested person within thirty days after the publication of the notice and recommendation. If a petition for hearing is not timely filed, the recommendation of the secretary becomes the final decision on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with the secretary's recommendation.

Section 113. That § 34A-6-1.22 be amended to read as follows:

34A-6-1.22. If the secretary has reason to believe that a violation of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, has occurred, the secretary shall cause written notice to be served personally or by mail upon the alleged violator or the alleged violator's agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute a violation, the nature of any corrective action proposed to be required, and the time within which such action is to be taken. For the purpose of §§ 34A-6-1.1 to 34A-6-1.38, inclusive, service by mail is deemed complete on the date of mailing.

Section 114. That § 34A-6-1.23 be amended to read as follows:

34A-6-1.23. In a notice given under § 34A-6-1.22, the secretary may also require the alleged violator to appear for a public hearing to be conducted before the board, and to answer the charges made against the alleged violator. If the secretary does not require an alleged violator to appear for a public hearing pursuant to this section, the alleged violator, a member of the board, or an interested person may request the board to conduct such a hearing. Such request shall be in writing and shall be filed with the board no later than ten days after service of a notice under § 34A-6-1.22. If such a request is filed, a hearing shall be held as soon as practicable. In such event, notice of hearing shall be provided which meets the requirements of § 1-26-17, and notice shall also be given in a manner

which will reasonably inform the public.

Section 115. That § 34A-6-1.27 be amended to read as follows:

34A-6-1.27. Upon issuing an order pursuant to § 34A-6-1.26, the secretary shall fix a place and time for a hearing before the board, not later than five days after the order is issued, unless the person to whom the order is directed requests a later time. The secretary may deny a request for a later time if the secretary finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted by the board in compliance with chapter 1-26 and rules promulgated by the board pursuant to chapter 1-26.

Section 116. That § 34A-6-1.34 be amended to read as follows:

34A-6-1.34. The board may enforce through its permit procedures those rules promulgated by the secretary pursuant to chapter 34-21 that pertain to the land disposal of radioactive substances. The department is designated the agency for all state purposes of the Federal Solid Waste Disposal Act (Public Law 89-272) as amended to January 1, 2011, and the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616) as amended to January 1, 2011.

Section 117. That § 34A-6-1.38 be amended to read as follows:

34A-6-1.38. In addition to the solid waste disposal fee assessed by the state under § 34A-6-1.17 and by a political subdivision under § 34A-6-29, a county or municipality may impose and levy a solid waste disposal fee upon the disposal of solid waste at a solid waste facility within, or operated under, its jurisdiction. Fees imposed under this section are in addition to all other fees and taxes levied by law.

The fee imposed in this section shall be paid by the owner of the solid waste disposal facility and remitted to the county or municipal treasurer. The obligation to pay the fee accrues at the time the solid waste is disposed of at the solid waste facility. The owner of the facility may collect these fees from persons disposing of solid waste at the facility. The fee imposed by this section is due and

payable by the owner on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on a form prescribed by the county or municipal treasurer. Each person required to pay the fee imposed by this section shall keep complete and accurate records in a form required by the county or municipal treasurer.

The county or municipality may distribute shares of this fee to municipalities and school districts within its boundary as it deems appropriate considering the location of the facility and the impacts on the representation jurisdiction.

Section 118. That § 34A-6-24 be amended to read as follows:

34A-6-24. Any municipality may grant and regulate franchises for the purpose of collection and disposal of solid waste, as defined in subdivision 34A-6-1.3(17), if the solid waste originates in the municipality or in a zone adjacent to the municipality that is not a part of another municipality, and does not exceed two miles around the boundaries of the municipality. The franchise may not be granted for a longer period than ten years.

Section 119. That § 34A-6-25 be amended to read as follows:

34A-6-25. No franchise may be granted by any municipality pursuant to § 34A-6-24 unless the governing body of the municipality submits the proposition of issuing the franchise to a vote of the electors at a general or special election called for that purpose. Before submitting the proposition, the governing body shall first approve the proposed franchise by ordinance, incorporating the proposed franchise in full and providing for submission of the proposition at an election to be held not sooner than thirty days after the publication of the election and proposition. The notice of election and the proposition shall refer to the ordinance by number and shall include the full title of the ordinance. No such franchise or franchise ordinance is effective unless the proposal to grant the franchise is approved at the election by a majority vote of the electors.

Section 120. That § 34A-6-29 be amended to read as follows:

34A-6-29. The governing body of a municipality, county, or subdivision may levy and collect fees and charges and require licenses as are necessary to discharge their responsibility. The fees, charges, and licenses shall be based on a fee schedule set forth in an ordinance or resolution. If any fee, charge, or license so levied, other than a municipal garbage collection fee, becomes delinquent, the delinquency may be certified to the county treasurer and shall be collected by the county treasurer in the following year as a condition precedent to payment of the real property tax on the lot or parcel of land with respect to which the fee, charge, or license was levied. The chief fiscal officer of a municipality shall collect a delinquent municipal garbage collection fee as a condition precedent to the payment of any water, sewer, utility, or other charge collected by the municipality.

Section 121. That § 34A-6-50 be repealed.

Section 122. That § 34A-6-55 be amended to read as follows:

34A-6-55. The Board of Minerals and Environment shall cause any existing large-scale solid waste facility to cease operation unless legislative approval as prescribed in § 34A-6-53 has been obtained.

Section 123. That § 34A-6-59 be amended to read as follows:

34A-6-59. The Legislature finds that the implementation of federal regulations under subtitle D of the Resource Conservation and Recovery Act, P.L. 94-580, as amended to January 1, 2011, will reduce the available landfill capacity in the state for the disposal of municipal solid waste. The Legislature further finds:

(1) That maximum solid waste source reduction, reuse, recycling, and composting are preferable to land disposal, are the most economically sound and environmentally safe methods of solid waste management and are in the best interest of the state in order to protect public health and the environment and to conserve resources, energy, and tax dollars; and

(2) That education, research, development, and innovation in the design, management, and operation of source reduction, reuse, recycling, and composting are essential in reducing operating costs and providing incentives for the use of these systems and operations and their products.

Section 124. That § 34A-6-70 be amended to read as follows:

34A-6-70. Each county and first class municipality shall prepare or have prepared, on or before January 1, 1993, a solid waste evaluation coordinated with the state solid waste management plan provided for in § 34A-6-1.5. The evaluation shall cover a fifteen-year time period, shall serve as the basis for county and municipal decisions on the need for facilities, and shall be provided to the board for its consideration in determining whether to issue facility permits under § 34A-6-1.13. The evaluation shall include an analysis of the current and projected volume of solid waste, disposal capacity including all existing and planned facilities, the potential for source reduction, reuse, recycling, resource recovery, and shared and regional recycling and waste management facilities. The evaluation shall include a full accounting of the true and total cost, including the long-term costs, of all options analyzed in the evaluation. Counties and municipalities subject to this section shall consider in their solid waste evaluation, 40 CFR parts 257 and 258 of the environmental protection agency solid waste disposal criteria commonly known as "RCRA subtitle D regulations," as finally adopted and published in the Federal Register on October 9, 1991, and as amended to January 1, 2011; the statewide comprehensive solid waste management plan; and all rules promulgated by the board.

Section 125. That subdivision (5) of § 34A-7-1 be amended to read as follows:

(5) "Litter," any discarded, used, or unconsumed substance or waste, including any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic, or paper containers or other packaging construction

material, abandoned motor vehicle, as defined in § 32-36-2, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly;

Section 126. That § 34A-7-3 be amended to read as follows:

34A-7-3. For purposes of § 34A-7-2, the term, property held out to the public for the transaction of business, includes commercially operated parks, campgrounds, drive-in restaurants, automobile service stations, business parking lots, car washes, shopping centers, marinas, boat launching areas, industrial parking lots, boat moorage and fueling stations, piers, beaches and bathing areas, airports, roadside rest stops, drive-in movies, and shopping malls. For purposes of § 34A-7-2, the term, property held out to the public for assemblage, recreation, or as a public way, includes any property that is publicly owned or operated for any of the purposes stated in the definition in this section for "property held out to the public for the transaction of business" but excludes state highway rights of way and rest areas located on state highway rights of way.

Section 127. That § 34A-7-7 be amended to read as follows:

34A-7-7. No person may dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream, or body of water in this state except as permitted by law. No person may transport by any means garbage or refuse from any dwelling, residence, place of business, farm, or other site to and deposit such material in, around, or on top of trash barrels or other receptacles placed along public highways or at roadside rest areas. A violation of this section is a Class 2 misdemeanor.

Section 128. That § 34A-7-8 be amended to read as follows:

34A-7-8. In addition to any penalty imposed under this chapter, a person convicted of violating § 34A-7-7 while operating a motor vehicle is considered to have been convicted of a moving traffic violation. A report of conviction of the provisions of this chapter shall be forwarded to the Department of Public Safety by the court within ten days after the date the conviction is entered.

The penalties prescribed in this section are in addition to, and not in lieu of, any penalties, rights, remedies, duties, or liabilities otherwise imposed or conferred by law.

Section 129. That § 34A-7-9 be amended to read as follows:

34A-7-9. No person may allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person. A violation of this section is a Class 2 misdemeanor.

Section 130. That § 34A-7-14 be amended to read as follows:

34A-7-14. Municipalities and counties may by ordinance regulate litter, provide penalties for violations of such ordinances, establish procedures for court appearances for violations, and provide penalties for failure to appear on a written promise.

Section 131. That § 34A-7-15 be amended to read as follows:

34A-7-15. Except as otherwise provided, if any person is arrested for a violation of any municipal ordinance adopted pursuant to this chapter, the arresting law enforcement officer or other municipal enforcement officer shall take the name and address of the person and issue a complaint or otherwise notify the person in writing to appear at a time and place to be specified in the complaint or notice. The time shall be at least five days after the arrest unless the person arrested demands an earlier hearing. If the person gives written promise to appear at the designated time and place, the officer shall release the person from custody. Any person refusing to give such written promise to appear may be prosecuted as in the manner of other violations of city ordinances.

Section 132. That § 34A-9-2 be amended to read as follows:

34A-9-2. As used in this chapter, the term, actions, includes:

(1) New and continuing projects or activities directly undertaken by any public agency, or supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more public agencies;

(2) Policy, regulations, and procedure-making; or

(3) The issuance by one or more public agencies of a lease, permit, license, certificate, or other public entitlement to an applicant.

Section 133. That § 34A-9-3 be amended to read as follows:

34A-9-3. As used in this chapter, the term, actions, does not include:

(1) Enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(2) Actions of a ministerial nature, involving no exercise of discretion;

(3) Emergency actions responding to an immediate threat to public health or safety;

(4) Proposals for legislation; or

(5) Actions of an environmentally protective regulatory nature.

Section 134. That § 34A-9-7 be amended to read as follows:

34A-9-7. An environmental impact statement shall be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

(1) A description of the proposed action and its environmental setting;

(2) The environmental impact of the proposed action including short-term and long-term effects;

(3) Any adverse environmental effects that cannot be avoided if the proposal is implemented;

(4) Alternatives to the proposed action;

(5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(6) Mitigation measures proposed to minimize the environmental impact; and

(7) The growth-inducing aspects of the proposed action.

Section 135. That § 34A-9-11 be amended to read as follows:

34A-9-11. To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2011, if the statement complies with the requirements of this chapter.

Section 136. That § 34A-9-12 be amended to read as follows:

34A-9-12. The requirements of this chapter do not apply to actions undertaken or approved before March 2, 1974.

Section 137. That § 34A-10-2.1 be amended to read as follows:

34A-10-2.1. Any person making application to the Water Management Board or the Board of Minerals and Environment for a permit, a license, or an extension, amendment, or renewal of an existing permit or license, which authorizes activity that could result in a significant risk of pollution, contamination, or degradation of the environment and that is not covered by a performance or damage bond or other financial assurance instrument, may be required, as a condition of the permit, to provide financial assurance guaranteeing the performance of corrective actions to contain, mitigate, and remediate all pollution, contamination, or degradation which may be caused by the activity. The financial assurance in a reasonable and proper amount shall be in a form and an amount

approved by the board, and may include insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit.

Section 138. That § 34A-10-2.2 be amended to read as follows:

34A-10-2.2. All right and title in any bond or other security required by the Water Management Board or the Board of Minerals and Environment under any provision of this title, Title 45, or Title 46 for the protection of the environment or reclamation of lands or other resources shall be in the state until the board by order releases the security. The bond or other security does not constitute an asset of the person required to provide it, and may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without board approval. The bond or other security shall be in a form and a reasonable and proper amount approved by the board, and may include a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. The board may permit the use of financial assurance other than a bond, including company net worth considerations. Interest earned on any bond or deposit made under § 34A-10-2.1 shall be returned annually to the person required to provide the bond.

Section 139. That § 34A-10-2.5 be amended to read as follows:

34A-10-2.5. The secretary of the Department of Environment and Natural Resources may bring an action without furnishing of bond, for an injunction against any person who fails to comply with an order issued by the secretary or any official under the secretary's supervision having authority to issue such order by virtue of this title, Title 45, or Title 46. The court to which the department applies for an injunction may issue a temporary injunction, if it finds there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

Section 140. That § 34A-10-3 be amended to read as follows:

34A-10-3. If the court has reasonable ground to doubt the solvency of the plaintiff or the

plaintiff's ability to pay any cost or judgment which might be rendered against the plaintiff in an action brought under this chapter, the court may order the plaintiff to post a surety bond or cash not to exceed five hundred dollars.

Section 141. That § 34A-10-4 be amended to read as follows:

34A-10-4. The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his or her findings to the court in the action.

Section 142. That § 34A-10-5 be amended to read as follows:

34A-10-5. If, in an action pursuant to § 34A-10-1, administrative, licensing, or other proceedings are required or available to determine the legality of the defendant's conduct, the court shall remit the parties to such proceedings. The proceedings shall be conducted in accordance with and subject to the provisions of chapters 34A-1 and 34A-2. In so remitting the court may grant temporary equitable relief if necessary for the protection of the air, water, and other natural resources or the public trust in such resources from pollution, impairment, or destruction. In so remitting the court shall retain jurisdiction of the action pending completion of the action for the purpose of determining whether adequate protection from pollution, impairment, or destruction has been afforded.

Section 143. That § 34A-10-6 be amended to read as follows:

34A-10-6. If judicial review of any administrative, licensing, or other proceeding is available, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Section 144. That § 34A-10-8 be amended to read as follows:

34A-10-8. In any administrative, licensing, or other proceedings, as described in § 34A-10-2, and in any judicial review of the proceedings, any alleged pollution, impairment, or destruction of the air, water, or other natural resources or the public trust in the resources shall be determined. No conduct may be authorized or approved which does, or is likely to pollute, impair, or destroy the air,

water, or other natural resources or the public trust in the resources, if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

Section 145. That § 34A-11-3 be amended to read as follows:

34A-11-3. The Department of Environment and Natural Resources is designated as the agency for all state purposes of the Federal Resource Conservation Recovery Act as amended to January 1, 2011, and the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), as amended to January 1, 2011.

Section 146. That § 34A-11-9 be amended to read as follows:

34A-11-9. The Board of Minerals and Environment may promulgate rules, pursuant to chapter 1-26, governing the generation, transportation, treatment, storage, and disposal of hazardous wastes necessary to execute the provisions of this chapter. The rules may include ownership, location, design, construction, operation, and maintenance of hazardous waste management facilities, financial responsibility, personnel training, record keeping, reporting, labeling, monitoring, container use, inspections, closure, post-closure procedures and requirements, contingency planning, enforcement, and use of a manifest system to assure all hazardous wastes are designated for treatment, storage, or disposal at a permitted hazardous waste management facility. The board may promulgate rules pursuant to chapter 1-26 that are consistent with the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. § 1801 et seq.), as amended to January 1, 2011, and the regulations adopted pursuant to that Act.

A violation of the rules adopted pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state, or both.

Section 147. That § 34A-11-11 be amended to read as follows:

34A-11-11. Any person may file a complaint with the secretary of environment and natural resources regarding a violation of this chapter. The secretary may conduct an investigation of the

alleged violation and make a written report of the investigation to the person. If the secretary determines that a violation has occurred, the secretary may take whatever enforcement action he or she considers appropriate.

Section 148. That § 34A-11-15 be amended to read as follows:

34A-11-15. Any permit issued pursuant to this chapter may be revoked, modified, or suspended, in whole or in part, during its term for cause, including the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresenting or failing to disclose fully all relevant facts; or

(3) A change in condition or discovery of new information which requires a temporary or permanent reduction, or termination of the permitted activity.

Section 149. That § 34A-11-17 be amended to read as follows:

34A-11-17. If the secretary of environment and natural resources determines that a person is in violation of this chapter, or any rule promulgated pursuant to this chapter, the secretary may cause written notice and an order to be served personally or by mail upon the alleged violator or the alleged violator's agent. The notice and order shall state the statute or rule allegedly violated, the pertinent facts, the nature of any corrective action that may be required and the time within which the action is to be taken. A notice and order may include a suspension or revocation of a permit issued under this chapter. For purposes of this chapter, service by mail is considered complete on the date of mailing.

Section 150. That § 34A-11-23 be amended to read as follows:

34A-11-23. Nothing in this chapter abridges or alters any rights of action or remedies in equity or under the common law or statutory law, criminal or civil. Nothing in this chapter may be construed as estopping any person in the exercise of the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Section 151. That § 34A-11-26 be amended to read as follows:

34A-11-26. In addition to the hazardous waste disposal fee assessed by the state under § 34A-11-25, a county or municipality may impose and levy a hazardous waste disposal fee upon the disposal of hazardous waste at any hazardous waste disposal facility within, or operated under, its jurisdiction excluding those facilities disposing of hazardous waste in a process of energy recovery. Fees imposed under this section are in addition to all other fees and taxes levied by law. The incineration or thermal destruction of hazardous waste is considered disposal for the purpose of this fee.

The fee imposed by this section shall be paid by the owner of the hazardous waste disposal facility and remitted to the county or municipal treasurer. The obligation of the owner to pay the fee accrues at the time hazardous waste is disposed of at a hazardous waste disposal facility. The owner of the facility may collect these fees from persons disposing of hazardous waste at the owner's facility. The fee imposed by this section is payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on forms prescribed by the county or municipal treasurer. Each person required to pay the fee imposed by this section shall keep complete and accurate records in a form required by the county or municipal treasurer.

The county or municipality may distribute shares of this fee to the municipalities and school districts within its boundary as it deems appropriate considering the location of the facility and the impacts on the representation jurisdiction.

Section 152. That subdivision (8) of § 34A-12-1 be amended to read as follows:

(8) "Regulated substance," the compounds designated by the department under §§ 23A-27-25, 34A-1-39, 34A-6-1.3(17), 34A-11-9, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68, including pesticides and fertilizers regulated by the Department of Agriculture; the hazardous substances designated by the Federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution

Control Act and Clean Water Act (33 United States Code sections 1251 to 1387, inclusive), as amended to January 1, 2011; the toxic pollutants designated by Congress or the Federal Environmental Protection Agency pursuant to section 307 of the Toxic Substances Control Act (15 United States Code sections 2601 to 2671, inclusive), as amended to January 1, 2011; the hazardous substances designated by the Federal Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 United States code sections 9601 to 9675, inclusive), as amended to January 1, 2011; and petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances, or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. This term does not include sewage and sewage sludge;

Section 153. That § 34A-12-3.1 be amended to read as follows:

34A-12-3.1. A subfund of the regulated substances response fund is hereby created for recovered leaking underground storage tank trust fund moneys. The subfund shall be separately maintained and administered in the manner required by the Superfund Amendments and Reauthorization Act of 1986 as amended as of January 1, 2011. Moneys deposited in the subfund may be disbursed and used only for the purposes authorized under subtitle I of the Resources Conservation Recovery Act as amended to January 1, 2011.

Section 154. That § 34A-13-6 be amended to read as follows:

34A-13-6. If the director has reason to believe that a release has occurred, the director shall notify the department. The director may undertake reasonable, independent investigations, in addition to any investigation of the department, necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health, safety, and welfare

or the environment.

Section 155. That § 34A-13-7 be amended to read as follows:

34A-13-7. Any person who the director has reason to believe is a covered party, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release or a corrective action, shall, if requested by the director, furnish to the director any information that person has or may reasonably obtain that is relevant to the release. Failure on the part of the covered party to do so allows denial of benefits under this chapter pursuant to subdivision 34A-13-8.5(6).

Section 156. That § 34A-13-8 be amended to read as follows:

34A-13-8. The director may, upon presentation of official fund credentials:

(1) Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the director under § 34A-13-7; and

(2) Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under § 34A-13-7, conducting surveys and investigations, and taking corrective action.

Failure by the covered party to allow access to the property and examination or copying of the documents authorized in this section allows denial of benefits under this chapter pursuant to subdivision § 34A-13-8.5(6).

Section 157. That § 34A-13-9.1 be amended to read as follows:

34A-13-9.1. Reimbursement, without a corrective action plan, may be allowed for tank pulling if petroleum contamination in the backfill area exceeds standards established by the department and if the tank pulling removes petroleum contamination to department standards. No reimbursement may be provided for upgrade of a release site taken during a corrective action.

Section 158. That § 34A-13-41 be amended to read as follows:

34A-13-41. The board shall provide reimbursement to licensed petroleum marketers, and other tank owners as defined by the board pursuant to rule for liability to third parties. Coverage may only be extended to tanks which are regulated in §§ 34A-2-98 and 34A-2-100, excluding tanks which are exempted from coverage requirements by rules promulgated pursuant to chapter 1-26 by the Board of Water Management, in any amount not to exceed nine hundred ninety thousand dollars as described in §§ 34A-13-8.1 and 34A-13-40 and set forth in §§ 34A-13-42 to 34A-13-46, inclusive.

Section 159. That § 34A-14-19 be amended to read as follows:

34A-14-19. Any member or employee of the authority who has, will have, or later acquires a personal interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of the interest in writing to the authority as soon as the member or employee has knowledge of such actual or prospective interest. The disclosure shall be entered upon the minutes of the authority. Upon the disclosure, the member or employee may not participate in any action by the authority authorizing the transaction. Actions taken when the member or employee reasonably believed that the member or employee had no and would not have any conflict are not invalidated because of such conflict. The fact that a member is also an officer or owner of an organization is not deemed to be a direct or indirect interest unless:

(1) The member has an ownership interest of greater than ten percent in the organization; or

(2) The transaction in question does not involve all similar organizations, but rather involves only the authority and the organization.

Section 160. That subdivision (4) of § 34A-15-2 be amended to read as follows:

(4) "Third parties," persons, partnerships, limited liability companies, corporations, associations, organizations, or legal entities other than governmental entities seeking to enforce federal, state, or local environmental statutes, ordinances, regulations, permits,

or orders; and

Section 161. That § 45-1-2 be amended to read as follows:

45-1-2. The state geologist shall carry on and continue surveys of the state in relation to geology, natural history, archaeology, and anthropology, particularly studying and emphasizing the economic geology of this state.

Section 162. That § 45-1-3 be amended to read as follows:

45-1-3. The state geologist, if requested by the commissioner of school and public lands, shall examine any state or school land in this state and make a written report to the commissioner of school and public lands concerning the geology of the state or school land and other related matters included in the request.

Section 163. That § 45-1-4 be repealed.

Section 164. That § 45-2-4.2 be amended to read as follows:

45-2-4.2. The state geologist shall continue the making of the actual geological survey of the lands, and earth, and the area beneath the surface of the lands of this state as provided by this chapter.

The survey is for the purpose of discovery, or aiding in the discovery, development, and industrial exploitation of such natural products, consisting of minerals, oil, gas, or other substances or commodities, among the natural and physical resources of the state, and of all by-products in connection with each of the natural products of the state.

Section 165. That § 45-2-4.3 be amended to read as follows:

45-2-4.3. The state geologist may incur expenses for equipment, personnel, materials, and other items necessary for conducting surveys and implementing the provisions of this chapter. Authorized expenses include the cost of placing all information secured at the disposition of the Governor and the executive office, and as may be otherwise provided by law, for use in the advertising and

development of the resources of the State of South Dakota.

Expenditures authorized under this section shall be paid out on warrants drawn by the state auditor on vouchers approved by the state geologist.

Section 166. That § 45-4-1 be amended to read as follows:

45-4-1. No location of a mining claim may be made until the discovery of the vein or lode within the limits of the claim located.

Section 167. That § 45-4-2 be amended to read as follows:

45-4-2. Before filing a location certificate pursuant to § 45-4-4, the discoverer shall locate the claim:

(1) By erecting a monument at the place of discovery and posting on the monument a plain sign or notice containing the name of the lode, the name of any locator, the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; and

(2) By marking the surface boundaries of the claim.

Section 168. That § 45-4-3 be amended to read as follows:

45-4-3. Surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground; one at each corner and one at the center of each side line and one at each end of the lode. If it is impracticable because of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

Section 169. That § 45-4-4 be amended to read as follows:

45-4-4. The discoverer of a lode shall within sixty days from the date of discovery record the claim in the office of the register of deeds of the county in which the lode is located by a location certificate which shall contain:

(1) The name of the lode;

(2) The name of the locator or locators;

(3) The date of location;

(4) If a lode claim, the number of linear feet in length claimed along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein; the general course of the vein or lode as near as may be; and a description of the claim located by reference to some natural object or permanent monument as will identify the claim.

Any location certificate of a lode claim that does not contain the information specified in this section is void.

Section 170. That § 45-4-5 be amended to read as follows:

45-4-5. No location certificate may claim more than one location whether the location is made by one or several locators. If the certificate purports to claim more than one location, it is void except as to the first location described in the certificate. If the locations are described together or so that it cannot be determined which location is first described, the certificate is void for all locations described in the certificate.

Section 171. That § 45-4-6 be amended to read as follows:

45-4-6. The length of any lode claim may equal but not exceed fifteen hundred feet along the vein or lode.

The width of a lode claim shall be three hundred feet on each side of the center of the vein or lode. However, any county may, at any general election, determine upon a width less than three hundred feet but not less than twenty-five feet on each side of the vein or lode.

Section 172. That § 45-4-7 be amended to read as follows:

45-4-7. The register of deeds may receive the fee as established by subdivisions 7-9-15(1) and

(2) for each location certificate recorded and certified by the register of deeds and shall furnish the locators with a certified copy of the certificate if demanded.

Section 173. That § 45-4-8 be amended to read as follows:

45-4-8. If the locator of any mining claim or the locator's assigns:

(1) Believes that the original certificate was defective or erroneous;

(2) Believes that the requirements of the law were not complied with before filing; or

(3) Desires to change the surface boundaries of the claim or to take in any part of an overlapping claim which has been abandoned;

the locator or the locator's assigns may file an additional certificate subject to the provisions of this chapter. No such relocation interferes with the existing rights of others at the time of the relocation, and no such relocation nor the record of any such relocation precludes the claimant from proving any such title as the claimant may have held under any previous location.

Section 174. That § 45-4-10 be amended to read as follows:

45-4-10. The location or location certificate of any lode claim includes all surface ground within the surface lines of the lode claim and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of the lode claim lines extended vertically and including parts of the lodes or ledges as they continue by dip beyond the side lines of the claim. The lode claim does not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

Section 175. That § 45-4-14 be amended to read as follows:

45-4-14. Any person, firm, association, or corporation who makes or sinks discovery shafts, open cuts, adits, or equivalents on a mining claim or on mineral property, ground, or premises shall immediately, while using the discovery shafts, open cuts, adits, or equivalents, make them secure and safe, either by means of a substantial fence or otherwise, to guard against the possibility of

livestock falling into or becoming injured or destroyed by reason of the openings. Before abandoning the discovery shafts, open cuts, adits, or equivalents, the person, firm, association, or corporation shall fill in or slope such openings, as a further precaution. Any person, firm, association, or corporation that fails or refuses to fully comply with this section is liable in damages for injury to or destruction of livestock caused thereby to the owner of the livestock and is guilty of a Class 2 misdemeanor.

Section 176. That § 45-4-16 be amended to read as follows:

45-4-16. In all actions in any circuit court of this state in which the title or right of possession to any mining claim is in dispute, the court may, upon application of any of the parties to the suit, enter an order for the underground as well as surface survey of the part of the property in dispute as may be necessary to a just determination of the question involved.

Section 177. That § 45-4-17 be amended to read as follows:

45-4-17. The order specified in § 45-4-16 shall designate some competent surveyor not related to any of the parties to the suit nor in any way interested in the result of the suit to conduct the survey. Upon the application of the party adverse to the application, the court may also appoint some competent surveyor to be selected by the adverse applicant who shall attend the survey and observe the method of making the survey at the cost of the party asking for the survey. The order may specify the names of witnesses named by either party, not exceeding three on each side, who may enter into and examine the property.

Section 178. That § 45-4-18 be amended to read as follows:

45-4-18. No such order may be made for survey and inspection except in open court or in chambers upon notice of at least six days, and only by agreement of parties or upon the affidavit of two or more persons that the survey and inspection is necessary to the just determination of the suit. The affidavits shall state the facts in the case and the necessity for the survey. No such order may be

made unless it appears that the party asking for the order has been refused the privilege of survey and inspection by the adverse party.

Section 179. That § 45-4-19 be amended to read as follows:

45-4-19. The court may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of the property if removal is shown to be necessary to a just determination of the question involved.

Section 180. That § 45-4-20 be amended to read as follows:

45-4-20. Any person who associates with another to obtain possession of a lode, gulch, or placer claim, then in the actual possession of another, by force and violence or by threats of violence or by stealth, and who carries out such purpose by:

(1) Making threats against the person or persons in possession;

(2) Entering the lode or mining claim for such purposes; or

(3) Entering a lode, gulch, placer claim, quartz mill, or other mining property, or, not being upon the property but being within hearing distance of the property, and making threats or use of any language, sign, or gesture calculated to intimidate any person at work on the property or from continuing work on or in the property, or intimidating others from working on or in the property,

is guilty of a Class 1 misdemeanor.

Section 181. That § 45-4-21 be amended to read as follows:

45-4-21. On trials under § 45-4-20, proof of a common purpose of two or more persons to obtain possession of property or to intimidate laborers as set forth in § 45-4-20, accompanied or followed by any of the acts specified, by any of them, is sufficient evidence to convict any person committing such acts, although the parties may not be associated together at the time of committing the acts.

Section 182. That § 45-4-22 be amended to read as follows:

45-4-22. The circuit court may issue writs of injunction for affirmative relief having the force and effect of a writ of restitution restoring any person to the possession of any mining property:

(1) From which the person may have been ousted by force and violence or by fraud;

(2) From possession of which the person is kept by threats; or

(3) If such possession was taken from the person by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent from the property.

The granting of the writ extends only to the right of possession under the facts of the case with respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had been issued.

Section 183. That § 45-5-1 be amended to read as follows:

45-5-1. If a mine or mining claim patented under the laws of the United States or held under the local laws and customs of this state is so situated that it cannot be conveniently worked without a road providing access; without a ditch, cut, or flume to convey water to the mining claim or water and tailings from the mining claim; or without a connecting shaft or tunnel; and if the road, ditch, cut, flume, shaft, or tunnel would necessarily pass over, under, through, or across any lands or mining claims owned or occupied by others under a patent from the United States or otherwise, the owner of the mine or mining claim is entitled to a right-of-way for the road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the other lands or mining claims upon compliance with the provisions of this chapter. If the mine or mining claim cannot be conveniently worked without the necessary construction on property owned either in total or in part by others of devices, treatment and tailings ponds, or other installations for treatment of air or water pollution in order to comply with state or federal air and water pollution statutes, rules, or regulations, the owner of the mine or mining claim may exercise the power of eminent domain as to the surface estate only. In the exercise of eminent domain, the owner may proceed as condemnation proceedings are conducted by the state

Department of Transportation pursuant to chapter 31-19, or as may otherwise be provided.

Section 184. That § 45-5-2 be amended to read as follows:

45-5-2. If, in order to enable the owner of a mining claim to successfully and conveniently work the claim, it is necessary that the owner have a right-of-way for any of the purposes set forth in § 45-5-1, and if such a right-of-way has not been acquired by agreement between the owner of the mining claim and the owner of the claim over, under, across, or upon which the owner of the mining claim seeks to establish the right-of-way, the owner of the mining claim may present to the judge of the circuit court for the county in which the desired right-of-way or some part of the right-of-way is situated, and file with the clerk of the court a petition requesting that the right-of-way be awarded. The petition shall be verified and contain a description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim on lands to be affected by the right or privilege, with the names of the occupants or owners of the lands. The petition may also set forth any tender or offer mentioned in § 45-5-14 and shall demand the relief sought.

Section 185. That § 45-5-3 be amended to read as follows:

45-5-3. Upon the filing of a petition with the clerk of the court pursuant to § 45-5-2, the judge shall order the owners named in the petition of mining claims and lands to be affected by the proceeding to appear before the judge on a day named in the order, not less than ten days from the service of the order, and show cause why the right-of-way should not be allowed as requested. The order shall be served on each of the parties in the manner prescribed by law for serving summons in a civil action.

Section 186. That § 45-5-4 be amended to read as follows:

45-5-4. Upon the return day of the order or upon any day to which the hearing is adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties. If upon the hearing the judge is satisfied that the claim of the petitioner should be worked by means of the privilege

requested, the judge shall make an order adjudging and awarding to the petitioner the right-of-way, and shall appoint three commissioners who shall be disinterested residents of the county to assess the damage resulting to the lands or claims affected by the order.

Section 187. That § 45-5-5 be amended to read as follows:

45-5-5. The commissioners appointed pursuant to § 45-5-4 shall be sworn or affirmed to discharge their duties faithfully and impartially. They shall proceed without unreasonable delay to examine the premises, shall assess the damage resulting from the right or privilege requested, and shall report the amount to the judge appointing them. If the right-of-way affects the property of more than one person or company, the report shall contain an assessment of the damages to each company or person.

Section 188. That § 45-5-6 be amended to read as follows:

45-5-6. Upon the payment of the sum assessed as damages to the persons to whom it shall be awarded or a tender of the sum to them, the person petitioning is entitled to the right-of-way requested in the petition and may immediately proceed to occupy the right-of-way and erect works and structures and conduct excavations in the right-of-way as may be necessary to the use and enjoyment of the right-of-way.

Section 189. That § 45-5-11 be amended to read as follows:

45-5-11. The prosecution of any appeal may not hinder, delay, or prevent the respondent from exercising all the rights and privileges mentioned in § 45-5-6, if the respondent files with the clerk of the court in which the appeal is pending a bond with sufficient sureties to be approved by the clerk in double the amount of the assessment appealed from, conditioned that the respondent will pay to the appellant whatever amount the appellant may recover in the action, not exceeding the amount of the bond.

Section 190. That § 45-5-12 be amended to read as follows:

45-5-12. If the appellant recovers fifty dollars more damages than the commissioners have awarded or if the respondent offers to allow judgment against the respondent to be taken, the respondent shall pay the costs of the appeal; otherwise the appellant shall pay the costs.

Section 191. That § 45-5-13 be amended to read as follows:

45-5-13. The costs and expenses under the provisions of this chapter, except as otherwise provided in this chapter, shall be paid by the party making the application.

Section 192. That § 45-5-14 be amended to read as follows:

45-5-14. If the applicant, before the commencement of the proceeding, has tendered to the parties owning or occupying the lands or mining claims a sum equal to or more than the amount of damages assessed by the commissioners, all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by the right-of-way and who appeared and resisted the claim of the applicant.

Section 193. That § 45-5A-5 be amended to read as follows:

45-5A-5. The mineral developer shall give the surface owner written notice of proposed mineral development, other than exploration activities, at least thirty days before the date operations are commenced. This notice shall be given to the record surface owner at the surface owner's address as shown by the records of the county register of deeds at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice shall be a form prepared by the Department of Environment and Natural Resources advising the surface owner of his or her rights and options under this chapter.

Section 194. That § 45-5A-6 be amended to read as follows:

45-5A-6. The mineral developer is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the mineral developer. The mineral developer is also

responsible for all damages to property, real or personal, resulting from an interference caused by mineral development.

Section 195. That § 45-5A-7 be amended to read as follows:

45-5A-7. The affected surface owner, to receive compensation, pursuant to §§ 45-5A-8 and 45-5A-9, shall notify the mineral developer, in writing, of the damages sustained by the affected surface owner within two years after the injury becomes apparent or should have become apparent to a reasonable person.

Section 196. That § 45-6-72 be amended to read as follows:

45-6-72. Together with the annual license fee, the operator shall submit the following information for each location mined during the previous year: the tonnage of material removed, a map showing the areas mined, the areas reclaimed, and the acreage of each.

Section 197. That § 45-6-69 be amended to read as follows:

45-6-69. The operator shall submit notification, consisting of a map of the affected area and the information required in the newspaper notice to the South Dakota Department of Environment and Natural Resources, the South Dakota Department of Game, Fish and Parks, the South Dakota Department of Education, and the local conservation district, of the operator's intent to commence mining at a new mine site at least thirty days before beginning mining operations.

Section 198. That § 45-6-76 be amended to read as follows:

45-6-76. It is a violation of the terms and conditions of an operator's license to refuse entry or access to any authorized representative of the Board of Minerals and Environment who, after presenting appropriate credentials, requests entry for the purpose of inspection under §§ 45-6-64 to 45-6-77, inclusive. No operator may obstruct, hamper, or interfere with any such investigation. The operator of the mining site may request and shall receive a report within ten days after the inspection setting forth the observations made by the person making the inspection which relate to compliance

with §§ 45-6-64 to 45-6-77, inclusive.

Section 199. That § 45-6B-5 be amended to read as follows:

45-6B-5. Any person desiring to engage in a mining operation shall make written application to the Board of Minerals and Environment for a permit for each mining operation on forms furnished by the board. The permit, if approved, authorizes the operator to engage in the mining operation on the affected lands described in the application for the life of the mine. The application shall consist of:

(1) One copy of the application pursuant to § 45-6B-6;

(2) A reclamation plan pursuant to § 45-6B-7 submitted with the application;

(3) An accurate map of the affected lands pursuant to § 45-6B-10 submitted with the application;

(4) The application fee pursuant to § 45-6B-14; and

(5) A post-closure plan for mine waste disposal facilities.

Section 200. That § 45-6B-22 be amended to read as follows:

45-6B-22. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as the operator's financial status, assets within the state, past performance on contractual agreements, and facilities available to carry out the planned work. The operator shall supply evidence of financial responsibility for all surety other than a bond.

Section 201. That § 45-6B-27 be amended to read as follows:

45-6B-27. The penalty of the surety shall from time to time be increased or reduced by the Board of Minerals and Environment so that the bond covers the cost of reclamation which would accrue to the state, if the state were required to reclaim the affected areas within the permit or in accordance

with the number of acres to which the bond is no longer operative because of the operator's withdrawal of acreage or by reason of the operator's performance of his or her obligations subsequent to the issuance of the permit.

Section 202. That § 45-6B-28 be amended to read as follows:

45-6B-28. Any person may file written objections to or statements in support of an application for a mining permit with the Board of Minerals and Environment. Such material shall be filed with the board not more than twenty days after the date of last publication of notice pursuant to § 45-6B-16. The board shall hold a hearing pursuant to § 45-6B-30 on the question of whether the permit should be granted. The applicant shall be notified by the board or department within ten days of receipt of any objections to the application and be provided a copy of the written objections.

Section 203. That § 45-6B-33.1 be amended to read as follows:

45-6B-33.1. Before making a determination pursuant to subdivision 45-6B-33(6), the board shall require the applicant to submit a socioeconomic impact study. The socioeconomic impact study shall be prepared at the operator's expense by a contractor approved by the board. An applicant may request board approval of a contractor at any time before or after filing a permit application.

The socioeconomic impact study shall evaluate the potential impacts of the proposed mining operation including the following areas:

(1) Population base;

(2) Employment and income;

(3) Tax base;

(4) Housing;

(5) Community services, including schools, law enforcement and fire protection, solid waste, water and wastewater, and roads; and

(6) Recreational opportunities or other beneficial uses of land within and adjacent to the

permit area.

If applicable, a study shall include an evaluation of the cumulative impacts of the proposed operation considered together with existing operations in the surrounding region. If an applicant is required to submit a socioeconomic impact study to a county government pursuant to county zoning ordinance or requirements, the board shall determine upon receipt of an application for a mining operation permit whether the required county socioeconomic impact study will satisfy the board requirements for such a study as provided for in this section.

Section 204. That § 45-6B-45 be amended to read as follows:

45-6B-45. Depending on the reclamation plan approved by the board, the operator shall meet the following requirements:

(1) If the choice of reclamation is forest planting, the operator may, with the approval of the Board of Minerals and Environment, select the type of trees to be planted. Planting methods and care of stock shall be governed by good planting practices. If the operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, the operator may defer planting until planting stock is available to plant such land as originally planned, or the operator may select an alternative method of reclamation;

(2) If the choice of reclamation is rangeland restoration, the affected land shall be restored to the satisfaction of the board to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The legume seed shall be properly inoculated in all cases. The area may be seeded either by hand, or power or by the aerial method. The species of grasses and legumes and the rates of seeding to be used per acre shall be determined primarily by recommendations from the state agricultural experiment stations, and experienced reclamation personnel of the operator, after considering other research

or successful experience with range seeding. No grazing may be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local conservation district, if any, shall determine when grazing may start;

(3) If the choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization and seeding, or planting rates shall be governed by general agricultural and horticultural practices, except where research or experience in such operations differs with these practices;

(4) If the choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the requirements necessary for such reclamation shall be agreed upon by the operator, landowner, and the board. The term, industrial or other uses, may not be construed to include future mineral exploration or development unless the board, operator, landowner, and local board of county commissioners agree that reclamation for future mineral exploration or development will result in a beneficial future use of the affected land.

The board may require reasonable modifications in the requirements necessary for reclamation before approving a reclamation plan under this chapter.

Section 205. That § 45-6B-47 be amended to read as follows:

45-6B-47. Any mining operation permit may be transferred. If one operator succeeds another at any uncompleted operation, the successor operator shall make application for a transfer to the Board of Minerals and Environment. The board may not deny a transfer unless the operation is not in compliance or cannot be brought into compliance, with all applicable local, state, and federal laws

pertaining to the operation before the transfer, or unless the successor operator is in violation of state statutes, rules, mining permit conditions, or requirements with respect to any mining operation in the state. The board shall release the first operator from all liability as to that particular reclamation operation and shall release the first operator's surety as to the operation if the successor operator assumes, as part of the successor operator's obligation under this chapter, all liability for the reclamation of the affected land, and the obligation is covered by an appropriate surety as to the affected land. Notice of a transfer shall be given to the board and accompanied by a one hundred dollar transfer fee.

Section 206. That § 45-6B-48 be amended to read as follows:

45-6B-48. If the secretary of environment and natural resources has reason to believe that a violation of an order, permit, notice of intent, or rule issued under the authority of this chapter has occurred, written notice shall be given to the operator of the alleged violation. The notice shall be served personally or by registered mail upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and shall recommend possible corrective action.

Section 207. That § 45-6B-72 be amended to read as follows:

45-6B-72. It is a violation of a mining permit's terms and conditions to refuse entry or access to any authorized representative of the Board of Minerals and Environment who after presenting appropriate credentials requests entry for the purpose of inspection under this chapter; nor may any person obstruct, hamper, or interfere with any such investigation. If requested, the operator of the mining site is entitled to receive a report setting forth the observations made by the person making the inspection which relate to compliance with this chapter.

Section 208. That § 45-6B-87 be amended to read as follows:

45-6B-87. Nothing in this chapter relieves the holder of any large-scale gold or silver surface

mining permit from any of the requirements of the Clean Air Act of 1955, as amended to January 1, 2011, the Clean Water Act of 1977, as amended to January 1, 2011, the South Dakota Air Quality Act (chapter 34A-1), the Federal Water Pollution Control Act of 1972, as amended to January 1, 2011, the Safe Drinking Water Act (P.L. 93-523), as amended to January 1, 2011, the Mine Safety and Health Administration regulations (30 C.F.R. Part 3830), as amended to January 1, 2011, United States Forest Service surface mining and exploration reclamation requirements (43 C.F.R., page 228), as amended to January 1, 2011, Bureau of Land Management mining and exploration requirements (43 C.F.R. Part 3800), as amended to January 1, 2011, the Mined Land Reclamation Act (this chapter), the regulated substance discharges statutes in chapter 34A-12, the Resource Conservation and Recovery Act of 1976, as amended to January 1, 2011, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 95-510), as amended to January 1, 2011, the Toxic Substance Control Act of 1976 (P.L. 94-469), as amended to January 1, 2011, Lawrence County extractive industries ordinances, as amended to January 1, 2011, and all rules and regulations promulgated to implement existing statutes, including rules dealing with air pollution, control of visible emissions, open burning, control of particulate emissions, control of sulfur compound emissions, new source performance standards, standards of performance for storage vessels of petroleum liquids, air standards, spill control plans, buried tanks, water pollution, public water systems, and dredge and fill permit requirements.

Section 209. That § 45-6B-96 be amended to read as follows:

45-6B-96. The board may not issue new permits to or amendments to existing permits for presently operating large-scale gold or silver surface mining operations for expanded acres of surface mining disturbed lands until reclamation has been performed in accord with § 45-6B-97, except that presently operating large-scale gold or silver surface mining operations are not subject to this provision until the permitted acres of surface mining disturbed lands total two hundred acres more

per each individual permit than its permitted surface mining disturbed land total acreage as of January 1, 1992.

Section 210. That § 45-6B-99 be amended to read as follows:

45-6B-99. Presently operating or new underground mining operations are not subject to the provisions of §§ 45-6B-94 to 45-6B-99, inclusive.

Section 211. That § 45-6C-20 be amended to read as follows:

45-6C-20. Criteria which shall be considered to determine the amount of surety necessary to guarantee the costs of reclamation of affected public and private lands and facilities include:

(1) Potential damages to unique and natural historical sites, springs, natural or man-made water storage and transport facilities, domestic and public water wells and water supply, waste water transport, storage and treatment facilities, or crops;

(2) Topography;

(3) Climatic, soil, and vegetative conditions;

(4) Estimated costs per test hole site to reclaim disturbed surface areas; and

(5) Estimated cost per test hole site to plug each test hole.

Section 212. That § 45-6C-21 be amended to read as follows:

45-6C-21. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as the operator's financial status, assets within the state, past performance on contractual agreements, and facilities available to carry out the planned work. The operator shall supply evidence of financial responsibility for all surety other than a bond.

Section 213. That § 45-6C-33 be amended to read as follows:

45-6C-33. The operator shall restore each drill site and other affected land as nearly as possible

to its original condition including backfilling all mudpits, scattering any drill cuttings left on the surface, reseeding the drill site and approach trails, removing shot wire, or other action as may be necessary.

Section 214. That § 45-6C-36 be amended to read as follows:

45-6C-36. If the secretary of environment and natural resources has reason to believe that a violation of this chapter has occurred, written notice shall be given to the operator of the alleged violation. The notice shall be served personally or by registered mail upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and shall recommend possible corrective action.

Section 215. That § 45-6C-51 be amended to read as follows:

45-6C-51. Any person engaged in recreational, hobby, amateur, or field activities independently or sponsored by educational institutions or by organizations involved in earth science activities including geology, mineralogy, paleontology, treasure hunting, gold panning, archaeology, and noncommercial agate and gem hunting and using hand- held tools and equipment is exempt from the provisions of this chapter.

Section 216. That § 45-6C-53 be amended to read as follows:

45-6C-53. Any exploration notice of intent may be transferred. If one operator succeeds another at any uncompleted exploration operation, the successor operator shall make application for a transfer to the Board of Minerals and Environment. The board may not deny a transfer unless the operation is not in compliance or cannot be brought into compliance, with all applicable local, state, and federal laws pertaining to the operation before the transfer, or unless the successor operator is in violation of state statutes, rules, notice restrictions, mining permit conditions, or requirements with respect to any exploration or mining operation in the state. The board shall release the first operator from

reclamation liability as to that particular exploration operation and shall release the first operator's surety posted to cover the costs of reclamation if the successor operator assumes, as part of the successor operator's obligation under this chapter, all liability for the reclamation of the affected land not completed by the first operator and reclamation of any additional lands affected under the notice. The obligation to complete this reclamation shall be covered by an appropriate surety. The successor may only conduct exploration work authorized in the notice and shall comply with the terms and conditions established when the original notice was issued. Notice of a transfer shall be given to the board and shall be accompanied by a two hundred fifty dollar transfer fee.

Section 217. That § 45-6D-20 be amended to read as follows:

45-6D-20. Criteria which shall be considered to determine the amount of surety necessary to guarantee the costs of reclamation of affected public and private lands and facilities include:

(1) Potential damages to unique and natural historical sites, springs, natural or man made water storage and transport facilities, domestic and public water wells and water supply, waste water transport, storage and treatment facilities or crops;

(2) Topography;

(3) Climatic, soil, and vegetative conditions;

(4) Estimated costs per test hole site to reclaim disturbed surface areas; and

(5) Estimated cost per test hole site to plug each test hole.

Section 218. That § 45-6D-21 be amended to read as follows:

45-6D-21. In determining whether the surety of an operator shall be guaranteed by a corporate surety bond and in determining the form of surety to be provided by the operator if other than a bond, the Board of Minerals and Environment shall consider, with respect to the operator, such factors as the operator's financial status, assets within the state, past performance on contractual agreements, and facilities available to carry out the planned work. The operator shall supply evidence of financial

responsibility for all surety other than a bond.

Section 219. That § 45-6D-26 be amended to read as follows:

45-6D-26. Any person may file written objections to or statements in support of an application for a uranium exploration operation permit with the Board of Minerals and Environment. The material for intervention shall be filed with the board not more than twenty days after the date of last publication of notice pursuant to § 45-6D-12. The board shall hold a hearing pursuant to § 45-6D-28 on the question of whether the permit should be granted. The applicant shall be notified by the board or Department of Environment and Natural Resources within five days of receipt of any objections to the application and shall be provided a copy of the written objections.

Section 220. That § 45-6D-38 be amended to read as follows:

45-6D-38. The operator shall restore each drill site and other affected land as nearly as possible to its original condition including backfilling all mudpits, scattering any drill cuttings left on the surface, reseeding the drill site and approach trails, removing shot wire, or other action as may be necessary.

Section 221. That § 45-6D-52 be amended to read as follows:

45-6D-52. If the secretary of environment and natural resources determines that any violation of any provisions of this chapter or of any notice, permit, or rule issued or promulgated under authority of this chapter exists, the board, not less than forty-eight hours after service of the notice required by § 45-6D-51, may issue a cease and desist order. The order shall set forth the provisions alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of shall be terminated and shall recommend possible corrective action. The order shall be served personally or by registered mail upon the alleged violator or the alleged violator's agent for service of process.

Section 222. That § 45-6D-62 be amended to read as follows:

45-6D-62. It is a violation of a uranium exploration operation permit's terms and conditions to refuse entry or access to any authorized representative of the Board of Minerals and Environment who, after presenting appropriate credentials requests entry for the purpose of inspection under this chapter; nor may any person obstruct, hamper, or interfere with any such investigation. If requested, the operator of the uranium exploration site shall receive a report setting forth the observations made by the person making the inspection which relate to compliance with this chapter.

Section 223. That § 45-6D-64 be amended to read as follows:

45-6D-64. The Department of Agriculture, the Department of Environment and Natural Resources, the Department of Game, Fish and Parks, the Department of Education, the commissioner of school and public lands, and local conservation districts shall furnish the Board of Minerals and Environment, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of total reclamation and enforcement duties.

Section 224. That § 45-9-5 be amended to read as follows:

45-9-5. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.

Section 225. That § 45-9-6 be amended to read as follows:

45-9-6. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require the taking of tests of oil or gas wells.

Section 226. That § 45-9-8 be amended to read as follows:

45-9-8. Without limiting its general authority, the Board of Minerals and Environment may classify, or may delegate to the secretary of environment and natural resources, specific authority to

classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

Section 227. That § 45-9-9 be amended to read as follows:

45-9-9. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require metering or other measuring of oil, gas, or product.

Section 228. That § 45-9-10 be amended to read as follows:

45-9-10. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require that wells not be operated with inefficient gas-oil or water-oil ratios, and to fix their ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios.

Section 229. That § 45-9-12 be amended to read as follows:

45-9-12. Without limiting its general authority, the Board of Minerals and Environment may regulate, or may delegate to the secretary of environment and natural resources, specific authority to regulate the production of oil and gas from any field, pool, or area, where physical waste is created.

Section 230. That § 45-9-14 be amended to read as follows:

45-9-14. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require the drilling, casing, operation, and plugging of wells in such manner as to prevent:

(1) Reasonably preventable escape of oil or gas out of one pool into another;

(2) The detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations;

(3) The pollution of fresh-water supplies by oil, gas, or salt water; and

(4) Blow-outs, cavings, seepages, and fires.

Section 231. That § 45-9-15 be amended to read as follows:

45-9-15. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require the furnishing of a plugging and performance bond in the amount of five thousand dollars per well drilled, or twenty thousand dollars blanket, with good and sufficient surety, conditioned for the performance of the duty to plug each dry or abandoned well, to restore the premises, insofar as possible, to the condition that existed before the filing of the application to drill; and conditioned on the proper performance of all of the requirements of §§ 45-9-5 to 45-9-18, inclusive. The condition of the bond insofar as it relates to restoration of the surface is deemed to have been complied with if the landowner or lessee and the producer or driller adopt a different plan as approved by the board. The board may require additional bond if the circumstances require.

Section 232. That § 45-9-15.1 be amended to read as follows:

45-9-15.1. The Board of Minerals and Environment shall require the furnishing of a surface restoration bond if the landowner or lessee is not a party to the oil or gas leasing agreement in the amount of two thousand dollars per well drilled, or ten thousand dollars blanket, with good and sufficient surety, conditioned for the performance of the duty to restore the premises, insofar as possible, to the condition which existed before the filing of the application to drill. The term, premises, as used in this section, includes the surface property of the landowner or lessee, both real and personal, and the ingress to and the egress from the real property.

Section 233. That § 45-9-16 be amended to read as follows:

45-9-16. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require that every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state keep and maintain complete and accurate records of the quantities

of the oil or gas. The records shall be available for examination by the board or its agents upon request.

Section 234. That § 45-9-17 be amended to read as follows:

45-9-17. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require the filing with the board of reports or plats that it may prescribe.

Section 235. That § 45-9-18 be amended to read as follows:

45-9-18. Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of environment and natural resources, specific authority to require the filing of all mechanical well logs, directional surveys, and reports on well location, drilling, and production with the secretary within thirty days after the completion or abandonment of the well. The board may also require the filing free of charge of samples and core chips and of complete cores, if taken, and if requested, with the secretary within six months after the completion or abandonment of the well. However, the log and samples and cores of an exploratory or wildcat well may, upon written request by the operator, be held confidential until six months after the completion of the well.

Section 236. That § 45-9-22 be amended to read as follows:

45-9-22. An order establishing spacing units shall specify the size and shape of the units, which will in the opinion of the Board of Minerals and Environment result in the efficient and economical development of the pool as a whole. The size of the spacing units may not be smaller than the maximum area that can be efficiently and economically drained by one well.

Section 237. That § 45-9-24 be amended to read as follows:

45-9-24. If spacing units of different sizes or shapes exist in a pool, the Board of Minerals and Environment shall, if necessary, and if production is limited due to physical waste, adjust the

allowable production from any wells drilled in the pool so that each person entitled to a share of the production in each spacing unit has a reasonable opportunity to produce or receive his or her just and equitable share of the production.

Section 238. That § 45-9-27 be amended to read as follows:

45-9-27. Upon application, if the secretary of environment and natural resources finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such wells or for other good cause shown, the secretary may permit the well to be drilled at a location other than that prescribed by the spacing order.

Section 239. That § 45-9-31 be amended to read as follows:

45-9-31. In the absence of voluntary pooling, the Board of Minerals and Environment, upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the development and operation of the spacing unit, and for the sharing of production from the spacing unit. Each such pooling order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive without unnecessary expense, his or her just and equitable share.

Section 240. That § 45-9-32 be amended to read as follows:

45-9-32. Each such pooling order shall authorize the drilling, equipping, and operation of a well on the spacing unit; shall provide who may drill and operate the well; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate in such well drilling, equipping, and operation; and shall provide for payment of the reasonable actual cost of the well drilling, equipping, and operation by all those who elect to participate, plus a reasonable charge for supervision and interest.

Section 241. That § 45-9-33 be amended to read as follows:

45-9-33. If requested, each such pooling order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation of a well may elect to surrender his or her leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration. If such terms are not agreed upon, they shall be determined by the Board of Minerals and Environment. The owner may elect to participate in the drilling and operation of the well, on a limited or carried basis, upon terms and conditions determined by the board to be just and reasonable.

Section 242. That § 45-9-35 be amended to read as follows:

45-9-35. If any of the owners drills, equips, and operates, or pays the costs of drilling, equipping, and operating a well for the benefit of another person as provided for in an order of pooling, then the owner is entitled to the share of production from the spacing unit accruing to the interest of the other person, exclusive of a royalty not to exceed one-eighth of the production, until the market value of the other person's share of the production exclusive of the royalty, equals the sums payable by or charged to the interest of the other person. If there is a dispute as to the costs of drilling, equipping, or operating a well, the Board of Minerals and Environment shall determine the costs.

Section 243. That § 45-9-43 be amended to read as follows:

45-9-43. An order providing for unit operations may be amended by an order made by the Board of Minerals and Environment in the same manner and subject to the same conditions as an original order providing for unit operations under the following conditions:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners is not required; and

(2) No such order of amendment may change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent

of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in the tract.

Section 244. That § 45-9-46 be amended to read as follows:

45-9-46. All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are deemed for all purposes the conduct of such operations upon each separately owned tract in the area by the several owners of the tracts. The portion of the unit production allocated to a separately owned tract in a unit area is, when produced, deemed, for all purposes, to have been actually produced from the tract by a well drilled on the tract.

Section 245. That § 45-9-49 be amended to read as follows:

45-9-49. Except to the extent that the parties affected agree, no order providing for unit operations may be construed to result in a transfer of any part of the title of any person to the oil and gas rights in any tract in the unit area.

Section 246. That § 45-9-50 be amended to read as follows:

45-9-50. No division order or other contract relating to the sale or purchase of production from a separately owned tract may be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions of the order or contract.

Section 247. That § 45-9-52 be amended to read as follows:

45-9-52. An agreement for the unit or cooperative development or operation of a field, pool, or part of the field or pool, may be submitted to the Board of Minerals and Environment for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. The approval constitutes a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account of the agreement or on account of operations conducted

pursuant to the agreement. The failure to submit such an agreement to the board for approval does not for that reason imply or constitute evidence that the agreement or operations conducted pursuant to the agreement are in violation of laws relating to trusts and monopolies.

Section 248. That § 45-9-55 be amended to read as follows:

45-9-55. The Board of Minerals and Environment shall conduct investigations necessary to determine whether waste exists or is imminent or whether other facts exist that justify action by the board.

Section 249. That § 45-9-59 be amended to read as follows:

45-9-59. The Board of Minerals and Environment may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

Section 250. That § 45-9-60 be amended to read as follows:

45-9-60. If any person refuses to comply with the subpoena issued by the Board of Minerals and Environment, or if any witness refuses to testify to any matter on which the witness may be interrogated and which is pertinent to the hearing or investigation, any circuit court in the state, upon the application of the board, may in term time or vacation issue an attachment for the person and compel the person to comply with the subpoena, and to appear before the board and produce such records, books, and documents for examination, and to give testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify in the case.

Section 251. That § 45-9-70 be amended to read as follows:

45-9-70. The secretary of environment and natural resources, acting for the Board of Minerals and Environment, may shut down any operation and place under seal any property or equipment for failure to comply with the oil and gas law or rules, may enter upon any land and perform any operation that

the operator fails to perform if ordered to do so in writing, and may recommend cancellation of any state lease and forfeiture under the bond for noncompliance with the applicable law, lease terms, and rules.

Section 252. That § 45-9-71 be amended to read as follows:

45-9-71. If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the Board of Minerals and Environment, and unless the board without litigation can effectively prevent violation or threat of violation, the board shall bring suit against the person in the circuit court for any county where the violation is occurring or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to the person may be directed to the sheriff of any county in this state for service by the sheriff. In any such suit, the court has jurisdiction to grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

Section 253. That § 45-9-72 be amended to read as follows:

45-9-72. If the Board of Minerals and Environment fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule or order of the board within ten days after receipt of written request to do so by any person who is or will be adversely affected by the violation, the person making the request may bring suit in the person's own behalf to restrain the violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person violating or threatening to violate a provision of this chapter, or rule or order of the board, and the action shall proceed and injunctive relief may be granted to the board without bond in the same manner as if suit had been brought by the board.

Section 254. That § 46-1-4 be amended to read as follows:

46-1-4. It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water.

Section 255. That § 46-1-9 be amended to read as follows:

46-1-9. The term, vested rights, used in this title means:

(1) The right of a riparian owner to continue to use water actually applied to any beneficial use on March 2, 1955, or within three years immediately before that date to the extent of the existing beneficial use made of the water;

(2) Use for domestic purposes as that term is defined in subdivision 46-1-6(7);

(3) The right of a riparian owner to take and use water for beneficial purposes if the riparian owner was engaged in the construction of works for the actual application of the water to a beneficial use on March 2, 1955, and if the works were completed and water was applied to use within a reasonable time thereafter;

(4) Rights granted before July 1, 1955, by court decree;

(5) Uses of water under diversions and applications of water before the passage of the 1907 water law and not subsequently abandoned or forfeited.

Section 256. That § 46-2-18 be amended to read as follows:

46-2-18. The provisions of chapter 1-26 notwithstanding, the chief engineer may, after appropriate investigation, issue an order to any person to shut off or limit the person's use of surface or

groundwater, or to plug or otherwise control a well. The order may be issued only to protect another user who has higher or earlier priority or to cause a user of water to discontinue the use of water to which the user has no legal right. Upon a refusal to obey the order, the chief engineer may request a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of the order.

Section 257. That § 46-2-19 be amended to read as follows:

46-2-19. The chief engineer, in the performance of duties under this title, may enter upon the lands of any person making appropriative use of the waters of the state after the chief engineer has made a reasonable attempt to notify the owner or possessor of the property of the entry. This section does not apply to entry into a house or the curtilage of a home.

Section 258. 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 second 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.

Section 259. That § 46-3A-1 be amended to read as follows:

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

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

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

(3) The term, person, means any person, firm, association, organization, partnership, company,

corporation, private or public, county, first or second class municipality, trust, or other public agencies;

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

Section 260. That § 46-3A-12 be amended to read as follows:

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

Section 261. That § 46-3A-30 be amended to read as follows:

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

Section 262. That § 46-3A-31 be repealed.

Section 263. That § 46-4-3 be amended to read as follows:

46-4-3. Any person desiring to take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board.

Section 264. That § 46-4-5 be amended to read as follows:

46-4-5. The right of any person to continue the use of water from any dry-draw is a vested right, to the extent it is not abandoned or forfeited and:

(1) The water had actually been applied to a beneficial use on March 18, 1957, or within three years immediately before that date to the extent of the actual beneficial use of the water; or

(2) The dry-draw owner was engaged in the construction of works for the actual application of water to a beneficial use on March 18, 1957, if the works were completed and water actually applied for such use within a reasonable time after that date, to the extent of actual beneficial use of the water; or

(3) The dry-draw owner filed a location notice and constructed or was in the process of constructing the dry-draw structure on December 31, 1982, if the works were completed and water actually applied to beneficial use within a reasonable time after that date to the extent of actual beneficial use.

Section 265. That § 46-5-1 be amended to read as follows:

46-5-1. No landowner may prevent the natural flow of a stream, or of a natural spring from where it starts its definite course, or of a natural spring arising on his or her land which flows into and constitutes a part of the water supply of a natural stream, nor pursue nor pollute any of these, except as provided by § 46-5-2.

Section 266. That § 46-5-6.1 be amended to read as follows:

46-5-6.1. The seventy acre restriction set forth in § 46-5-6 does not apply to permits to appropriate water for irrigation from the Missouri River. The Water Management Board shall establish by rules promulgated pursuant to chapter 1-26, acreage restrictions to apply to permits to appropriate water for irrigation from the Missouri River.

Section 267. That § 46-5-11 be amended to read as follows:

46-5-11. Water Management Board rules shall, in addition to providing the form and manner of preparing and presenting an application, require the applicant to state the amount of water, periods of annual use, and all other data necessary for proper description and limitation of the right applied for, together with such information, maps, field notes, plans, and specifications as may be necessary to show the method and practicability of construction.

Section 268. That § 46-5-25 be amended to read as follows:

46-5-25. The work of construction shall be diligently prosecuted to completion. If one-fifth of the work is not completed within one-half the time allowed, as determined by the Water Management Board, the board may accept and approve an application for the use of any of the waters included in the permit issued to the prior applicant, and the right to use the waters under the former permit are forfeited. However, the Water Management Board shall allow an extension of time at the request of the prior applicant, equal to the time during which work was prevented by the operation of law beyond the power of the applicant to avoid. This section does not apply to permits or licenses issued under § 46-5-8.1.

Section 269. That § 46-5-37 be amended to read as follows:

46-5-37. If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water.

Section 270. That § 46-5-37.1 be amended to read as follows:

46-5-37.1. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Section 271. That § 46-5-38.1 be amended to read as follows:

46-5-38.1. Water Management Board approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specified priority date and is not a grant of authority to construct the works or to put the water to beneficial use. Before the time that the holder

of a future use permit initiates construction of the works and puts water to beneficial use, the holder shall file an application for a water permit pursuant to the procedure contained in chapter 46-2A. If the holder of the future use permit is granted a water permit to develop only a portion of the water reserved by the future use permit, the holder shall apply for and receive an additional water permit, or permits, before developing and using the remaining water reserved in the future use permit. Permits for future uses shall be reviewed by the board every seven years and are subject to cancellation if the board determines that the permit holder cannot demonstrate a reasonable need for a future use permit.

Section 272. That § 46-5-47 be amended to read as follows:

46-5-47. No person may construct facilities on any watercourse to control floods for the purpose of preventing or alleviating damage without a permit issued pursuant to the procedure contained in chapter 46-2A. The permit may be approved subject to conditions deemed necessary, including conditions to safeguard water supplies for existing water permits and licenses, to assure the safety of works, and to prevent damage to property. No person may construct works in a manner not approved in the permit for those works. This section applies only to watercourses whose flow exceeds that of a dry-draw as defined in subdivision 46-1-6(8).

Section 273. That § 46-5-50 be amended to read as follows:

46-5-50. For purposes of § 46-5-51, the term, drip irrigation, means a planned irrigation system in which water is applied directly to the root zone of plants by means of applicators, such as orifices, emitters, porous tubing, or perforated pipe, that are operated under low pressure and are placed on or below the surface of the ground.

Section 274. That § 46-6-1 be amended to read as follows:

46-6-1. The term, vested rights, as used in this chapter, means:

(1) Beneficial uses of groundwater under diversions and applications of water before February 28, 1955;

(2) The right to take and use groundwater for beneficial purposes if an owner or lawful agent was engaged in the construction of works for the actual application of water to a beneficial use on February 28, 1955, if the works are completed and water is actually applied for such use within a reasonable time after that date.

Section 275. That § 46-6-11 be amended to read as follows:

46-6-11. On each well drilled the driller shall keep accurate records and complete a record of well construction on a form supplied by the chief engineer. If for any reason well construction is begun but not completed, the well driller shall complete the record of well construction to the extent possible. Within one month of completion of a well driller's work on a well, the well driller shall file all well construction records with the chief engineer for placement on permanent file. Access to the records is available to the public at any time during normal business hours.

Section 276. That § 46-6-15 be amended to read as follows:

46-6-15. The owner of an uncontrolled artesian well shall notify the Water Management Board in writing of the location and size of the well. An uncontrolled artesian well is one that cannot be controlled by mechanical means.

Section 277. That § 46-6-30 be amended to read as follows:

46-6-30. The chief engineer, during or immediately following construction of a well, may order the owner or driller of the well to properly construct or repair the well if the chief engineer determines that there is a serious and imminent threat to health or property. The chief engineer, upon failure of an owner or driller to comply with an order issued pursuant to this section, may enter upon the property where the well is located and plug or otherwise control the well. The cost of plugging or controlling the well shall be borne by the owner of the property and shall be recorded with the county register of deeds as a lien against the property until paid. This section does not limit any other remedy against an owner or driller of a well.

Section 278. That § 46-6-31 be amended to read as follows:

46-6-31. The chief engineer, if plugging or otherwise controlling a well pursuant to the provisions of §§ 46-6-29 and 46-6-30, shall comply with the bidding provisions of chapter 5-18 unless the chief engineer determines that compliance with those provisions will result in harm to health or property or will result in an unreasonable waste of water.

Section 279. That § 46-7-5 be amended to read as follows:

46-7-5. The chief engineer may inspect any works described in § 46-7-3, including abandoned works, to determine whether the works are safe. If works are found to be unsafe, the chief engineer shall notify the owner and shall order the owner to make changes necessary to secure the safety of the works, allowing a reasonable time, not to exceed six months, for putting the works in a safe condition. The order may specify that if the owner fails to make the repairs in the time allowed, the chief engineer may enter the property and put the works in a safe condition. Any costs incurred shall be borne by the owner in accordance with § 46-7-5.1. The owner may contest the order of the chief engineer by filing a protest in writing with the chief engineer within twenty days of the service of the order upon the owner. Upon receiving the protest, the chief engineer shall schedule the matter for hearing with the board in accordance with the provisions of chapter 46-2A. The filing of the written protest suspends the operation of the chief engineer's order until further action by the board. The board may affirm, modify, or reverse the order of the chief engineer. No owner of unsafe works as determined by the chief engineer or, after a protest and hearing, by the board may fail or refuse to make changes necessary to secure the works' safety pursuant to the order. The chief engineer, the state, or its employees do not incur any liability, either sovereign or personal, as a result of the duties imposed by this section or other provisions related to the inspection and repair, maintenance, or alteration of works or the notification to owners of unsafe conditions.

Section 280. That § 46-7-5.1 be amended to read as follows:

46-7-5.1. Upon failure or refusal of an owner of unsafe works to make the changes necessary to secure the safety of the works pursuant to the chief engineer's order or order of the board as applicable, the chief engineer may enter upon the property where the works are located and make the necessary changes. The cost of the work shall be borne by the owner of the works and may be recorded as a lien against any property of the owner until paid. This section does not limit any other remedy against the owner of the works. The chief engineer shall comply with the bidding provisions of chapter 5-18 unless the chief engineer determines that compliance with those provisions will result in harm to public health or property.

Section 281. That § 46-7-5.5 be amended to read as follows:

46-7-5.5. The provisions of §§ 46-7-5.4 to 46-7-5.11, inclusive, only apply to privately owned high-hazard dams constructed before January 1, 1990, if the owner and the owner's immediate family are the only persons residing below the dam within the flood plain. The chief engineer shall determine the flood plain.

Section 282. That § 46-7-5.8 be amended to read as follows:

46-7-5.8. The owner's affidavit referred to in § 46-7-5.7 shall:

(1) Be in a form prescribed and approved by the board;

(2) Identify and describe the dam in question;

(3) State the construction date of the dam;

(4) Acknowledge that the owner is aware that the unsafe condition exists;

(5) State that the owner refuses to correct the unsafe condition;

(6) Include a description of the flood plain as determined by the chief engineer;

(7) State that no one other than the owner and the owner's immediate family reside within the flood plain;

(8) Include the owner's express assumption of all liability for any claim, injury, or damage

resulting from failure of the dam, specifically holding the state, the board, the department, the chief engineer, and all officers, agents, or employees of the state harmless from any liability and damages for claims, injuries, damages, and costs, including attorney's fees resulting from failure of the dam;

(9) Acknowledge that the owner is aware that the provisions of §§ 46-7-5.4 to 46-7-5.11, inclusive, only apply to privately owned high-hazard dams constructed before January 1, 1990, if the owner and the owner's immediate family are the only persons residing below the dam within the flood plain; and

(10) State that if any individual other than the owner establishes a habitation within the flood plain, the owner will report the name, address, and location of the individual to the chief engineer within ten days.

Section 283. That § 46-10-2.1 be amended to read as follows:

46-10-2.1. The court conducting a general adjudication may direct the chief engineer of the Water Management Board to deposit with the court certified copies of every water permit, water license, certificate of construction, or other document or order and every cancellation of each document or order in the river system and all other sources involved, within a time set by the court. This section does not in any manner limit the powers of the court.

Section 284. That § 46-10-3.3 be amended to read as follows:

46-10-3.3. An action for general adjudication is commenced by the filing of a complaint in circuit court in any case in which the named defendants number one hundred or more. In such a case personal service of a summons and complaint is not required but may be made. If personal service is not made, the court shall order service to be made by the plaintiff on named defendants by mailing a court approved notice of the action by registered or certified mail, return receipt requested. The court shall order the plaintiff to obtain service on all unnamed defendants by publication of the notice

for four consecutive weeks in a newspaper published in each of the counties within which interest in rights to use of the water and water rights may be affected by the adjudication. If there is no newspaper in one or more of the counties, then publication for the counties shall be in one or more newspapers published in the state, and of general circulation within the counties. If publication is in a daily newspaper, one insertion a week is sufficient.

Section 285. That § 46A-1-4 be amended to read as follows:

46A-1-4. The enactment of this chapter does not create any right to water or the use of water and does not affect any existing legislation with respect to water or water rights, except as expressly provided in this chapter. Nothing in this chapter affects vested water rights.

Section 286. That § 46A-1-5 be repealed.

Section 287. That § 46A-1-11 be amended to read as follows:

46A-1-11. If the Board of Water and Natural Resources determines that it is necessary to carry out any of the objects and purposes of the water plan, through the construction of a water facility that has been established by the Legislature as a part of the State Water Resources Management System, the board shall, in cooperation with such federal, state, and local agencies or entities or private interests as may be concerned, prepare preliminary cost estimates, estimates of resources, if any, to be contributed from all other sources to aid in the construction, and estimates of the revenues that might be anticipated from the facility from all purposes and functions. The board shall adopt a resolution declaring that the public interest and necessity require the carrying out of these objects and purposes and requesting that the Legislature authorize the construction of this part of the State Water Resources Management System.

Section 288. That § 46A-1-15 be amended to read as follows:

46A-1-15. The Board of Water and Natural Resources shall along with its review of the state water plan consider, in cooperation with the Game, Fish and Parks Commission, the designation of

certain rivers or sections of rivers as "wild, scenic, and recreational rivers" upon which no development may occur that is detrimental to the natural and scenic beauty of the designated river.

Section 289. That § 46A-1-18 be amended to read as follows:

46A-1-18. In addition to its other powers, the district may enter into financing arrangements with any public entity or person to loan the proceeds of the district's interim notes to any public entity or person for a project anywhere within this state. The district may adopt the necessary resolution for the loan without specific authorization of the Legislature and without regard to the limitations, provisions, or requirements of any other law except this chapter and chapter 46A-2, and in addition to the aggregate indebtedness otherwise authorized by the Legislature if an agency of the State of South Dakota or an agency or instrumentality of the United States government has committed itself to make a grant or loan to the public entity or person. Under this section, the district may only provide interim financing less than or equal to the combined federal and state grant or loan commitments on each project and may not apply the proceeds of the interim notes and financing to any purpose other than expenses allowed by § 46A-1-17 and the project for which the financing arrangement is made. The person or public entity receiving this interim financing may apply the proceeds of the district's interim notes to the project without specific authorization of the project by the Legislature.

Notes to make loans pursuant to this section may be issued before the district has entered into any financing arrangement if the principal amount of notes does not exceed the amount which the district estimates to be required to enter into financing arrangements and if a grant or loan commitment is received before the district lends note proceeds pursuant to any financing arrangement.

Section 290. That § 46A-1-23 be amended to read as follows:

46A-1-23. All such notes and the interest on the notes may be secured by a pledge of, and payable from, any income and revenue (subject to the prior payment of the operation and maintenance expenses of any project) derived from the project to be undertaken with the proceeds of the notes; the

proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under this chapter; the project itself; any funds, property, or obligation of any public entity or person with whom the district has entered into a financing arrangement under § 46A-1-18 in connection with the project; the proceeds of the notes; or any grant or loan to be made by an agency or instrumentality of the United States government in connection with the project.

Section 291. That § 46A-1-24 be amended to read as follows:

46A-1-24. The district, in order further to secure the payment of the interim notes, may make any other or additional covenants, terms, and conditions not inconsistent with the provisions of this chapter, and do anything that may be necessary or convenient or desirable in order to secure payment of its interim notes, or in the discretion of the district, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts, or things may not be enumerated in this chapter.

Section 292. That § 46A-1-26 be amended to read as follows:

46A-1-26. The notes may be executed by the chairman of the board and shall be attested by the secretary of the Department of Environment and Natural Resources. The district may by resolution provide that any signatures, other than the authentication signature of the trustee, on the notes may be printed, lithographed, engraved, or otherwise reproduced on the notes. The notes shall be sold in a manner and at a price determined by the district by resolution.

Section 293. That § 46A-1-29 be amended to read as follows:

46A-1-29. Upon presentation of a request to authorize the construction of a water facility of the state water resources management system by the Board of Water and Natural Resources in accordance with § 46A-1-11, the board shall provide a plan for financing the construction of the project to the Legislature, including, in the case of a project to be financed under § 46A-1-49, a general description of the anticipated financing agreement with the participating persons or public entities. If the board

deems it necessary to request authorization for the issuance of bonds by the district, the Legislature shall determine whether such authorization shall be given in the same act as it authorizes the inclusion of construction of the project as part of the state water resources management system. If the Legislature authorizes the issuance of bonds for the construction of the facilities, it shall specify the amount of bonds that may be issued by the district for construction of the project, including any amount of bonds issued to fund a debt service reserve for the bonds or for capitalized interest during construction of the project. Pursuant to authorization by the Legislature, the district may issue bonds to acquire or construct or arrange for construction of, or to enter into a financing agreement with persons or public entities for, any one project, or more than one, or to refund bonds heretofore or hereafter issued for each project or facility or to fund a debt service reserve for the bonds or for capitalized interest during construction of the project and to provide for the security and payment of the bonds and for the rights of the holders of the bonds. The board may issue bonds in the amount of up to thirty percent greater than the specific amount authorized by the Legislature for financing any specific project if increases in construction costs, changes in engineering designs, or minor changes in the area or number of persons served by a project require such an increase to complete the project, and if the amount of funds obtained from the district through its bonding power does not exceed the authorization of the Legislature by more than thirty percent for any specific project.

Section 294. That § 46A-1-30 be amended to read as follows:

46A-1-30. The district may issue bonds authorized by the Legislature pursuant to § 46A-1-29 or by § 46A-1-31 for the following purposes, which are hereby determined to be in the public interest and to constitute lawful and public purposes:

(1) To acquire, construct, plan, or arrange for acquisition and construction of any one project, or more than one;

(2) To issue bonds to effectuate § 46A-2-16;

(3) To refund bonds heretofore and hereafter issued, including the refunding of bonds in advance of their call or maturity date. The refunding bonds may be partially or wholly secured by and payable from obligations of the United States government or the income from such obligations;

(4) To fund a debt service reserve for the bonds;

(5) To provide for capitalized interest during the estimated construction period of the projects and for a period of one year thereafter;

(6) For any of the preceding purposes;

(7) To enter into financing agreements to make loans pursuant to § 46A-1-49;

(8) To provide for the payment of the costs of issuance of the bonds. At no time may district indebtedness exceed the aggregate indebtedness authorized by the Legislature pursuant to § 46A-1-29, plus any additional amount authorized by that section, less the cumulative regular amortization payments made on each bond issue, except as specifically provided by § 46A-1-31. The bonds shall be authorized by resolution of the Board of Water and Natural Resources. The resolution may provide that any signatures, other than the authentication signature of the trustee, on the bonds may be printed, lithographed, engraved, or otherwise reproduced on the bond;

(9) To purchase or otherwise finance or provide for the purchase or payment of loans made by the United States Department of Agriculture, as provided in § 46A-1-31;

(10) To purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations of any public entity or person in connection with the water pollution control revolving fund program and the drinking water revolving fund program, as provided in § 46A-1-31.

Section 295. That § 46A-1-31 be amended to read as follows:

46A-1-31. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in an amount not to exceed in aggregate eight million dollars at any time for the purpose of financing projects as defined in subdivision 46A-2-4(5) that are components of the statewide water plan subject to the provisions of §§ 46A-1-49 to 46A-1-52, inclusive. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in any amount at any time for the purpose of purchasing or otherwise financing or providing for the purchase or payment of loans made by the United States Department of Agriculture to any person or public entity, whether or not the person or public entity or the project financed with the loan are located in South Dakota or formed under or recognized by South Dakota law, as community facilities loans or water and waste disposal loans. The purchasing, financing, or payment activities are hereby determined to be components of the state water plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with the persons or public entities to secure and provide for the payment of the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may make payments or deposits for the purchase or payment of the loans from funds obtained from the persons or public entities, whether or not bonds have been issued. The purchase or payment of loans for persons or public entities or projects located outside of the State of South Dakota is hereby authorized and declared to be a public purpose if, at the discretion and in the determination of the district, the purchase or payment is expected to result in economies of scale, fees, interest savings, financing, or other benefits to the district, South Dakota persons, or public entities or the State of South Dakota. The district, in the proceedings for the issuance of the bonds, shall establish the manner in which the trustee shall manage and disperse any savings for the benefit of the persons and public entities whose community facilities loans and water and waste disposal loans have been purchased or prepaid by the district. In

addition to the aggregate indebtedness authorized by the Legislature and the Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may also issue bonds in any amount at any time for the purpose of funding all or part of the revolving funds required for either the state water pollution control revolving fund program or the state drinking water revolving fund program or both under either the federal Clean Water Act, as amended to January 1, 2011, or federal Safe Drinking Water Act, as amended to January 1, 2011, or both. The bonds issued for these revolving fund programs shall be used to purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations, including the refinancing of obligations previously issued or for projects previously completed. The purchasing, financing, or payment activities are hereby determined to be components of the state water facilities plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with the persons or public entities to secure and provide for the payment of the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may pledge or assign to or hold in trust for the benefit of the holder or holders of the bonds those moneys appropriated by the Legislature for the purpose of funding state contributions to the state water pollution control revolving fund program and the state drinking water revolving fund program. The moneys may be held and invested pursuant to a trust agreement for the payment of the principal of, premium, if any, and interest on, the bonds.

Section 296. That § 46A-1-36 be amended to read as follows:

46A-1-36. The district may covenant with or for the benefit of the holder of any bonds issued under this chapter that if any such bonds remain outstanding and unpaid, the district will fix, maintain, and collect in such installments as may be agreed upon, all revenues authorized to be pledged under § 46A-1-33 until the bonds and accruing interest have been paid in accordance with their terms. The aggregate revenues shall be sufficient at all times to pay all necessary expenses of the operation and maintenance of any project, to pay the bonds at maturity and accruing interest on the bonds in

accordance with their terms, and to create and maintain all reserves for the bonds as provided by the resolution authorizing the bonds.

Section 297. That § 46A-1-37 be amended to read as follows:

46A-1-37. The district may covenant that if any of the bonds issued under this chapter remain outstanding and unpaid, the district will not, except upon such terms and conditions as may be determined, voluntarily create or cause to be created any debt, lien, mortgage, pledge, assignment, encumbrance, or other charge having priority to the lien of the bonds issued under this chapter upon any of the income and revenues derived from all revenues pledged pursuant to § 46A-1-33, or convey or otherwise alienate any project or the real estate upon which the project is located, except at a price sufficient to pay all the bonds issued for the project then outstanding and interest accrued on the bonds, and then only in accordance with any agreements with the holder of the bonds.

Section 298. That § 46A-1-38 be amended to read as follows:

46A-1-38. The district may covenant with or for the benefit of the holder of any bonds issued under this chapter as to all matters deemed advisable by the district including:

(1) The purposes, terms, and conditions for the issuance of additional parity or junior lien bonds that may thereafter be issued, and for the payment of the principal, redemption premiums, and interest on the bonds;

(2) The kind and amount of all insurance to be carried, the cost of which shall be charged as an operation and maintenance expense of any project;

(3) The operation, maintenance, and management of any project to assure the maximum use and occupancy of the project; the accounting for, and the auditing of, all income revenue from, and all expenses of, any project; the employment of engineers and consultants; and the keeping of records, reports, and audits of any project;

(4) The obligation of the district to maintain any project in good condition and to operate the

project at all times in an economical and efficient manner;

(5) The terms and conditions for creating and maintaining debt service funds, reserve funds, and such other special funds as may be created in the resolution authorizing the bonds, separate and apart from all other funds and accounts of the district and the institution;

(6) The procedure by which the terms of any contract with the holders of the bonds may be amended, the amount of bonds the holders of which must consent to the amendment, and the manner in which consent may be given;

(7) Providing the procedure for refunding the bonds;

(8) Such other covenants as may be deemed necessary or desirable to assure a successful operation of any project and the prompt payment of the principal of and interest upon the bonds so authorized.

Section 299. That § 46A-1-39 be amended to read as follows:

46A-1-39. The district may vest in a trustee the right to receive any part of the proceeds of the bonds and any part of the income and revenue pledged and assigned to, or for the benefit of, the holder of bonds issued under this chapter; the right to hold, apply, and dispose of the bonds; and the right to enforce any covenant made to secure or pay or in relation to the bonds. The district may execute and deliver a trust agreement setting forth the powers and duties of and the remedies available to the trustee, limiting the liabilities of the trustee, describing what occurrences constitute events of default, and prescribing the terms and conditions upon which the trustee or the holder of any specified amount or percentage of the bonds may exercise such right and enforce any such covenants and resort to remedies as may be appropriate.

Section 300. That § 46A-1-40 be amended to read as follows:

46A-1-40. The district may covenant to perform any act and to do anything as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the district tend

to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated in this section or this chapter. It is the intention of this chapter to empower the district issuing bonds pursuant to this chapter to make all covenants, to perform all acts, and to do all things not inconsistent with the Constitution of the State of South Dakota.

Section 301. That § 46A-1-42 be amended to read as follows:

46A-1-42. Any bonds issued pursuant to this chapter are obligations of the district payable only in accordance with the terms of the bonds and are not obligations general, special, or otherwise, of the State of South Dakota. Such bonds do not constitute a debt, legal or moral, of the State of South Dakota, and are not enforceable against the state. Payment of the bonds is not enforceable out of any funds of the district other than the income and revenues pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

Section 302. That § 46A-1-44 be amended to read as follows:

46A-1-44. The bonds bearing the signatures of officers of the district in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of and payment for the bonds any person whose signature appears on the bonds may have ceased to be an officer. The validity of the bonds is not dependent on nor affected by the validity or regularity of any proceedings to acquire any project financed by the bonds, or to refund outstanding bonds, or taken in connection with the bonds.

Section 303. That § 46A-1-48 be amended to read as follows:

46A-1-48. Notwithstanding the provisions of any other law, no moneys derived from the sale of bonds or notes issued under the provisions of this chapter, or pledged or assigned to or in trust for the benefit of the holder or holders of the bonds or notes, may be required to be paid into the state treasury.

Section 304. That § 46A-1-49 be amended to read as follows:

46A-1-49. In addition to its other powers, the district may, by appropriate resolution of the Board of Water and Natural Resources, enter into financing agreements with any public entity or person to loan the proceeds of the district's bonds to any public entity or person for a project within or without a water development district, subject to the requirement of § 46A-2-20, without regard to the limitations, provisions, or requirements of any other law except chapter 46A-2 and this chapter. The persons or public entities receiving this financing may apply the borrowed funds to the project without further authorization of the project by the Legislature.

Section 305. That § 46A-1-53 be amended to read as follows:

46A-1-53. The provisions of § 46A-1-48 do not limit the power of the district to agree in connection with the issuance of any of its bonds as to the custody and the disposition of the moneys received from the sale of the bonds or from the income and revenues pledged or assigned to or in trust for the benefit of the holder of the bonds.

Section 306. That § 46A-1-56 be amended to read as follows:

46A-1-56. The district may issue negotiable refunding bonds for the following purposes:

(1) To refund unpaid matured bonds;

(2) To refund unpaid matured coupons evidencing interest upon its unpaid matured bonds; and

(3) To refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds.

Section 307. That § 46A-1-58 be amended to read as follows:

46A-1-58. The district s may issue negotiable refunding bonds under the provisions of this chapter to refund bonds at or before their maturity or which by their terms are subject to redemption before maturity, or both, in an amount necessary to refund:

(1) The principal amount of the bonds to be refunded;

(2) The interest to accrue up to and including the maturity date or dates, or to the next

succeeding redemption date of the bonds; and

(3) The applicable redemption premiums, if any.

Section 308. That § 46A-1-59 be amended to read as follows:

46A-1-59. Refunding bonds issued pursuant to § 46A-1-58 may be sold at a price determined by the district. All proceeds received at the sale of the refunding bonds (excepting the accrued interest received) shall be used:

(1) If the bonds to be refunded are then due, for the payment of the bonds;

(2) If the bonds to be refunded are voluntarily surrendered with the consent of the holder or holders of the bonds, for the payment of the bonds;

(3) If the bonds to be refunded are then subject to prior redemption by their terms, for the redemption of the bonds;

(4) If the bonds to be refunded are not then subject to payment or redemption, to purchase direct obligations of the United States of America if the obligations will mature at such times, with interest on the obligations or the proceeds received from the obligations, to provide funds adequate to pay when due or called for redemption before maturity the bonds to be refunded, together with the interest accrued on the bonds and any redemption premium due on the bonds. The proceeds or obligations of the United States of America shall, with all other funds legally available for such purpose, be deposited in escrow with a banking corporation, or national banking association, located in and doing business in the State of South Dakota, with power to accept and execute trusts, or any successor thereto, which is also a member of the federal deposit insurance corporation and of the federal reserve system, to be held in an irrevocable trust solely for and until the payment and redemption of the bonds so to be refunded. Any balance remaining in the escrow after the payment and retirement of the bonds to be refunded shall be returned to the district to

be used and held for use as revenues pledged for the payment of the refunding bonds; or

(5) For any combination of the purposes specified in subdivisions (1) to (4), inclusive, of this section.

Section 309. That § 46A-1-90 be amended to read as follows:

46A-1-90. The South Dakota Conservancy District in carrying out the authority established in subdivision 46A-2-2(7) through a contractual agreement with the federal government to upgrade federal hydroelectric facilities shall ensure that the power realized from upgrading federal hydroelectric facilities is marketed subject to the statutory limitation contained in section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825s, as amended to January 1, 2011. Funds accruing to the district under such contracts shall be deposited into the South Dakota water and environment fund established by § 46A-1-60 for the purposes of debt service of any bond indebtedness incurred pursuant to the upgrade of federal hydroelectric facilities and for grants and loans authorized from the water and environment fund.

Section 310. That § 46A-1-94 be amended to read as follows:

46A-1-94. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a twenty-seven million nine hundred ninety-nine thousand two hundred fifty dollar Perkins County Rural Water System as generally described in the report, Final Engineering Report, for Perkins County Rural Water System Inc., Bison, South Dakota, dated January 2003, is hereby authorized for the purpose of providing safe and adequate municipal, rural, and industrial water supplies in Perkins County.

The Legislature finds that it is in the best interest of the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, 2011, through the state water resources management system revolving loan program. The Board of Water and Natural Resources may provide loans under the state water resources management system revolving loan program in amounts not to exceed a total of four million five

hundred thousand dollars to the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, 2011. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

Notwithstanding the provisions of § 46A-1-66, no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment is due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources.

The Board of Water and Natural Resources may provide grants in amounts not to exceed two million five hundred thousand dollars, or so much thereof as may be necessary, to the Perkins County Rural Water System project to provide the State of South Dakota's portion of the nonfederal matching requirements for the project. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

The loan and grant authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 2001, as indicated by engineering costs indices applicable for the type of construction involved.

Section 311. That § 46A-1-104 be amended to read as follows:

46A-1-104. The brownfields revitalization and economic development program subfunds are hereby continuously appropriated to the South Dakota Board of Water and Natural Resources. Money received for these programs may be used only for purposes authorized by the federal Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) as amended to January 1, 2011.

Section 312. That § 46A-1-105 be amended to read as follows:

46A-1-105. Any eligible entity may establish a brownfields program to prevent, assess, safely clean up, promote the economic development of, and sustainably reuse eligible brownfields sites as

authorized in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended to January 1, 2011, and in the Small Business Liability Relief and Brownfields Revitalization Act, P.L. 107-118 as amended to January 1, 2011.

Section 313. That § 46A-2-6 be amended to read as follows:

46A-2-6. The Department of Environment and Natural Resources may equip, operate, and maintain an office as the principal place of business for the district and to establish other offices as required.

Section 314. That § 46A-2-11 be amended to read as follows:

46A-2-11. The Board of Water and Natural Resources may sue and be sued in the name of the district.

Section 315. That § 46A-2-14 be amended to read as follows:

46A-2-14. The Board of Water and Natural Resources may acquire, under the provisions of this chapter and chapters 46A-3A to 46A-3E, inclusive, by purchase or lease, all real and other property as may be necessary for the construction, maintenance, and operation of any water resources project; hold and use the property, lease, or otherwise dispose of any part of the property; or sell the property if not required for water resources project use, and no longer necessary to its use. The board may enter into rental or other agreements with local project sponsors to allow local project sponsors to use property controlled by the board or Department of Environment and Natural Resources according to terms and conditions specified by the board. In carrying out this section the board shall follow the procedures required in the case of counties under the laws of South Dakota.

Section 316. That § 46A-2-19 be amended to read as follows:

46A-2-19. The district may sell, grant, convey, assign, lease, or otherwise transfer perfected water rights or permits to appropriate water for energy industry use to energy industry users for such consideration and under such terms and conditions as are fixed by contract or instrument of

conveyance. The contracts represent the entire financial obligation for the use of water owed by an energy industry user to the State of South Dakota and no further fee, tax, or assessment may be levied against the user except for an ad valorem tax as assessed under chapter 10-37. Any such contract may provide that for failure to perform any condition of performance, for breach, for failure of consideration, or for failure to perform any other contractual obligation, the transfer is void. If the Board of Water and Natural Resources determines that such a failure to perform a condition of performance or breach has occurred, it may file with the division of water rights a notice to cancel the permit or license evidencing the transfer after complying with any notice of breach provision or other condition precedent to cancellation specified in the contract.

Section 317. That § 46A-2-21 be amended to read as follows:

46A-2-21. The district, may, notwithstanding § 46A-2-20, exercise the power of eminent domain as provided by law if necessary for the purposes of acquiring and securing any right, title, interest, estate, or easement necessary for any project for which the district has entered into a financing arrangement under § 46A-1-18, which cannot be acquired by negotiation. However, this power may not be exercised in connection with any project that may provide or assist in providing water for use in a coal slurry pipeline.

Section 318. That § 46A-2-22 be amended to read as follows:

46A-2-22. The Board of Water and Natural Resources may become a party to long or short-term contracts as principal or guarantor for payment for such services or for performance of construction, operation, or maintenance work as is deemed beneficial or advisable by the board. However, nothing contained in this chapter or chapters 46A-3A to 46A-3E, inclusive, permits the board to enter into any contracts or agreements that obligate the State of South Dakota beyond the extent of the board's then current annual appropriation.

Section 319. That § 46A-2-25 be amended to read as follows:

46A-2-25. The Board of Water and Natural Resources may accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public sources for the purpose of aiding and promoting the construction, maintenance, and operation of any water resource project.

Section 320. That § 46A-2-26 be amended to read as follows:

46A-2-26. The Board of Water and Natural Resources may cooperate with and may furnish assurances of cooperation and act as principal and guarantor or either to enter into a contract with the United States of America, with public entities of South Dakota, or with persons for the performance of obligations entered into with the United States for the construction, operation, or maintenance of water resources projects or for accomplishment of the purposes and intents of this chapter and chapters 46A-3A to 46A-3E, inclusive.

Section 321. That § 46A-2-31 be amended to read as follows:

46A-2-31. The district, upon recommendation by the Board of Water and Natural Resources and approval of the Governor, may enter into contracts with the United States for the marketing of water service from federal projects. No such contract entered into by the state may prejudice state interests and rights to water resources within the boundaries of the state pursuant to state and federal statutes. Such contracts shall be for the express purpose of compensating the United States for the storage facilities provided by federal water projects. Before the implementation the contracts shall be recommended to the Legislature for inclusion in the state water resources management system pursuant to chapter 46A-1.

Section 322. That § 46A-2-33 be amended to read as follows:

46A-2-33. The Board of Water and Natural Resources may exercise the necessary power and authority of a subdistrict board of directors, if the subdistrict has been dissolved under provisions of chapter 46A-3, until all responsibilities, obligations, and contractual commitments of the dissolved subdistrict have been satisfied. The board may not levy taxes on any election district as defined in

§ 46A-3-8 for the continuation of any project not supported by a majority of the election district voters in a subdistrict election called by the board for that purpose unless the subdistrict's contracting authority specifically approves the project or contract and the tax levy allowable for the contract or project.

Section 323. That § 46A-2-37 be amended to read as follows:

46A-2-37. The provisions of this chapter and chapters 46A-3A to 46A-3E, inclusive, do not abrogate or limit the rights, powers, duties, and functions of the State Water Management Board, but are supplementary to and in aid of such rights, powers, duties, and functions. Chapters 46A-3A to 46A-3E, inclusive, do not limit or affect the laws of this state relating to the organization and maintenance of irrigation districts, water user districts, drainage districts, soil conservation districts, or watershed districts. Chapters 46A-3A to 46A-3E, inclusive, do not infringe upon or establish any rights superior to any existing water rights, and do not preclude the establishment of any such or similar public entity wholly or in part within the boundaries of the district created by this chapter.

Section 324. That § 46A-3A-8 be amended to read as follows:

46A-3A-8. Fifteen percent of the owners of real property in a geographical area, as shown by the records in the offices of the register of deeds of the county wherein the real property is situated, may petition the Board of Water and Natural Resources to submit to an election the question of whether the geographical area shall become a water development district. If land is sold under a contract for deed, which is of record in the office of the register of deeds in the county wherein the land is situated, both the landowner and the landowner's individual purchaser of the land, as named in the contract for deed, shall be treated as owners of real property.

Section 325. That § 46A-3A-9 be amended to read as follows:

46A-3A-9. A petition arising under the provisions of § 46A-3A-8 shall describe the exact boundaries of the area to be included within the proposed water development district, and each person

signing the petition shall add to the person's signature, in the person's own handwriting, the person's place of residence, and the date of signing. The petition may contain more than one page, and each page shall have identical headings. Any number of identical petition forms may be circulated and each be a part of the petition, but each of the identical petition forms must be verified by the circulator as follows:

"I, the undersigned, being first duly sworn, hereby depose that I circulated the above and foregoing petition, containing ____ signatures; that I personally witnessed each of the persons named upon the petition place their signatures on the petition and add in their own handwriting the information set forth after their respective signatures.

_____

P.O. Address

_____

Subscribed and sworn to before me this _____ day of _____, 20____

_____

Notary Public".

Section 326. That § 46A-3A-15 be amended to read as follows:

46A-3A-15. If all of the election districts within a proposed water development district become a part of the water development district as provided in this chapter on approval of the proposed district by sixty percent or more of the votes cast in the election districts, or if the Board of Water and Natural Resources establishes a water development district pursuant to the provisions of § 46A-3A-14 for which not all of the election districts become a part of the water development district, the board shall by resolution create and establish the water development district, give it a name and, upon filing a true copy of the resolution with the secretary of state, the water development district shall become a political subdivision of the state with the authority, powers, and duties prescribed by this chapter.

Section 327. That § 46A-3B-11 be amended to read as follows:

46A-3B-11. At the first meeting in January of each year, designated as the annual meeting of the water development district, the directors shall elect a chair, a vice chair, and a secretary from among their membership. The officers shall hold office until the next annual meeting of the water development district or until their successors have been elected. In addition, the directors shall appoint a treasurer who may or may not be a director and who shall serve at the pleasure of the board of directors or until a successor is appointed. The treasurer shall be bonded in such amounts and with such sureties as the directors may specify, conditioned on faithful performance of the treasurer's duties. The chair, vice chair, secretary, and treasurer constitute the officers of the board of directors. The treasurer, if not a director, has no voting privileges.

Section 328. That § 46A-3C-2 be amended to read as follows:

46A-3C-2. The petition of dissolution pursuant to § 46A-3C-1 shall request that the water development district be dissolved and shall include the legal name of the water development district. Each person signing the petition shall add to the person's signature, in the person's own handwriting, the person's place of residence and the date of signing. The petition may contain more than one page, and each page shall have identical headings. Any number of identical petition forms may be circulated and each be a part of the petition. Every page of the petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following form:

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF _____)

I, the undersigned _____, being first duly sworn, depose and say, that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on the petition sheet personally signed the petition in my presence; that I believe that each

of the signers is a resident at the address written opposite the signer's name; and that I stated to every petitioner before the signer affixed his or her signature the legal effect and nature of the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, 20____.

_____

Notary Public

Section 329. That § 46A-3E-3 be amended to read as follows:

46A-3E-3. Only those landowners who contractually agree for special assessments to finance a water delivery project may be specially assessed. The provisions of § 46A-3E-4 notwithstanding, any person who wishes to join a water delivery project after a petition has been filed with the water development district board of directors pursuant to § 46A-3E-4 may contractually agree to join the project. However, a person contractually joining a water delivery project late may be required to make special payments in addition to special assessments in order to bear the person's fair share of project costs.

Section 330. That § 46A-3E-10 be amended to read as follows:

46A-3E-10. The board of directors of a water development district shall at the time of the organization of the board and annually thereafter on a date established by the district, but not later than the first of September, adopt a budget and prepare an operations and budget report. The report shall present estimates and itemizations of all the expenses and obligations of the water development district, including expenses of directors, expenses of operating the office, debt service and retirement, and obligations and liabilities to the United States for which provisions must be made. Before approval of the budget by the district board of directors, a public hearing shall be held. Notice of the hearing shall be published once each week for two successive weeks in the water development

district's official newspapers. The notice shall state the time and place of the hearing, its purpose, and that at the hearing all persons interested may appear, either in person or by representative, and be heard and given an opportunity for a full and complete discussion of all items in the budget. With the first notice, the budget shall be published in a form approved by the auditor general. At the conclusion of the hearing, the water development district board may eliminate or amend any portion of the budget before adoption.

Section 331. That § 46A-4-2 be amended to read as follows:

46A-4-2. The term, elector, as used in this chapter and chapters 46A-5 to 46A-7, inclusive, means any person, the United States of America, the State of South Dakota or any political subdivision of the state, or any corporation authorized to do business in the state and owning not less than thirty-five acres of land within any district. If the elector is the owner or entryman of land in more than one division of the irrigation district and resides without the district, the elector is considered an elector in the division of the district in which the major portion of the elector's land is situated. If the qualifying thirty-five acres or more of land is sold under a contract for deed which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as an elector.

Section 332. That § 46A-4-3.1 be amended to read as follows:

46A-4-3.1. Each elector signing a petition shall add to the elector's signature, in the elector's own handwriting, the elector's post office address, the legal description of sufficient land to qualify as an elector, and the date of signing. The petition may contain any number of pages, and each page shall have an identical heading. Any number of identical petition forms may be circulated as a part of the petition. Every page of a petition containing signatures shall have below the signatures an affidavit by the circulator in substantially the following form:

State of South Dakota)

) SS

County of _____)

I, the undersigned, being first duly sworn, depose and say that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on the petition sheet personally signed the petition in the presence of the affiant; that the affiant believes that each of the signers is an owner or entryman of the land described opposite the signer's signature, to be included within the proposed district, and residing at the address written opposite the signer's name; and that affiant stated to every petitioner before the petitioner affixed his or her signature the legal effect and nature of the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, 20____.

_____

Notary Public

Section 333. That § 46A-4-9 be amended to read as follows:

46A-4-9. Any ditch or canal constructed before July 1, 1917, of sufficient capacity to water the lands for which the water was appropriated, together with the land subject to be watered by the ditch, canal, or franchise, is exempt from the operation of this chapter, unless an irrigation district is formed under the provisions of this chapter for the purpose of purchasing the ditches, canals, and franchises. This chapter and chapters 46A-5 to 46A-7, inclusive, do not affect the rights of ditches already constructed.

Section 334. That § 46A-4-10 be amended to read as follows:

46A-4-10. In no case may any land be held by any district or taxed for irrigation purposes if the land cannot from any natural cause be irrigated by the district.

Section 335. That § 46A-4-12 be amended to read as follows:

46A-4-12. The Board of Water and Natural Resources may make changes in the proposed boundaries as it deems proper and shall exclude from the district proposed by the petitioners land that is not susceptible of irrigation by the proposed system of works. The board may not allow land which will not be benefited by irrigation by the system of works or a portion thereof to be included in the proposed district. Upon written request by an owner or entryman before the board's hearing on the question of formation, the board shall exclude the owner's or entryman's land from the proposed district.

Section 336. That § 46A-4-17 be amended to read as follows:

46A-4-17. No person may vote at any election held under the provisions of this chapter unless the person is a qualified elector as provided in § 46A-4-2.

Section 337. That § 46A-4-22 be amended to read as follows:

46A-4-22. If the majority of the lands within the district are unentered public lands, a majority of the board of directors shall be appointed by the secretary of the interior. The directors shall be residents of the state and are subject to removal from office, and any vacancy shall be filled by the secretary of the interior. The directors shall hold office until the unentered public lands within the district constitute a minority of the total area, after which a general election shall be called by the board of directors, when their successors shall be elected.

Section 338. That § 46A-4-25 be amended to read as follows:

46A-4-25. Each year after establishing the district, there shall be elected for a term of three years one or more members of the board of directors, as the case may be. The member of the board of directors from each division shall be nominated as provided in this chapter and shall be elected by receiving the highest number of votes cast by the electors of the division in the irrigation district for which the member is to serve as a director. The regular election of such districts shall be held on the

last Tuesday in October.

Section 339. That § 46A-4-30 be amended to read as follows:

46A-4-30. If there is no question to be submitted to the electors and if only one nominating petition for any vacancy to be filled has been filed, then no election may be held to fill the vacancy; and the secretary shall issue a certificate of election to the nominee in the same manner as to a successful candidate after election. If no nominating petition has been filed, the incumbent is entitled to remain in office for an additional term.

Section 340. That § 46A-4-33 be amended to read as follows:

46A-4-33. Before the time for posting the notices, the board of directors shall appoint from each precinct participating in the election from the electors of the precinct, one clerk and two judges, who shall constitute a board of election for the precinct, in any election not conducted under a district system of voting by mail. If the board fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member of the board of election. The board of directors shall, in its order appointing the board of election, designate the hour and place in the precinct where the election will be held.

Section 341. That § 46A-4-34 be amended to read as follows:

46A-4-34. One of the judges shall be chair of the election board and may administer all oaths required in the progress of an election. The chair may appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk of the board of election, may administer and certify oaths required to be administered during the progress of an election.

Section 342. That § 46A-4-36 be amended to read as follows:

46A-4-36. The board of directors shall meet at its usual place of meeting on the first Monday after

each election and canvass the return. If at the time of meeting the returns from each precinct in the district in which the polls were opened have been received, the board of directors shall proceed to canvass the returns. However, if some of the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received, or until postponements have been had. The canvass shall be made in public and by opening the returns and ascertaining the vote of the district for each person voted for and declaring the results of the canvass. No list, tally paper, or certificate returned from any election may be set aside or rejected for want of form if it can be satisfactorily understood.

Section 343. That § 46A-4-37 be amended to read as follows:

46A-4-37. The board of directors shall declare the person having the highest number of votes cast for each vacancy elected. The secretary shall immediately make out and deliver to that person a certificate of election, signed by the secretary and authenticated with the seal of the district.

Section 344. That § 46A-4-38 be amended to read as follows:

46A-4-38. The secretary of the board of directors shall, as soon as the result is declared, enter upon the records of the board and file in the office of the auditor of each county in which the district is located a statement of the results. The statement shall show:

(1) The whole number of votes cast in the district and in each division of the district;

(2) The names of the persons voted for;

(3) The office to fill which each person was voted for;

(4) The number of votes given in each precinct for each of such persons; and

(5) The number of votes given in the district for each of such persons.

Section 345. That § 46A-4-39 be amended to read as follows:

46A-4-39. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by a majority of the remaining members of the board. Any director so

appointed shall hold office until the next general election of the division and until the director's successor is elected and qualified. The district treasurer shall be appointed by the board of directors and shall serve at the pleasure of the board.

Section 346. That § 46A-4-42 be amended to read as follows:

46A-4-42. If any district organized under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, the treasurer and each director shall execute an additional official bond in such sum as the secretary of the interior may require. The bond shall be conditioned for the faithful discharge of the duties of the office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization. The additional bonds shall be approved, recorded, and filed as provided in § 46A-4-41 for other official bonds, and any such additional bonds may be sued upon by the United States or any person injured by the failure of the officer or the district fully, promptly, and completely to perform their respective duties.

Section 347. That § 46A-4-46 be amended to read as follows:

46A-4-46. All records of the board of directors shall be open to the inspection of any elector during business hours, and the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings of the board in one newspaper of general circulation in the district, at the legal rate for advertising legal notices. The board shall file an itemized list of all expenditures approved at any such meeting at the office of the auditor of the county or counties where the district is located within ten days of any such meeting.

Section 348. That § 46A-4-49 be amended to read as follows:

46A-4-49. No director or officer named in this chapter, or chapters 46A-5 to 46A-7, inclusive, may be interested in any manner, directly or indirectly, in any contract awarded, or to be awarded, by

the irrigation district board, or in the profits to be derived from the contract. No such director or officer may receive any bonds, gratuity, or bribe. Any such director or officer who is interested in any manner, directly or indirectly, in any contract awarded, or to be awarded, by the board of directors provided for in chapters 46A-5 to 46A-7, inclusive, or in the profits derived from the contract, or who receives any bonds, gratuity, or bribe, is guilty of a Class 5 felony.

Section 349. That § 46A-4-50 be amended to read as follows:

46A-4-50. The boundaries of any irrigation district organized under the provisions of this chapter may be changed, and tracts of land included within the boundaries of the district at or after its organization under the provisions of this chapter may be excluded from the district in the manner prescribed in this chapter. However, neither a change of boundaries of the district nor an exclusion of lands from the district may impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature. No such boundary change or exclusion of lands may affect, impair, or discharge any contract, obligation, lien, or charge for or upon which the district is or might become liable or chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

Section 350. That § 46A-4-52 be amended to read as follows:

46A-4-52. If any contract has been made between the district and the United States as provided in chapters 46A-5 and 46A-6, no change may be made in the boundaries of the district. The board of directors may make no order changing the boundaries of the district until the secretary of the interior assents to the change in writing and the assent is filed with the board of directors.

Section 351. That § 46A-4-54 be amended to read as follows:

46A-4-54. A conservator or personal representative of an estate, who is appointed as such under the laws of this state and who, as conservator or personal representative, is entitled to the possession of the lands belonging to the estate which the conservator or personal representative represents, may

on behalf of his or her ward or the estate which he or she represents, upon being authorized by the proper court, sign and acknowledge the petition provided in this chapter, and may show cause, as provided in this chapter, why the boundaries of a district should not be changed.

Section 352. That § 46A-4-56 be amended to read as follows:

46A-4-56. The board of directors at the time and place mentioned in the notice, or at such other time to which the hearing of the petition may be adjourned, shall hear the petition and all objections to the petition presented in writing by any person. The failure of any person interested in the district or in the matter of the proposed change of its boundaries to show cause in writing is deemed an assent by the person to the change of the boundaries of the district as prayed for in the petition, or to such a change in the boundaries as will include a part of the lands. The filing of the petition with the board is deemed an assent by each petitioner to a change of the boundaries that may include the whole or any portion of the lands described in the petition.

Section 353. That § 46A-4-57 be amended to read as follows:

46A-4-57. If the board of directors deems it not in the best interests of the district that a change of its boundaries be made to include in the district the lands mentioned in the petition, the board shall reject the petition. However, if the board deems it in the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not be made, or if having shown cause, withdraws the objection, or if having shown cause does not withdraw the objection and the board of directors deems it in the best interests of the district that the district boundaries be so changed, the board shall by resolution order that the boundaries of the district be changed to include in the district the lands mentioned in the petition, or some part of such lands. The resolution shall describe the exterior boundaries of the lands to be included within the boundaries of the district. The order shall describe the entire boundaries of the district as they will be after the boundary change, and for that purpose the

board may cause a survey to be made of such portions of the boundaries as the board deems necessary.

Section 354. That § 46A-4-58 be amended to read as follows:

46A-4-58. No provision of this chapter authorizes or empowers the board of directors to include any land within the district unless the owner or lessee of the land pays or obligates the land to pay the same assessments or charges as all other lands have originally paid or have been obligated for, including the cost of studies, construction, operation, and maintenance charges and the cost of water deliveries.

Section 355. That § 46A-4-59 be amended to read as follows:

46A-4-59. The board of directors to whom a petition to include land within the district is presented may require, as a condition precedent to the granting of the petition, that the petitioners shall severally pay to the district such prospective sums to be determined by the board, as nearly as the same can be estimated, as the petitioners or their grantors would have been required to pay to the district, as assessments, had the lands been included in the district at the time the district was originally formed.

Section 356. That § 46A-4-60 be amended to read as follows:

46A-4-60. Upon the adoption of the resolution specified in § 46A-4-57, if twenty-five percent of the electors of the district have made written protests against the proposed inclusion of lands within the district and have not withdrawn the protests, the board of directors shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which the election shall be held. The board shall cause notice of the election to be given, posted, and published, and the election shall be held and conducted. The returns of the election shall be made and canvassed, the result of the election ascertained and declared, and all things pertaining to the election conducted in the manner prescribed

by chapter 46A-6 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall contain the words, "for change of boundary" or "against change of boundary," or equivalent terms. The notice of election shall describe the boundaries in such manner and terms that the boundary can be readily traced.

Section 357. That § 46A-4-61 be amended to read as follows:

46A-4-61. If at the election a majority of all the votes cast are against the change of boundaries, the board of directors shall order that the petition be denied and may proceed no further in the matter. However, if a majority of the votes are in favor of the change, or if no election is held due to a lack of sufficient written protests as provided in § 46A-4-60, the board shall order the boundaries of the district to be changed in accordance with the resolutions adopted by the board. The order shall describe the entire boundaries of the district, and for that purpose the board may cause a survey of such portions of the district to be made as the board may deem necessary.

Section 358. That § 46A-4-62 be amended to read as follows:

46A-4-62. If the boundaries of a district are changed, a copy of the order of the board of directors ordering the change, certified by the president and secretary of the board, shall be filed for record in the office of the Board of Water and Natural Resources and also the register of deeds office of each county within which are situated any of the lands of the district. The district shall remain an irrigation district as fully, to every intent and purpose, as if the lands which are included in the district by the boundary change had been included in the district at the original organization of the district.

Section 359. That § 46A-4-64 be amended to read as follows:

46A-4-64. In case of the inclusion of any land within any district by proceedings under this chapter, the board of directors shall, at least thirty days before the next succeeding general election, make an order redividing the district into three, five, or seven divisions, as nearly equal in size as may be practicable. The divisions shall be numbered, and one director shall thereafter be elected by each

division. For the purposes of elections the board of directors shall establish a convenient number of election precincts in the district and define the precinct boundaries. The precincts may be changed from time to time as the board deems necessary.

Section 360. That § 46A-4-65 be amended to read as follows:

46A-4-65. The owner in fee of any tract of land, entrymen of unpatented lands, and the secretary of the interior for unentered public lands, which constitute a portion of an irrigation district, may file with the board of directors of the district a petition praying that such tracts and any other contiguous tracts be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of the petitioners that are included within the boundaries. The description of the lands need not be more particular nor certain than is required when the lands are entered in the assessment book by the county director of equalization; and the petition shall be acknowledged in the same manner and form as required in case of a conveyance of land.

Section 361. That § 46A-4-66 be amended to read as follows:

46A-4-66. The secretary of the board of directors shall publish a notice of the filing of the petition once each week for at least two successive weeks in some newspaper published in the county where the office of the board of directors is situated. If any portion of the territory to be excluded lies within another county, then the notice shall be published in a newspaper published within each of the counties. If no newspaper is published in such counties, notice shall be provided by posting the notice for the same time in at least three public places in the district. In the case of the posting of notices, one such notice shall be posted on the lands proposed to be excluded. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands mentioned in the petition, and the prayer of the petition. The notice shall notify all persons interested in or that may be affected by the change of the boundaries of the district to appear at the office of the board, at a time named in the

notice, and show cause in writing why the change in the boundaries of the district, as proposed in the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the next regular meeting of the board after the expiration of the time for the publication of the notice.

Section 362. That § 46A-4-67 be amended to read as follows:

46A-4-67. The board of directors, at the time and place mentioned in the notice or at the time to which the hearing of the petition may be adjourned, shall hear the petition and all objections to the petition, presented in writing by any person, showing cause why the petition should not be granted. The failure of any person interested in the district to show cause, in writing, why the tract or tracts of land mentioned in the petition should not be excluded from the district is deemed an assent by the person to the exclusion of the tract of land, or any part of the tract. The filing of the petition with the board is deemed an assent by each petitioner to the exclusion of the lands mentioned in the petition, or any part of the lands.

Section 363. That § 46A-4-68 be amended to read as follows:

46A-4-68. If there are outstanding bonds of the district or if the district has entered into a contract with the United States as provided in chapters 46A-5 and 46A-6, the board of directors may adopt a resolution to the effect that the board deems it to be for the best interests of the district that the lands mentioned in the petition, or some portion of the lands, should be excluded from the district. The resolution shall describe the lands so that the boundaries of the lands can be readily traced. The holders of any such outstanding bonds may give their consent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district. If any contract has been made with the United States, the secretary of the interior may assent to the change. The assent may be acknowledged by the holders of the bonds in the same manner and form as required in case of a conveyance of land, except the assent of the

secretary of the interior need not be acknowledged. The assent shall be filed with the board and shall be recorded in the minutes of the board. The minutes, or a certified copy of the minutes, are admissible in evidence with the same effect as the assent; but if the assent of the bondholders, and in case of any contract with the United States the assent of the secretary of the interior, is not filed, the board shall deny and dismiss the petition. However, if the resolution authorizing the issuance of the outstanding bonds explicitly provides that no bondholder assent is required for the exclusion of lands from the district or if the resolution provides that the bondholder assent is required only under certain specified conditions, then the terms of the resolution shall prevail and no bondholder assent need be obtained as provided in this section.

Section 364. That § 46A-4-69 be amended to read as follows:

46A-4-69. If the board of directors deems it not in the best interests of the district that the lands mentioned in the petition, or some portion of the lands, should be excluded from the district, the board shall order that the petition be denied. If the board deems it in the best interests of the district, the board may order that the lands mentioned in the petition, or some portion of the lands, be excluded from the district under the following conditions:

(1) Less than twenty-five percent of the electors of the district show cause in writing why the lands or some portion of the lands should not be excluded from the district or, having shown cause, withdraw their objection;

(2) There are no outstanding bonds of the district, or, if there are outstanding bonds of the district, no bondholder assent to exclusion is required as provided by § 46A-4-68 and by the resolution authorizing the issuance of the outstanding bonds; and

(3) There is no contract between the district and the United States.

Section 365. That § 46A-4-80 be amended to read as follows:

46A-4-80. If any tract of land, or any part of a tract of land, to which the water right attached at

any time becomes subirrigated, to the extent that water is no longer of any benefit on the land for irrigation purposes, the owner or entryman of the land may apply to the irrigation district board to relieve the subirrigated land from the district assessment as provided in chapter 46A-7. In the application, the landowner or entryman releases all claim to the water right as may belong to or has been applied to or upon the land, until the land may be drained and water for irrigation is again beneficial. The landowner or entryman may apply for a permit to transfer the water right to any other lands to which the water may be beneficially applied and to have the new or additional tract included within the boundaries of the district as provided by law and the exclusion of such lands and the inclusion of the new tract as provided in this section. The board may thereupon make the appropriate order of suspension of assessments, of the exclusion and inclusion of the lands and the transfer of the water right. A certified copy of the order shall be recorded in the office of the register of deeds in the county in which the land is situated. After the order has been recorded, all the obligations against the land from which the water right has been taken, arising by reason of the water right, shall be canceled and the obligation shall follow and attach with the water right to the land so included, if any.

Section 366. That § 46A-4-81 be amended to read as follows:

46A-4-81. If a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the qualified electors of the irrigation district a proposition to vote on the discontinuance of the irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the election. The board shall publish a notice of the election in some newspaper in each of the counties in which the district is located, and in which a newspaper is published, for a period of thirty days before the election, setting forth the time and place for holding the election in each of the voting precincts in the district. The board shall also post a written or printed notice of the election in some conspicuous place in each of

the voting precincts.

Section 367. That § 46A-4-82 be amended to read as follows:

46A-4-82. If a contract has been made with the United States, no action may be taken by the board of directors for the dissolution of any irrigation district, as provided in this chapter, unless the assent of the secretary of the interior to the dissolution in writing has been filed with the secretary of the board of directors and a certified copy of the assent filed with the register of deeds of each county where the district lands are situated.

Section 368. That § 46A-4-83 be amended to read as follows:

46A-4-83. The directors shall provide ballots to be used at an election called pursuant to § 46A-4-81, on which shall be written or printed the words: "For dissolution, Yes," and "For dissolution, No." The ballots shall be placed in the hands of the proper election officers in the several voting precincts of the district before the opening of the polls on the day of the election. The election shall be conducted in all respects in the same manner as provided for the election of officers of the district.

Section 369. That § 46A-4-84 be amended to read as follows:

46A-4-84. The return of the election, together with the ballots cast at the election, shall be certified by the election boards of the district to the board of directors within three days after the election. The board shall, on or before the third day after the election, canvass the returns and declare the result of the election. The result shall be at once recorded in the records of the district board.

Section 370. That § 46A-4-85 be amended to read as follows:

46A-4-85. If a majority of the votes are "For dissolution, No," there may not be another election upon the question of a dissolution of the district during the year in which the election was held.

Section 371. That § 46A-4-87 be amended to read as follows:

46A-4-87. For the purpose of raising money to pay any indebtedness of the district, the board of directors may sell and dispose of the canal, franchises, and other property belonging to the district at

not less than a valuation to be fixed by a board of three appraisers. One member of the board of appraisers shall be appointed by the board of directors of the district and one shall be appointed by the board of county commissioners of the county in which the district was originally organized. The two appraisers shall elect a third. The board of appraisers shall be sworn by any officer authorized by law to administer oaths and who has an official seal, to appraise the canal, franchises, and other property of the district at its cash value. As soon as practicable, the appraisers shall make an appraisement and shall report in writing their appraisement of all the property owned by the district to the board of directors.

Section 372. That § 46A-4-89 be amended to read as follows:

46A-4-89. The board of directors may reject any bids that are not, in the judgment of the board, a fair and just consideration for the property. After bids are thus rejected by the board, the board may by private negotiations with any person sell and convey by deed, executed by the board, all of the property for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of the district. If the district has no bonded indebtedness, the interest upon the deferred payments shall be as agreed upon by the board and the purchaser, not exceeding the rate allowed by law. The deferred payments are a lien upon all the property thus sold by the board and have the same force and effect as a mortgage against the property and may, when due, be foreclosed in the manner provided by law for the foreclosure of mortgages.

Section 373. That § 46A-4-90 be amended to read as follows:

46A-4-90. In addition to the lien, the board of directors may require the purchaser of the property to furnish the district with additional security upon all deferred payments. All notes, bonds, mortgages, and other securities shall be made out to and in the name of the irrigation district, and shall be, together with the money received from the sale, deposited with the county treasurer of the county in which the district was originally organized. The notes, bonds, mortgages, and other

securities may be paid out only upon warrants duly authorized by the board of directors of the district, signed by the president and secretary of the board. All actions at law or in equity brought for the purpose of collecting such indebtedness, shall be brought in the name of the district by counsel employed by the district board. If the board is disorganized, such employment shall be by the board of county commissioners.

Section 374. That § 46A-4-91 be amended to read as follows:

46A-4-91. If bonds and other obligations of irrigation districts are issued, the bonds and obligations are subject to redemption by the board of directors of any irrigation district, as soon as the property and franchise of the district are sold after the district has elected to dissolve as a district, as provided in this chapter.

Section 375. That § 46A-4-92 be amended to read as follows:

46A-4-92. After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from the sale, together with other funds of the district, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district. However, in no case may the district pay more than the par value of the outstanding bonds with interest up to the time of payment plus any redemption premium agreed upon by the district at the time the outstanding bonds are issued.

Section 376. That § 46A-4-94 be amended to read as follows:

46A-4-94. After all the property of the district is disposed of and all of the obligations of such district are paid, the directors of the district shall file in the office of the county auditor of each county in which the district is located, and in the office of the Board of Water and Natural Resources, a report attested by the secretary and under the seal of the board of directors, stating that the district has disposed of its property and franchises and is disorganized and dissolved. The report shall be recorded in the miscellaneous record of the counties. If any person who has any claim against the district that

is not settled or disposed of at the time of the filing of the report fails or neglects to bring suit upon the claim within five years from the time of the filing of the report, the claim is forever barred against the district as well as against all persons and property in the district.

Section 377. That § 46A-4-95 be amended to read as follows:

46A-4-95. All irrigation districts, created under the provisions of this chapter, and any addition to or deletion from any such district, heretofore established or purporting to be established or adjusted pursuant to the provisions of this chapter and chapters 46A-5 to 46A-7, inclusive, and having a de facto existence of at least one year, are hereby declared to be valid and legally created political subdivisions of the state. The regularity and validity of the creation of the irrigation districts or any boundary adjustments of the districts are not open to question in any court in this state. All acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any such irrigation district and the United States of America, and all acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any such irrigation district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes. All such existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the irrigation district executing or causing the execution of the contracts or bonds.

Section 378. That § 46A-5-6 be amended to read as follows:

46A-5-6. The board of directors, its agents, and employees may enter upon any land within the district to make surveys and may locate the line of any canal and the necessary branches for the location. The board of directors may acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants, pumping stations, and lands for reservoirs for storage of water and all

necessary appurtenances. The board of directors may acquire by purchase or condemnation, for the use of the district, any irrigation works, power plant, pumping station, ditches, canals, or reservoirs already constructed. In case of purchase, the bonds of the district may be used at their par value in payment, as provided in this title.

Section 379. That § 46A-5-10 be amended to read as follows:

46A-5-10. The board of directors may construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume that the route of the canal may intersect or cross, in such manner as to afford security to life and property. However, the board shall restore the stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume to its former state as near as may be, or in a manner that will not unnecessarily impair its usefulness. Any company whose railroad is intersected or crossed by such works may unite with the board in forming the intersections and crossings, and grant the privileges specified in this section. If the railroad company and the board, or the owners and controllers of the property, thing, or franchise to be crossed, cannot agree upon the amount to be paid for the crossing, or the points or the manner of the crossing, the issues shall be ascertained and determined in all respects as provided in condemnation proceedings.

Section 380. That § 46A-5-12 be amended to read as follows:

46A-5-12. The board of directors may take conveyances or other assurances for all property acquired by it under the provisions of chapters 46A-4 to 46A-7, inclusive, in the name of the irrigation district, for the uses and purposes provided in this chapter. The board may institute and maintain any actions and proceedings at law or in equity necessary or proper in order to carry out fully the provisions of chapters 46A-4 to 46A-7, inclusive, and to enforce, maintain, protect, or preserve any rights, privileges, and immunities created by those chapters or acquired in pursuance of such rights, privileges, and immunities. In all actions or proceedings the board may sue, appear, and defend, in person or by attorney, and in the name of the irrigation district.

Section 381. That § 46A-5-13 be amended to read as follows:

46A-5-13. After adopting a plan of canals, storage reservoirs, and works, the board of directors shall publish notice of the plan, not less than twenty days after it is adopted, in one newspaper published in each of the counties in which the district is situated, if a newspaper is published in the counties, and in such other newspapers as the board deems advisable, calling for bids for the construction of the work or any portion of the work. If less than the whole work is advertised, the portion so advertised shall be particularly described in the notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals for the work, and that the contract will be let to the lowest responsible bidder. The notice shall state the time and place for opening the proposals, which at the time and place shall be opened in public. As soon as convenient after the bids are opened, the board shall let such work, either in part or as a whole, to the lowest responsible bidder. Alternatively, the board may reject any bid and readvertise for proposals, or may proceed to construct the work under its own superintendence.

Section 382. That § 46A-5-17 be amended to read as follows:

46A-5-17. The provisions of §§ 46A-5-13 to 46A-5-16, inclusive, do not apply in case of any contract between the district and the United States.

Section 383. That § 46A-5-18 be amended to read as follows:

46A-5-18. The board of directors may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water under the provisions of the federal reclamation acts and all acts amendatory thereof, or supplementary thereto, and the rules and regulations established under such acts, as amended to January 1, 2011. The board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract.

Section 384. That § 46A-5-19 be amended to read as follows:

46A-5-19. If any contract is made with the United States as provided in this chapter, bonds of the district may be deposited with the United States at ninety percent of their par value, to secure the amount to be paid by the district to the United States under any such contract. The bonds may be held by the United States, and if deemed desirable, or if the appraised value of the land is double the bonded indebtedness, the bonds may be sold by the United States. The net proceeds received from the sale of the bonds shall be applied to the liquidation of the contract indebtedness of the district to the United States. The interest and principal on the bonds shall be provided for by assessment and levy as in the case of other bonds of the district and regularly paid to the United States, to be applied as provided in the contract.

Section 385. That § 46A-5-20 be amended to read as follows:

46A-5-20. If bonds of the district are not deposited with the United States pursuant to § 46A-5-19, the board of directors shall include as part of any levy or assessment provided for in this title an amount sufficient to meet each year all payments accruing under the terms of any contract made pursuant to § 46A-5-18.

Section 386. That § 46A-5-21 be amended to read as follows:

46A-5-21. The board of directors may accept on behalf of the district appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of the money for and on behalf of the United States in connection with any federal reclamation project, organized under this title as an irrigation district, whereupon the district may act and assume the duties and liabilities incident to such action. The board may do anything required by the federal statutes in connection with such duties and liabilities, and all things required by the rules and regulations established by any department of the federal government in regard to such duties and liabilities.

Section 387. That § 46A-5-23 be amended to read as follows:

46A-5-23. The board of directors shall keep the water flowing through the ditches and canals under its control to the full capacity of the ditches and canals in times of high water and when the water can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators.

Section 388. That § 46A-5-25 be amended to read as follows:

46A-5-25. If the water supply is not sufficient to supply continuously the lands susceptible of irrigation from the water supply, the board of directors shall apportion, in a just and equitable proportion, a certain amount of the water upon certain or alternate days to different localities, as the board deems best for the interests of all concerned and with due regard to the legal and equitable rights of all.

Section 389. That § 46A-5-26 be amended to read as follows:

46A-5-26. Every irrigation district within this state is liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations if the person suffering damage, within thirty days after such negligence or failure, serves a notice in writing on the chair of the board of directors of the district, setting forth the acts or omissions on the part of the district which it is claimed constitute such negligence or failure, and that the person expects to hold the district liable for whatever damages may result. Such action may be brought not later than one year from the time the cause of action accrues.

Section 390. That § 46A-5-27 be amended to read as follows:

46A-5-27. Nothing contained in chapters 46A-4 to 46A-7, inclusive, authorizes any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, so that the vested right of any person having any interest in the river, creek, stream, canal, or ditch, or the waters of the river, creek, stream, canal, or ditch, is invaded or interfered with, unless previous compensation has been determined and paid under the laws of this state authorizing the taking of private property for public

use.

Section 391. That § 46A-5-28 be amended to read as follows:

46A-5-28. The board of directors of any irrigation district may appropriate money from its general fund for the purpose of advertising the district's possibilities and advantages to the world as a home and as a location for agriculture, factories, and other legitimate enterprises. The appropriation may not exceed the sum of two and one-half cents for each irrigable acre within the irrigation district.

Section 392. That § 46A-6-1 be amended to read as follows:

46A-6-1. Neither the board of directors, nor any other officers of an irrigation district, may incur any debt or liability, either by issuing bonds or otherwise, in excess of the express provisions of chapters 46A-4 to 46A-7, inclusive, and any debt or liability incurred in excess of such express provisions is void.

Section 393. That § 46A-6-2 be amended to read as follows:

46A-6-2. The board of directors of any irrigation district may enter into contracts for a supply of water for the irrigation of the lands within the irrigation district with any person or with the United States. The source of supply of the water may be either within or without the boundaries of this state, and the water supply may be either the entire supply of water for the district or to supplement an appropriation already made by the district.

Section 394. That § 46A-6-3 be amended to read as follows:

46A-6-3. If the contract provided in § 46A-6-2 provides for payment of the entire purchase price of the water supply within one year after the making of the contract, the board of directors of the district shall, at the time of entering into the contract, pass a resolution that a levy shall be made sufficient to raise a sum necessary to pay the purchase price. The board of directors shall thereafter, and at the same time the levy for other taxes of the district is made, levy a tax against the taxable property of the district sufficient to raise and pay the sum.

Section 395. That § 46A-6-5 be amended to read as follows:

46A-6-5. Any organized irrigation district may whenever it appears necessary, proper, or beneficial to drain any of the land within the district, either for the benefit of the land actually requiring drainage or for the protection of other lands within the district, whether the irrigation works have been actually acquired or constructed or not, cause drainage canals and works to be constructed. For these purposes, the district may levy special assessments or otherwise provide funds necessary to properly drain the lands, enter upon lands for the purpose of making surveys, exercise the right of eminent domain, and contract for the construction of necessary ditches. The district may extend the drainage ditches outside of the limits of the district for the purpose of conducting the drainage water to other lands upon which the water may be lawfully used or to return the water to some natural watercourse. The powers granted in this section include the power to enter into a contract with the United States of America to carry out and effectuate all proper drainage of the district or any part of the district; and any such contract shall be treated, to all intents and purposes, as if made under the provisions of this chapter.

Section 396. That § 46A-6-7 be amended to read as follows:

46A-6-7. The board of directors shall submit the contract referred to in § 46A-6-6 to the electors of the irrigation district at a general election, or at a special election called for that purpose. If a special election is called for that purpose, notice of election shall be given, the election shall be conducted, and the votes shall be canvassed, so far as practicable, in the manner provided for elections held for the purpose of voting upon the issuance of bonds. The ballots at the election shall have printed on the ballots "For the approval of contract for drainage of contiguous lands outside the boundaries of the irrigation district," and "Against approval of contract for drainage of contiguous lands outside the boundaries of the irrigation district." The notice of election need not give the entire contract. It is sufficient if the notice states in a general way the substance of the contract. If a majority

of the voters voting on the proposition vote for approval of the contract, the board of directors may enter into the contract.

Section 397. That § 46A-6-8 be amended to read as follows:

46A-6-8. The board of directors of any irrigation district established and organized under the laws of South Dakota, if deemed advisable and in the best interests of the district, may enter into any contract with the United States supplementing or amending any original contract with the United States, if the original contract was entered into pursuant to the provisions of chapters 46A-4 to 46A-7, inclusive, and if the supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract.

Section 398. That § 46A-6-9 be amended to read as follows:

46A-6-9. If any supplementary or amendatory contract is made with the United States under § 46A-6-8, no election is necessary, nor is the board of directors of the irrigation district required to proceed for a judicial confirmation of the making of the contract and the terms of the contract. It is sufficient in the case of a contract made with the United States under § 46A-6-8 for the board of directors of any irrigation district to authorize the execution of the contract by its president and secretary by appropriate resolution adopted at any regular or special meeting of the board of directors.

Section 399. That § 46A-6-15 be amended to read as follows:

46A-6-15. Any resolution authorizing the issuance of bonds of the irrigation district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of the bonds. The covenants and agreements shall be a part of the contract with the holders of the bonds, including agreements for setting aside reserves or debt service funds and the regulation, investment, and disposition of the reserves or debt service funds; agreements on the use of trustees to further protect the interest of bondholders; and any other agreements, of a like or different nature,

that in any way affect the security or protection of bonds of the district.

Section 400. That § 46A-6-16 be amended to read as follows:

46A-6-16. Bonds authorized and issued as provided in § 46A-5-4 for the purpose of being delivered to the United States and held or sold by it, shall be in the form, terms, and denominations as may be fixed by the secretary of the interior in carrying out the provisions of the act of Congress of June 17, 1902, (32 Stat. 388), as amended to January 1, 2011, and any acts that are supplementary to the act.

Section 401. That § 46A-6-19 be amended to read as follows:

46A-6-19. The bonds, and the interest on the bonds, shall be paid by revenue derived from an annual assessment upon the real property of the district. All real property of the district is liable to be assessed for such payments as provided in chapter 46A-7, and for all payments due or to become due to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States.

Section 402. That § 46A-6-29 be amended to read as follows:

46A-6-29. Any irrigation district organized under the laws of this state for irrigation or drainage purposes may enter into contracts with the United States whereby the bonds of the district are guaranteed by the United States, or financial credit is extended by the United States to the district, for the sale, purchase or use of any canal, ditch, reservoir, right-of-way, irrigation or drainage system, or other property owned or to be acquired for the use of the district.

Section 403. That § 46A-6-30 be amended to read as follows:

46A-6-30. Any irrigation district may accept any of the provisions of any act of Congress of the United States applicable to the district and may obligate itself to comply with laws, rules, and regulations promulgated by any department of the United States pursuant to the act. Irrigation districts contracting with the United States under the provisions of this chapter shall be governed in all matters

by the laws of the state relating to irrigation or drainage districts, as the case may be, except in such things as may be otherwise provided for such districts. This section does not limit the rights of any irrigation district under existing laws to purchase a water supply, or otherwise contract, and is cumulative to such existing laws.

Section 404. That § 46A-6-31 be amended to read as follows:

46A-6-31. The board of directors may, in connection with making any contract with the United States or others, levying any assessment, or taking any particular steps or action, commence a special proceeding in the circuit court, in and by which the proceedings of the district leading up to or including the making of any such contract, and the validity of any of the terms of the contract, the levying of any such assessment, or the taking of any particular steps or action, shall be judicially examined, approved, and confirmed or disapproved and disaffirmed. The practice and procedure for the confirmation of any step or action provided for shall conform as nearly as possible with the practice and procedure now provided for the confirmation before the issuance and sale of bonds of irrigation districts. The court may approve and confirm the proceedings in part and may disapprove and declare illegal or invalid other and subsequent parts of the proceedings. Insofar as possible, the court shall remedy and cure all defects in the proceedings.

Section 405. That § 46A-6-36 be amended to read as follows:

46A-6-36. If an irrigation district organized under the laws of this state enters into a contract with the United States for the payment of charges due the United States in connection with a federal reclamation project, and the district contract is inconsistent in any respect with the individual water right contracts between the United States and the landowners of the district, the district contract will be taken as amendatory of individual water right contracts affecting district land, the owners, mortgagees, or lienors of which fail to answer the petition. However, the contract entered into with the United States, providing for a different deficiency assessment, shall be approved by a majority

vote of the owners of land at an election properly called for such purpose.

Section 406. That § 46A-6-37 be amended to read as follows:

46A-6-37. Upon the hearing of the special proceeding the court may examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each of the proceedings for the organization of the district, including the petition for the organization of the district and all other steps and matters that may affect the legality or validity of the proceedings and objects set forth in the petition, including any proceedings connected with the voting and issuing of bonds by the district. The court in inquiring into the regularity, legality, or correctness of the proceedings shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties. The court may approve and confirm the proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible the court shall remedy and cure all defects in the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed by this chapter. The costs of the special proceeding may be allowed and apportioned between the parties in the discretion of the court.

Section 407. That § 46A-6-38 be amended to read as follows:

46A-6-38. If the court determines the proceedings for the organization of the district to be legal and valid and the proceedings for the voting and issuing of the bonds legal and valid, the board of directors shall then prepare a written statement, beginning with the filing of the petition for the organization of the district and including all subsequent proceedings for the organization of the district, the voting and issuing of such bonds or other objects of such petition, and ending with the decree of the court finding the proceedings for the organization of the district and subsequent proceedings legal and valid. If the proceedings are for the confirmation of a bond issue, the board shall present the written statement and the bonds to the Department of Environment and Natural

Resources and the written statement shall be certified under oath by the board of directors of the district. The Department of Environment and Natural Resources shall record the statement and register the bonds in its office, and no such bonds may be issued or be valid unless they are registered and have endorsed on the bonds a certificate of the Department of Environment and Natural Resources showing that the bonds are issued pursuant to law, the date filed in the office of the department being the basis of the certificate.

Section 408. That § 46A-6-39 be amended to read as follows:

46A-6-39. The board of directors of any irrigation district in this state sustaining contractual relations with the United States may borrow funds for the purpose of making any necessary payments on the contracts, and may pledge the credit of the district for the payment of the contracts.

Section 409. That § 46A-6-40 be amended to read as follows:

46A-6-40. The board of directors may borrow funds to meet the necessities of any unforeseen or unusual conditions arising in the operation and maintenance of the irrigation system of the district and may pledge the credit of the district for the payment of the debt.

Section 410. That § 46A-6-41 be amended to read as follows:

46A-6-41. The total sum borrowed by any district under the provisions of §§ 46A-6-39 and 46A-6-40 may at no time exceed two-thirds of the amount of the general fund levy of the district for the preceding year. If the levy for the then current year is insufficient to provide for the payment of the sum borrowed, then the payment shall be provided for in the levy for the next ensuing year.

Section 411. That § 46A-6-43 be amended to read as follows:

46A-6-43. The board of directors may draw from time to time from the construction fund and deposit, in the county treasury of the county where the office of the board is situated, any sum in excess of twenty-five thousand dollars. The county treasurer shall receive and receipt for the deposit and place the deposit to the credit of the district. The county treasurer is responsible on the treasurer's

official bond for the safekeeping and disbursement of the deposit as provided in this chapter. The county treasurer shall pay out the deposit, or any part of the deposit, only to the treasurer of the district and upon the order of the board, signed by the president and attested by the secretary. The county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury credited to the district, the amount of receipts for the month preceding, and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

Section 412. That § 46A-6-47 be amended to read as follows:

46A-6-47. No claim may be paid by the district treasurer until the claim has been allowed by the board of directors, and only upon warrants signed by the president and countersigned by the secretary. All warrants shall be drawn and payable to the claimant or bearer, the same as county warrants.

Section 413. That § 46A-6-48 be amended to read as follows:

46A-6-48. If the district treasurer does not have sufficient money on hand to pay any warrant when it is presented for payment, the district treasurer shall endorse on the warrant "Not paid for want of funds," the date, and the treasurer's signature. From the time of presentation until paid, the warrant shall draw interest at a rate to be negotiated by the parties.

Section 414. That § 46A-6-49 be amended to read as follows:

46A-6-49. The district treasurer shall keep a register that lists each warrant presented for payment, the date and amount of the warrant, to whom payable, the date of the presentation of payment, the date of payment, and the amount paid in redemption of the warrant. All warrants shall be paid in the order of their presentation for payment to the district treasurer.

Section 415. That § 46A-7-1 be amended to read as follows:

46A-7-1. For the purpose of defraying the expenses of the organization of an irrigation district, and for the purpose of defraying all expenses incurred in formulating a general plan for the proposed operation of an irrigation district including surveys, maps, estimates, examinations, and plans made

in order to demonstrate the practicability of such general plan, all as authorized by §§ 46A-5-2 and 46A-5-3, and for the purpose of defraying all expenses related to the care, operation, management, repair, and improvement of such portions of its canal and works as are completed and in use, including salaries of officers and employees, the board of directors of the district may either fix rates of tolls and charges and collect the tolls and charges from all persons using such works for irrigation or other purposes, or may provide for the payment of such expenditures by assessments, or by both tolls and assessments. If by assessment, the levy shall be made upon the completion and equalization of the assessment roll in accordance with the benefit received; and the board has the same powers and functions for the purposes of the levy as are now possessed by boards of county commissioners in this state. The assessment shall be collected as provided in this chapter.

Section 416. That § 46A-7-3 be amended to read as follows:

46A-7-3. The board of directors may at any time call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in chapters 46A-4 to 46A-7, inclusive. The election shall be called upon the notice prescribed, and the election shall be held and the result of the election determined and declared in all respects in conformity with the provisions of chapters 46A-4 to 46A-7, inclusive. The notice shall specify the amount of money proposed to be raised, and the purpose for which it is intended to be raised. The ballots shall contain the words "Assessment--Yes," "Assessment--No." If a majority of the votes are "Assessment--Yes," the board shall, at the time of the annual levy, levy an assessment sufficient to raise the amount voted. The assessment shall be entered upon the assessment roll and upon the tax list by the county auditor and collected at the same time and in the same manner as other assessments. All revenue laws of this state for the collection of real estate taxes and sale of land for taxes apply to the assessment provided for in this section. When collected, the assessment shall be paid by the county treasurer to the district

treasurer for the purpose specified in the notice of the special election.

Section 417. That § 46A-7-4 be amended to read as follows:

46A-7-4. The director of equalization shall, between the first Monday in May and the first Monday in July in each year, examine each tract or legal subdivision of land in an irrigation district including entered and unentered public lands of the United States, subject to the irrigation district under the act of Congress approved August 11, 1916, entitled "An Act to promote the irrigation of arid lands," as amended to January 1, 2011. The director of equalization shall determine the benefits that will accrue to each tract or subdivision on account of the construction or acquisition of the irrigation works. The amount so apportioned or distributed to each tract or subdivision as finally equalized or confirmed by the court, as the case may be, is the basis for fixing the annual assessments levied against the tracts or subdivisions in carrying out the purposes of chapters 46A-4 to 46A-7, inclusive.

Section 418. That § 46A-7-6 be amended to read as follows:

46A-7-6. The director of equalization shall make a list of the apportionment or distribution. The list shall contain a complete description of each subdivision or tract of land of the district, with the amount and rate per acre of the apportionment or distribution of cost and the name of the owners of the subdivision or tract. Alternatively, the director of equalization may prepare a map on a convenient scale showing each of such subdivisions or tracts with the rate per acre of the apportionment entered on the map. If all lands on any map or section of a map are assessed at the same rate, a general statement to that effect is sufficient. The list or map shall be made in duplicate, one of which shall be filed in the office of the Department of Environment and Natural Resources and the other shall remain in the office of the board of directors for public inspection.

Section 419. That § 46A-7-7 be amended to read as follows:

46A-7-7. If any irrigation district, organized under the laws of this state, has contracted with the

United States for a supply of water for the irrigation of lands within the district, the construction of irrigation or drainage works, or the operation of such works, or both, or other purposes authorized by law, the board of directors may make the assessments intended to meet the obligations of the district under the contract in accordance with the method and terms as provided by the contract. No apportionment of benefits by the director of equalization is necessary if so provided in the contract.

Section 420. That § 46A-7-8 be amended to read as follows:

46A-7-8. On or before the fifteenth day of July in each year, the director of equalization shall complete the assessment roll and deliver it to the secretary of the board of directors. The board shall immediately give notice of the assessment and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication once each week for at least two consecutive weeks in a newspaper published in each of the counties comprising the district. The time fixed for the meeting may not be less than ten nor more than twenty days from the first publication of the notice; and in the meantime the assessment rolls shall remain in the office of the secretary for the inspection of all persons interested.

Section 421. That § 46A-7-13 be amended to read as follows:

46A-7-13. If an irrigation district organized under the laws of this state is under contract with the United States providing for a different deficiency assessment than is prescribed in § 46A-7-12, the provisions of the contract shall govern the district in making its assessments, if the contract has been approved by the necessary majority vote of the owners of the land affected at an election properly called for such purpose.

Section 422. That § 46A-7-14 be amended to read as follows:

46A-7-14. If the board of directors of any irrigation district neglects or refuses to cause an assessment and levy to be made as provided in this chapter, the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district. The county

commissioners of the county in which the district was originally organized shall cause an assessment roll of the district to be prepared and shall make the levy for the payment of the principal and interest on bonds, to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, and to meet the expenses for organizing and operating the district, in the same manner and with like effect as if the levy had been made by the board of directors. The expense incident to making the levy shall be borne by the district.

Section 423. That § 46A-7-15 be amended to read as follows:

46A-7-15. If the board of directors has made a levy or assessment under any contract between the United States and the district, and the United States thereafter modifies or supplements the contract or agreement to eliminate certain charges under the contract or agreement or to make the charges due at a later date than originally provided in the contract or agreement, the board may direct the cancellation of the levy or assessment previously made to raise funds to pay the United States that are under the modification or supplemental contract or agreement made due and payable at a later date.

Section 424. That § 46A-7-16 be amended to read as follows:

46A-7-16. The secretary of the board of directors shall compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund, together with the sum payable by each tract obligated to the United States by contract, if any, for the payment of water charges to be paid on the property. The secretary shall certify to the auditor of the county in which the land is located the amount of the taxes in each fund levied upon each tract of land by the board, including sums due the United States, and the auditor shall enter the amount of each in separate columns of the tax list of the county. All tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of the irrigation district.

Section 425. That § 46A-7-21 be amended to read as follows:

46A-7-21. All such taxes collected and paid to the county treasurer shall be received by the

treasurer in the treasurer's official capacity. The treasurer is responsible for the safekeeping, disbursement, and payment of the taxes, the same as for other money collected in the treasurer's official capacity.

Section 426. That § 46A-7-22 be amended to read as follows:

46A-7-22. In addition to other provisions of the laws of this state for the collection of assessments levied against the acreage of an irrigation district, the board of directors of any irrigation district organized within a United States reclamation project may make collections of all assessments levied against the acreage of the irrigation district through the office of the board.

Section 427. That § 46A-7-26 be amended to read as follows:

46A-7-26. In districts that use the alternative method of collecting assessments, as provided for by § 46A-7-22, the director of equalization shall, between the first day in September and the first day of November, in each year, make the examination and determine the benefits and fix the annual assessments to be levied against the tracts in the district, as provided for and in §§ 46A-7-4 to 46A-7-7, inclusive. The director of equalization shall, on or before the fifteenth day of November in each year, complete the assessment roll and deliver it to the secretary of the board of directors, who shall give notice of the assessment as provided in § 46A-7-8.

Section 428. That § 46A-7-27 be amended to read as follows:

46A-7-27. If the written certificate of the board of directors is filed as provided in § 46A-7-23, the irrigation district is not required to certify to the county auditor the amount of the assessments, including sums due the United States, that have been levied against the acreage of the district. The auditor is not required to enter the amount of each of the sums in separate columns of the tax lists of the county; and the tax lists, when delivered by the auditor to the county treasurer, need not contain the assessments levied on the tracts of land within the irrigation district. The secretary of the board of directors of the irrigation district shall certify to the treasurer of the irrigation district the amount

of the assessments, including sums due the United States, who shall act in lieu of the county auditor in entering the amount of assessments in each fund levied upon each tract of land by the board of directors, including sums due the United States, in separate columns of a book to be known as "irrigation district assessment collection book." The book shall be kept by the treasurer of the district as a public record of the irrigation district, and the treasurer shall thereafter act in lieu of the county treasurer in sending notices, collecting, and receipting for such assessments.

Section 429. That § 46A-7-29 be amended to read as follows:

46A-7-29. Any irrigation district, organized within a United States reclamation project, that chooses to collect its assessments as provided in §§ 46A-7-22 to 46A-7-28, inclusive, may revert back to the prior method of making collection through the county treasurer's office by filing with the county auditor of the county or counties stated in § 46A-7-23, within which the irrigation district is located, a certificate signed by a majority of the board of directors of the irrigation district stating that a majority of the board of directors of the irrigation district desires to make such a change. After the certificate is filed, beginning with the first day of May of the year in which the change is desired to be made, all requirements of the laws of this state for the collection of taxes and assessments through the county treasurer's office shall be complied with as though §§ 46A-7-22 to 46A-7-28, inclusive, had not been enacted.

Section 430. That § 46A-7-31 be amended to read as follows:

46A-7-31. No taxes or assessments may be ordered refunded unless the person complaining files in the office of the secretary of the district a copy of the person's tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessment should be refunded:

(1) That the land upon which the assessment was levied is not within the boundaries of the district;

(2) That the land is exempt by law, setting forth the reason for the exemption; or

(3) That by reason of injury through seepage or subirrigation the land could not now be benefited by irrigation, or that the land is not susceptible of irrigation from the canal of the district.

Section 431. That § 46A-7-32 be amended to read as follows:

46A-7-32. If any special tax or assessment levied upon any property located within the irrigation district is found to be invalid and uncollectible, or is adjudged to be void by a court of competent jurisdiction, or paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or resolution, the board of directors may relevy the special tax or assessment on the property in the same manner as other special taxes and assessments are levied, without regard to whether the formalities, prerequisites, or conditions before equalization have been met. If there is an erroneous extension of the water charge assessment, either against the wrong tract of land or against the wrong person, the assessment may not, for that reason, be invalidated. The district board upon the discovery of the error may release, abate, refund, or otherwise correct the assessment by directing the county auditor to release, abate, refund, or otherwise correct the assessment and to spread the assessment against the proper person or against the correct tract, or to abate the assessment, or to refund the water charge assessment erroneously collected, as the case may require.

Section 432. That § 46A-7-33 be amended to read as follows:

46A-7-33. All assessments on real property and to the extent provided by the act of Congress of August 11, 1916, as amended to January 1, 2011, on entered and unentered public lands, are a lien against the property assessed from and after the day the real estate taxes become a lien. The assessments shall draw interest at the same rate and from the same date as unpaid real estate taxes,

and such lien is not removed until the assessments are paid or the property sold for the payment of the assessments. The county treasurer shall collect the assessments in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection of taxes and sale of land for such taxes apply to the collection of assessments under this chapter.

Section 433. That § 46A-7-36 be amended to read as follows:

46A-7-36. If the board of directors determines that assessments levied before February 25, 1933 against the lands of the district for either its general fund or bond and United States contract fund are delinquent to such an extent that the enforcement of the payments thereof through tax title proceedings is impracticable, and further determines that it is to the benefit of the irrigation district to compromise, abate, or reallocate any part or all of such assessments, the board may compromise, abate, or reallocate any of the delinquent assessments, subject to the following conditions:

(1) All claims or obligations against the district's general fund for all years in which the assessments were levied have been paid in full before the compromise, abatement, or reallocation, or if not paid in full, the owners of the obligations have consented in writing to the proposed compromise, abatement, or reallocation;

(2) If the district's bond and United States contract fund would be affected by the compromise, abatement, or reallocation, the written consent of the United States, if the assessments were levied to meet contract obligations to the United States, or of all bondholders, if the assessments were levied to meet bonded indebtedness or interest on the bonds, shall be obtained to each such proposed compromise, abatement, or reallocation, before it becomes effective. The compromises, abatements, or reallocations may be made, without the individual consent of the United States or bondholders, if made pursuant to the terms of a contract between the district and the United States or the bondholders. The board is hereby vested with authority to execute the contract with the United States or the district

bondholders. This section does not limit the rights of any irrigation district under the existing laws to compromise, abate, or refund district assessments but is cumulative to those rights.

Section 434. That § 46A-7-38 be amended to read as follows:

46A-7-38. For the purpose of paying the taxes, assessments, interest, and penalties, the directors may create by resolution a fund to be known as the "special revenue fund for the purchase of tax certificates and titles." The directors may provide funds for the special revenue fund by levy, bond issue, or otherwise, and the district may pay the taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against the fund, if there is sufficient money in the fund to pay the taxes, assessments, interest, and penalties in full upon demand.

Section 435. That § 46A-7-39 be amended to read as follows:

46A-7-39. If taxes are paid by the district as provided in this chapter, the county treasurer shall distribute that portion of the tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. At the time of redemption, or of the sale by the district of the tax sale certificate, or of the property obtained through the certificate, such funds as are realized shall be deposited with the county treasurer, who shall credit the proceeds of sale to the special revenue fund specified in § 46A-7-38.

Section 436. That § 46A-7-40 be amended to read as follows:

46A-7-40. No expenditures may be made from the special revenue fund except for the purposes as specified in §§ 46A-7-38 and 46A-7-39. If, by resolution of the board of directors, the fund is deemed inactive, the balance remaining in the fund shall be transferred to a debt service fund to be applied upon any indebtedness that may have been incurred by the district by reason of the creation of the special revenue fund, if any exists; otherwise, the balance shall be transferred to the general fund of the district.

Section 437. That § 46A-7-43 be amended to read as follows:

46A-7-43. After the issuance of any such tax deed to an irrigation district, the directors may sell and convey the land so purchased, or any part of the land, at either public or private sale, whether or not the price received for the land equals the amount of delinquent taxes, assessments, penalties, interest, and costs against the lands. However, if the lands are offered for sale at public sale, the directors may reject any bids on the lands, and no such lands may be sold by the directors at private sale until the lands have been offered for sale at public sale, nor at a price less than the highest price bid for the lands at the public sale at which the lands were offered. If no bid is received for the lands when the lands are offered for public sale, the directors may then sell the lands in such manner and for such price as they deem to be in the best interests of the district.

Section 438. That § 46A-7-44 be amended to read as follows:

46A-7-44. The provisions of §§ 46A-7-37 to 46A-7-43, inclusive, apply only if the irrigation district has commenced delivery of water to any lands within the irrigation district.

Section 439. That § 46A-7-45 be amended to read as follows:

46A-7-45. No irrigation district may in any year issue warrants in excess of ninety percent of the levy for the year. However, in case of due and outstanding obligations against the district on account of operation, maintenance, and current expenses contracted before the year in which any levy is made, the district board may make an additional levy, not to exceed one dollar per acre upon all irrigable lands within the district, to create a special fund for the payment of past due obligations.

Section 440. That § 46A-7-46 be amended to read as follows:

46A-7-46. If the claims or obligations against any fund for any year are fully paid, the board of directors may transfer any unused balance to any other fund for the preceding or succeeding year.

Section 441. That § 46A-7A-3 be amended to read as follows:

46A-7A-3. Lands initially within the district are those lands on a list provided by local project

sponsors to be filed with the state board. The list shall contain the name and address of each landowner whose lands are to be included in the district. Before it fixes the date for the validation election required by § 46A-7A-11, the state board shall notify each such landowner, by first class mail, that:

(1) The landowner's land is to be included in the district;

(2) An election is to be held on the question of whether the district should be formed;

(3) Information concerning the district and the election may be obtained from the address of the state board; and

(4) Each landowner has the right to have the landowner's land excluded from the district within one hundred eighty days following the validation election without obligation.

The lands included in the district, which need not be contiguous, may be changed from time to time by action of the board by exclusions or inclusions as provided in §§ 46A-7A-12 to 46A-7A-18, inclusive.

Section 442. That § 46A-7A-10 be amended to read as follows:

46A-7A-10. In the validation election required by § 46A-7A-11, each elector may cast one vote in the division in which the majority of the elector's land is located. In any election for directors or election for dissolution of the district, as provided in this chapter, each elector may vote in each division in which any of the district land owned by the elector is situated and may cast one vote for each full acre of such land to which the elector holds title in the division. In any other district election, each elector may cast one vote for each one hundred dollars, but not fraction thereof, of district assessed valuation of district land to which the elector holds title. The district assessed valuation is the valuation assessed by the district.

Section 443. That § 46A-7A-12 be amended to read as follows:

46A-7A-12. Any holder of title to land included in the original district or any land subsequently

annexed to the district may elect to exclude all or any part of his or her lands without any obligation whatsoever by notice to the board within one hundred eighty days following the validation election.

Section 444. That § 46A-7A-20 be amended to read as follows:

46A-7A-20. Any director shall either be an elector, or the designated representative of an elector, holding title to a minimum of one hundred acres of district land within the division the director represents and shall reside within the general boundaries of the division as set forth in the notice provided in § 46A-7A-21 or as later modified by the board.

Section 445. That § 46A-7A-27 be amended to read as follows:

46A-7A-27. In the calendar year following the validation election and each year thereafter, the district shall call a regular election, at which there shall be elected for a term of three years, two or more members of the board, as the case may be. Any nominee from each division shall be nominated as provided and shall be elected by receiving the highest number of votes cast by the electors of the nominee's division. Any regular election of the district shall be held on the last Tuesday in October of each year.

Section 446. That § 46A-7A-28 be amended to read as follows:

46A-7A-28. After the initial election of directors, the directors shall be nominated by filing with the board, not less than thirty days before the regular election, nominating petitions for the vacancies to be filled. The petitions shall be in the form prescribed by the State Board of Elections and shall be signed by at least ten qualified electors of the division in which a vacancy will occur. No petition may contain the name of more than one candidate for any vacancy to be filled. Each elector may sign petitions for vacancies in each division in which the elector is a holder of title, but no elector may sign more than one petition for any particular vacancy.

Section 447. That § 46A-7A-36 be amended to read as follows:

46A-7A-36. In case of a vacancy in the office of a member of the board, the vacancy shall be

filled by appointment by a majority of the remaining members of the board. Any director so appointed shall hold office until the next election of the division and until the director's successor is elected and qualified.

Section 448. That § 46A-7A-37 be amended to read as follows:

46A-7A-37. Any director elected in compliance with § 46A-7A-24 shall enter immediately into the duties of the office upon qualifying as provided in § 46A-7A-38 and shall hold office until the next regular election of the district, when a successor is elected and qualified. Any director elected thereafter shall assume the duties of the office on the last Tuesday in November after the election and shall hold office until a successor is elected and qualified.

Section 449. That § 46A-7A-38 be amended to read as follows:

46A-7A-38. Before assuming the duties of the office, any director or officer shall take and subscribe an official oath. The district treasurer shall execute an official bond, approved by the board of directors, in the sum of not less than one thousand dollars, plus such additional amounts as determined by the board. Any official bond shall be in the form prescribed by law for official bonds of county officers. However, the obligee named in the bond shall be the district, and if approved surety company bonds are furnished, the cost of the bonds shall be paid by the district.

Section 450. That § 46A-7A-44 be amended to read as follows:

46A-7A-44. For time actually employed in the duties of the office and in attending and returning from sessions of the board and other meetings approved by the board, any director shall receive compensation, per diem, and mileage allowances in an amount not to exceed state rates. Any exception may be granted by an affirmative vote of the board. The board shall fix the compensation to be paid to district officers and employees. Such compensation shall be paid from the district general fund.

Section 451. That § 46A-7A-47 be amended to read as follows:

46A-7A-47. No director or officer of the district may be interested in any manner, directly or indirectly, in any contract awarded by the district or in the profits to be derived from the contract, nor may the director or officer receive any gratuity or bribe. Any director or officer who is interested in any manner, directly or indirectly, in any contract awarded by the board or in the profits derived from the contract, or who receives any gratuity or bribe, is guilty of a Class 5 felony.

Section 452. That § 46A-7A-54 be amended to read as follows:

46A-7A-54. The board may enter into any obligation or contract with the United States for construction, operation, and maintenance of all or any part of necessary works for delivery and distribution of water from the works under the provisions of federal reclamation acts, as amended to January 1, 2011, any acts supplementary to the reclamation acts, and any rules and regulations established under the reclamation acts or supplementary acts. The board may contract with the United States for water and power supplies under any act of Congress providing for or permitting such contracts. Any contract with the United States shall be approved by district electors in the same manner as approval of a bond issue.

Section 453. That § 46A-7A-56 be amended to read as follows:

46A-7A-56. The board, if it deems it in the best interests of the district, may enter into any contract with the United States supplementing or amending any original contract with the United States, if the supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at that date.

Section 454. That § 46A-7A-58 be amended to read as follows:

46A-7A-58. To estimate the cost of any construction work, the board shall have surveys, examinations, and plans made to demonstrate the practicability of the plan and to furnish the proper basis for an estimate of the cost of construction. Any surveys, examinations, maps, plans, and estimates shall be made under the direction of, and certified by, a registered professional engineer.

The board of directors shall file a copy of the surveys, examinations, maps, plans, and estimates with the state board.

Section 455. That § 46A-7A-60 be amended to read as follows:

46A-7A-60. If any contract for construction is made with the United States as provided in § 46A-7A-54 and bonds are required to raise funds in addition to the amount of the contract, they may be issued only in the amount needed.

Section 456. That § 46A-7A-63 be amended to read as follows:

46A-7A-63. The board may make all necessary acquisitions of right-of-way to provide service to each tract of land subject to assessment and may exercise its right of eminent domain to procure right-of-way for conveyance facilities. This section does not deprive any person from exercising the person's right of eminent domain.

Section 457. That § 46A-7A-126 be amended to read as follows:

46A-7A-126. Each county auditor, treasurer, and director of equalization shall file annually with the county commissioners of the county an itemized statement showing additional expenses to his or her office caused by performance of the duties imposed upon the office by this chapter. Upon filing of the statement, the county commissioners, by order in its minutes, shall deduct such expenses from the assessment money of the district and transfer it into the county general fund.

Section 458. That § 46A-7A-131 be amended to read as follows:

46A-7A-131. If the district has levied an assessment and the board determines that the assessment, together with interest on the assessment, will provide an amount greater than is required to meet all obligations incurred for the purposes for which the assessment was levied, the board, if no bonds are outstanding, by resolution may declare its intention to cancel all or any portion of the assessment balance. For purposes of this section, the term, assessment balance, means the assessment and the interest on the assessment. The board, subject to limitations provided in this chapter, may cancel the

assessment balance, including the interest thereon, a part of the assessment and the interest thereon, all of the interest on the assessment or a part of the interest on the assessment.

Section 459. That § 46A-7A-146 be amended to read as follows:

46A-7A-146. All funds belonging to the district, other than funds deposited with trustees or fiscal agents for payment of the principal of and interest on bonds of the district, shall be deposited by the treasurer in any bank within the state. The bank shall be designated by the board. If no depository is designated, the treasurer shall select a bank as a depository for the funds. Deposit of the funds relieves the district treasurer from personal liability for loss of deposited funds through the insolvency or failure of the depository while funds are deposited pursuant to this section.

Section 460. That § 46A-7A-147 be amended to read as follows:

46A-7A-147. The board may draw from any district fund to deposit in the state treasury any sum in excess of twenty-five thousand dollars. The state treasurer shall receive and receipt the deposit and place it to the credit of the district or to any designated fund of the district. The state treasurer is responsible upon the state treasurer's official bond for investment, safekeeping, and disbursement of the funds as provided in this chapter. The state treasurer shall pay out funds only to the treasurer of the district upon an order of the board, signed by the president and attested by the secretary. The state treasurer shall report in writing each month on the amount of money in the state treasury credited to the district, the amount of receipts for the month preceding and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

Section 461. That § 46A-7A-182 be amended to read as follows:

46A-7A-182. After all property of the district is disposed of and all obligations of the district have been paid, the directors shall file, in the office of the auditor of each county in which the district is located and in the office of the state board, a report attested by the secretary and under the seal of the board. The report shall state that the district has disposed of its property and franchises and become

disorganized and dissolved. The report shall be recorded in the miscellaneous record of the counties. If any person having any claim against the district not settled or disposed of at the time of the filing of the report fails to bring action upon the claim within five years from the time of filing of the report, the claim is forever barred against the district and against all persons and property in the district.

Section 462. That § 46A-8-4 be amended to read as follows:

46A-8-4. The board of county commissioners of any county in which there has been a water users' association organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, as amended to January 1, 2011, and which, under its articles of incorporation, is authorized to furnish water only to its stockholders, may accept the water users' association books for public record, containing printed copies of their articles of incorporation and forms of subscription to stock and to use the books for recording the stock subscriptions of the association. The charges for the recording of the stock subscriptions shall be made on the basis of the number of words actually written therein.

Section 463. That § 46A-8-6 be amended to read as follows:

46A-8-6. Any water users' association organized under the laws of this state and in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, as amended to January 1, 2011, and which, under its articles of incorporation, may furnish water only to its shareholders, may, for the purpose of raising revenue necessary for the accomplishment of the purposes of the association, levy assessments from time to time, as required, against its shareholders. The shareholders may make and enforce the necessary bylaws for the making, levying, collecting, and enforcing of the assessments. The nonpayment of any of the assessments is not a bar to the levying and collecting of other assessments against the same shareholders.

Section 464. That § 46A-8-7 be amended to read as follows:

46A-8-7. Such associations have the first and prior lien for all unpaid assessments on the lands

of the shareholder against which the assessments are levied, and for all deferred payments on the water right appurtenant to the lands. The lien is in all respects prior to any other liens created or attempted to be created by the owner and possessor of the lands. The lien shall remain in effect until the last deferred payment for the water right and any unpaid assessments levied by the association against the land are fully paid and satisfied, according to the terms of the contract under which the water right was acquired, the provisions of this chapter, and the bylaws of the association relating to assessments. The lien shall be enforced by the association by the foreclosure and sale of the lands, or so much thereof as may be necessary, in the manner provided by law for the foreclosure of mortgages on real property.

Section 465. That § 46A-9-4 be amended to read as follows:

46A-9-4. A water user district may be organized under the provisions of this chapter by filing in the Department of Environment and Natural Resources a petition in compliance with the requirements set forth in this section, and the approval of the petition by the Board of Water and Natural Resources as provided in this chapter. The petition shall be addressed to the Board of Water and Natural Resources and shall state in substance that it is the intent and purpose of the petitioners to create a district under the provisions of this chapter, subject to approval by the board. The petition shall contain:

(1) The name of the proposed district;

(2) The object and purpose of the system proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works;

(3) A description of the lands constituting the proposed district and of the boundaries of the proposed district, and the names of any municipalities included partly or wholly within the boundaries of the proposed district;

(4) The location of the principal place of business of the proposed district;

(5) A statement that the proposed district does not have the power to levy taxes or assessments;

(6) The number of members of the board of directors of the proposed district, which may not be less than five nor more than thirteen, a statement as to whether the directors shall be elected at large or shall be apportioned to election divisions and elected by the voters of the election divisions, the names and addresses of the members who shall serve until their successors are elected and qualified as provided in this chapter, and if election divisions are provided for, the respective divisions which the directors are to represent. The persons named in the petition as directors shall be owners of land or entrymen within the district, and, if election divisions are provided for, they shall be owners of land or entrymen within the respective divisions they are to represent.

Section 466. That § 46A-9-6 be amended to read as follows:

46A-9-6. Nothing in this chapter prevents the organization of a water user district under this chapter within, or partly within, the territorial boundaries of another district organized under this chapter, or of an irrigation district organized under the provisions of chapter 46A-4, if the works or systems, the operations of the works or systems, the exercise of powers and the assumptions of duties and responsibilities under this chapter, of one district, do not nullify, conflict with, or materially affect those of another such district.

Section 467. That § 46A-9-7 be amended to read as follows:

46A-9-7. Directors may be elected either at large, or from election divisions, without regard to whether municipality areas are included within the water user district. If the petition states that the directors shall be elected from election divisions, the petition shall describe the boundaries of the divisions. The boundaries may be drawn either with or without regard to the corporate limits of any

municipality included partly or wholly within the district boundaries.

Section 468. That § 46A-9-9 be amended to read as follows:

46A-9-9. The petition shall be signed by twenty-five percent of the landowners or entrymen within the area constituting the proposed water user district, or by their duly authorized representatives. However, if the proposed district includes any portion of the area within a municipality, the petition shall be signed by twenty-five percent of the landowners or entrymen in the portion of the proposed district area within each such municipality, or by their duly authorized representatives, and shall also be signed by twenty-five percent of the landowners or entrymen in the area lying outside the limits of the municipalities or by their duly authorized representatives. On each petition, set opposite the signature of each petitioner, shall be stated the petitioner's name and post office address and the location of land of which the petitioner is the owner or entryman.

Section 469. That § 46A-9-15 be amended to read as follows:

46A-9-15. If the Board of Water and Natural Resources determines that the petitioners have complied with the requirements of this chapter, the board shall make an immediate investigation of the proposed water user district and of its proposed works, systems, or plans and of the engineering and economic feasibility of the project. The board may make an estimate of the cost of the investigation and may require the petitioners to defray part or all of the estimated cost before proceeding with the investigation.

Section 470. That § 46A-9-16 be amended to read as follows:

46A-9-16. The Board of Water and Natural Resources, within ninety days from the receipt of the petition, or within ninety days from the time funds become available to defray the cost of the investigation, shall declare that the proposed project is or is not feasible and conforming to public convenience and welfare. If the project is deemed not feasible, the board shall dismiss the petition. However, if the board deems the project feasible and conforming to public convenience and welfare,

the board shall immediately execute a certificate, in duplicate, setting forth a true copy of the petition and declaring that the petition is approved. The board shall file the certificate in the Office of the Secretary of State and a copy of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any of the lands in the water user district are located. Thereupon, the district, under its designated name, is a body politic and corporate under the provisions of this chapter and is a public corporation of the State of South Dakota.

Section 471. That § 46A-9-17 be amended to read as follows:

46A-9-17. All water user districts, created under the provisions of this chapter, and additions to and deletions from the districts, established or purporting to be established or adjusted before July 1, 1978, pursuant to the provisions of this chapter and having a de facto existence of at least one year, are hereby declared to be valid and legally created political subdivisions of the state. The regularity and validity of the creation of such water user districts in existence for one year or any boundary adjustments of the districts is not open to question in any court in the state. All acts and proceedings of any water user district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any water user district and the United States of America, and all acts and proceedings of any water user district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any water user district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes. All existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the water user district executing or causing the execution of the contracts or bonds. This section does not apply to any suit or proceeding legally initiated before July 1, 1978.

Section 472. That § 46A-9-20 be amended to read as follows:

46A-9-20. A water user district may be extended by including additional territory by filing in the Department of Environment and Natural Resources a petition in writing, verified by the circulator of

the petition, addressed to the department, signed by at least twenty-five percent of the landowners or entrymen in any area to be included, and bearing the approval by resolution, of a majority of the board of directors of the water user district, upon compliance with the requirements set forth in this chapter. The petition shall contain a description of the lands to be included.

Section 473. That § 46A-9-23 be amended to read as follows:

46A-9-23. Upon receipt of the petition the Board of Water and Natural Resources shall act upon the petition in the same manner as required upon an original petition to create a water user district, as set forth in §§ 46A-9-12 to 46A-9-16, inclusive, and § 46A-9-18.

Upon the approval of the petition and project by the Board of Water and Natural Resources, and the issuance and filing of its certificate of approval in the Office of the Secretary of State and filing a copy of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any lands in which such water user district is located, the included areas constitute a part of the water user district.

Section 474. That § 46A-9-25 be amended to read as follows:

46A-9-25. The board of directors of the water user district shall fix the hour and place, within the boundaries of the district, of each election and shall preside at the election. If the district is divided into election divisions, the board of directors in its discretion may fix a place of election within each election division, in which case the directors who represent that division shall preside at the election.

Section 475. That § 46A-9-27 be amended to read as follows:

46A-9-27. The board of directors, at least twenty days before the date of election, shall mail to each person or corporation entitled to vote at the election, at the person's or corporation's last known place of residence or business, a notice stating the time, place, and purpose of the election. Alternatively, the board may publish in each county in which lands within the district lie, in some newspaper of general circulation printed and published in the county, once each week for at least two

successive weeks before the time of election, a notice that the election will be held and giving the purpose, time, and place.

Section 476. That § 46A-9-30 be amended to read as follows:

46A-9-30. No person is qualified to hold office as a member of the board of directors of any water user district unless the person is a landowner or entryman of the district.

Section 477. That § 46A-9-39 be amended to read as follows:

46A-9-39. A water user district organized under the provisions of this chapter has the powers provided by §§ 46A-9-40, 46A-9-41, and §§ 46A-9-43 to 46A-9-45, inclusive, and may own, have, or exercise the rights, privileges, and franchises provided by those sections.

Section 478. That § 46A-9-40 be amended to read as follows:

46A-9-40. The water user district has all the usual powers of a corporation for public purposes. The district may acquire by purchase, gift, condemnation, or other lawful means and may hold any real or personal property reasonably necessary for the conduct of its business, or may lease such property for its proper purposes. The district may sell, lease, or otherwise dispose of such property if not needed by the district.

Section 479. That § 46A-9-41 be amended to read as follows:

46A-9-41. The water user district may own, construct, reconstruct, improve, purchase, condemn, lease, receive by gift, or otherwise acquire, hold, extend, manage, use, or operate any works and any kind of property, personal or real, necessary, useful, or incident to such acquisition, extension, management, use, and operation. The district may sell, mortgage, alienate, or otherwise dispose of the works or any part of the works only under the terms and subject to the conditions provided in §§ 46A-9-69 to 46A-9-72, inclusive.

Section 480. That § 46A-9-44 be amended to read as follows:

46A-9-44. The district may exercise any of the powers enumerated in §§ 46A-9-41 and 46A-9-43

either within or beyond or partly within and partly beyond the boundaries of the district and of the State of South Dakota, unless prohibited by the law of the area or state concerned or of the United States of America.

Section 481. That § 46A-9-46 be amended to read as follows:

46A-9-46. In addition to any other rights and powers conferred upon any water user district organized under the provisions of this chapter, the district may exercise the power of eminent domain for the purposes and after the manner provided for in chapter 21-35, after declaring by resolution the necessity for and purpose of the taking of property and the extent of the taking. If any such district condemns private property or interests in the private property, the appraisement shall include the amount of damage that will accrue to the owner of the condemned property through severance of the condemned property from other property of the owner, previously operated with the condemned property, as a unit.

Section 482. That § 46A-9-47 be amended to read as follows:

46A-9-47. The district has no power of taxation, or of levying assessments for special benefits. No governmental authority may levy or collect taxes or assessments for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district as such or upon which the district may be or become in any manner liable. No privately owned property within or outside the district, nor the owner of the property, and no municipality, county, irrigation district, or other political subdivision or public or private corporation or association or its property, is directly or indirectly liable for any such district indebtedness or obligation beyond the liability to perform any express contract, if any, between the owner or public or private organization and the district.

Section 483. That § 46A-9-49 be amended to read as follows:

46A-9-49. Any water user district organized under this chapter may exercise any power conferred by this chapter for the purpose of obtaining grants or loans or both from any federal agency pursuant

to or by virtue of any acts of Congress independently or in conjunction with any other power or powers conferred by this chapter, or heretofore or hereafter conferred by any other law. The district may accept from private owners or other sources, gifts, deeds, or instruments of trust or title relating to land, water rights, and any other form of property.

Section 484. That § 46A-9-50 be amended to read as follows:

46A-9-50. The water user district may purchase and acquire lands, water rights, rights-of-way, and real and personal properties of every nature in cooperation with the United States under such conditions as the board deems advisable. The district may convey such rights and property under conditions, terms, and restrictions approved by the board of directors and the federal government or any of its agencies. The district may pay the purchase price and any construction costs or other necessary expenses and costs in connection with any works contemplated by this chapter either from its own funds or cooperatively with the federal government.

Section 485. That § 46A-9-61 be amended to read as follows:

46A-9-61. The board of directors, subject to the provisions of this chapter, may fix and establish the prices, rates, and charges at which any resources and facilities made available under the provisions of this chapter shall be sold and disposed of. The board may enter into any contracts and agreements, and do anything that in its judgment is necessary, convenient, or expedient for the accomplishment of any of the purposes and objects of this chapter, under such general regulations and upon such terms, limitations, and conditions as it shall prescribe. The board shall enter into contracts and fix and establish prices, rates, and charges to provide at all times funds sufficient to pay all costs of operation and maintenance of any of the works authorized by this chapter, together with necessary repairs to such works, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds, warrants, notes, debentures, and other evidences of indebtedness as they severally become due and payable. However, nothing contained in this chapter authorizes any change,

alteration, or revision of any such rates, prices, or charges as established by any contract entered into under authority of this chapter except as provided by the contract.

Section 486. That § 46A-9-70 be amended to read as follows:

46A-9-70. If, in the judgment of the board of directors, it is in the best interest of the water user district to sell any portion of the district works not needed for the performance of any outstanding contract, and not mortgaged or hypothecated as provided for in § 46A-9-71, the board of directors shall pass a resolution to that effect and shall submit the question to the Board of Water and Natural Resources for approval. If the Board of Water and Natural Resources approves, the board of directors shall call a special election at which the question of selling the portion of the works shall be submitted to the voters of the district qualified to vote for district directors. The board of directors shall mail to each qualified voter, at the voter's last known place of residence or place of business, a notice stating the time, place, and purpose of the election, and so far as practicable shall conduct the election in all other respects as provided in §§ 46A-9-25 to 46A-9-28, inclusive. If a majority of all qualified voters of the district vote "yes" at the election, the board of directors s may sell the portion of the works.

Section 487. That § 46A-9-71 be amended to read as follows:

46A-9-71. If, in order to borrow money from the federal government or from any of its agencies, or from the State of South Dakota, it becomes necessary that the water user district mortgage or otherwise hypothecate any of its property or assets to secure the payment of a loan made to it by or from such a source, the district may mortgage or hypothecate the property and assets for such purposes. Nothing in this section prevents the district from assigning, pledging, or otherwise hypothecating its revenues, incomes, receipts, or profits to secure the payment of indebtedness to the federal government or any federal agency, or the State of South Dakota. However, the State of South Dakota may never pledge its credit or funds, or any part of its credit or funds, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under the provisions

of this chapter. Nothing in this chapter authorizes any agency of the State of South Dakota to make loans to any such district, unless the agency is otherwise authorized by law to make such loans.

Section 488. That § 46A-9-73 be amended to read as follows:

46A-9-73. Any water user district organized under this chapter may be dissolved by authorization of a majority vote of the voters, qualified to vote for district directors, at a special election called by the board of directors for that purpose. Notice of the election shall be mailed to each qualified voter at least twenty days before the date of the election. The procedure for the election shall conform as nearly as may be to the procedure provided in §§ 46A-9-25 to 46A-9-28, inclusive, for the election of directors. However, the district may not at the time of dissolution own property or rights or have outstanding any contract or contracts or obligations of any kind.

Section 489. That § 46A-9-74 be amended to read as follows:

46A-9-74. Dissolution of the water user district shall be completed upon resolution of the board of directors canvassing the vote and declaring that a majority of the qualified voters voting on the question have voted in favor of dissolution. A verified copy of the resolution shall be filed in the office of the Department of Environment and Natural Resources and in the office of the county auditor of each county in which any portion of the district lies.

Section 490. That § 46A-9-75 be amended to read as follows:

46A-9-75. In case of such dissolution, the Department of Environment and Natural Resources shall cancel all applications for appropriation of water, and all rights of the water user district therein and thereunder shall thereupon cease and determine.

Section 491. That § 46A-9-77 be amended to read as follows:

46A-9-77. Nothing in this chapter repeals, limits, or in any way affects the provisions of chapters 46A-4 to 46A-7, inclusive, relating to the organization and operation of irrigation districts. Nothing in this chapter limits in any way the powers and functions of irrigation districts organized under

chapters 46A-4 to 46A-7, inclusive, and nothing in this chapter repeals, limits, or affects the provisions of any other laws of the State of South Dakota other than as specifically provided in this chapter.

Section 492. That § 46A-10A-2 be amended to read as follows:

46A-10A-2. The board of county commissioners of each county may appoint a commission of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the board, to be known as the county drainage commission. If a commission member resigns his or her position, is unable to fulfill the duties of the position, or is removed for cause under the provisions of § 46A-10A-3, the board shall appoint a new member to the commission within thirty days. A commission may not conduct official business unless all memberships on the commission are filled and unless a majority of the members are present at a meeting of the commission. Administrative officials of the county may be appointed as ex officio members of the commission, but have no vote in commission matters.

Section 493. That § 46A-10A-30 be amended to read as follows:

46A-10A-30. Any board or commission under the provisions of this chapter and chapter 46A-11 may adopt a permit system for drainage. The permit system shall be prospective in nature. Permits shall be granted consistent with the principles outlined in § 46A-10A-20. The fee for a permit shall be established by the permitting authority, based on the administrative costs of regulating drainage activities, may not exceed one hundred dollars, and shall be paid only once. However, permitted drainage that is enlarged, rerouted, or otherwise modified requires a new permit. Any vested drainage right not recorded under the provisions of § 46A-10A-31 requires a permit for its use if a permit system has been established in the county where it exists. Any person or the person's contractor draining water without a permit, if a permit is required under the provisions of this section, is guilty of a Class 1 misdemeanor. In addition to or in lieu of any criminal penalty, a court may assess against

any person violating the provisions of this section a civil penalty not to exceed one thousand dollars per each day of violation. A permit system is an official control.

Section 494. That § 46A-10A-32 be amended to read as follows:

46A-10A-32. After a vested drainage right is recorded with a county register of deeds under the provisions of § 46A-10A-31, the register of deeds shall transmit a copy of the registration to the Department of Environment and Natural Resources.

Section 495. That § 46A-10A-38 be amended to read as follows:

46A-10A-38. An individual landowner may petition a board or commission to change the drainage restrictions on any part of the landowner's property. The petitioning landowner shall notify all directly affected adjoining landowners and all directly affected third parties holding drainage interests by registered or certified mail of the petitioned change at least one week before any public hearing held on the petition by the board or commission. Property shall be considered as adjoining even if it is separated from the property of the petitioner by a public road or highway.

Section 496. That § 46A-10A-56 be amended to read as follows:

46A-10A-56. All state public or school lands are subject to drainage laws. In any drainage proceeding affecting such lands, notices required by law to be given by publication and posting shall be served upon the commissioner of school and public lands at least thirty days before the time of the hearing. Such service may be made upon the commissioner in person, by service at the commissioner's office with the person in charge, or by registered or certified mail. If the land affected by the drainage proposal is not under the commissioner's control, the commissioner shall transmit a copy of the notice to the board or officer in charge of the land. The board or officer in charge of the land may appear at any such hearing or proceeding on behalf of the state.

Section 497. That § 46A-10A-60 be amended to read as follows:

46A-10A-60. A petition may be presented at any regular or special meeting of the board, and, if

proper in form, shall be ordered filed with the county auditor. The board shall act within thirty days on all drainage project petitions. Upon receiving a petition, the county auditor shall transmit a copy to the Department of Environment and Natural Resources.

Section 498. That § 46A-10A-61 be amended to read as follows:

46A-10A-61. If the board determines it is necessary, it shall contract for a survey of the proposed drainage to be made by an engineer selected by the board. The survey and subsequent report shall show the starting point, the route, the terminus of any proposed ditch or drain or other improvement, and the course and length of any drain through each tract of land, together with the number of acres from each tract required for construction of improvements. The survey and report shall show the elevation of all lakes, ponds, and sloughs or depressions in the project and the boundary of the proposed project, to include all land that will be benefited by the proposed improvements. The survey and report shall include the approximate location of watersheds within the district, a description of each tract of land within the district, and the names of the owners and shall identify that tract of land most likely to receive average benefit from the project. The survey and report shall estimate the probable cost and shall include other facts and recommendations the engineer deems material so the board may determine the feasibility of the project. The survey may extend to lands other than those affected by the proposed project to determine the best practical method of draining the entire area under study. For the purpose of inspection or surveys, board members, engineers, or their employees may enter upon any land traversed by the proposed project that, in their judgment, is likely to be affected. The county auditor shall furnish the Department of Environment and Natural Resources a copy of the engineer's report and all maps and plans prepared by the engineer.

Section 499. That § 46A-10A-64 be amended to read as follows:

46A-10A-64. If so requested, the Department of Environment and Natural Resources may render such assistance and advice to the board in regard to the project as the assigned duties of the

department will permit. The department shall be reimbursed by the board for any expenses incident to the advice and assistance.

Section 500. That § 46A-10A-70 be amended to read as follows:

46A-10A-70. Subject to any official controls pursuant to this chapter and chapter 46A-11, owners of land may drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water into any natural watercourse, into any established watercourse, or into any natural depression whereby the water will be carried into a natural watercourse, into an established watercourse, or into a drain on a public highway, conditioned on consent of the board having supervision of the highway. If such drainage is wholly upon an owner's land, the owner is not liable in damages to any person. Nothing in this section affects the rights or liabilities of landowners in respect to running waters or streams.

Section 501. That § 46A-10A-97 be amended to read as follows:

46A-10A-97. If, on appeal, the court rules in favor of a board decision regarding a conflict between the appellant landowner and the board, the appellant landowner is liable for all costs associated with the appeal. If the contention of an appellant landowner is substantially sustained, costs associated with the appeal shall be included in the total costs of the project, but the appellant's costs before appeal shall be borne by the appellant.

Section 502. That § 46A-10B-37 be amended to read as follows:

46A-10B-37. Each person who signs the petition for dissolution shall add to the person's signature, in the person's own handwriting, the person's place of residence, a legal description of the person's real property within the district, and the date of signing. The petition may contain more than one page, each page shall have identical headings, and any number of identical petition forms may be circulated and each be a part of the petition. Every page of the petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following

form:

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF _____)

I, the undersigned _____, being first duly sworn, depose and say, that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on the petition sheet personally signed the petition in my presence; that I believe that each of the signers is a resident at the address written opposite the signer's name; and that I stated to every petitioner before the person affixed his or her signature the legal effect and nature of the petition.

_____

Circulator

Subscribed and sworn to before me this _____ day of _____, 20____.

_____

Notary Public

Section 503. That § 46A-11-16 be amended to read as follows:

46A-11-16. Any assessment against lands described in § 46A-10A-56 for construction of a drainage project shall be certified by the county auditor of the county in which the project is located to the board or officer having charge of the lands. If sufficient funds are under control of the officer or board from which payment of the assessment can be made, it shall be made. If sufficient funds are not available, the officer or board shall approve the assessment and certify it to the state auditor, who shall pay the assessment from money available for that purpose. If no money is available, the state auditor shall request the Legislature to provide an appropriation for payment of the assessment. The payment shall be made to the treasurer of the county in which the lands are located. No penalty other than interest may attach to any such land after an assessment becomes delinquent and the land may

not be sold to enforce delinquent assessments.

Section 504. That § 46A-11-20 be amended to read as follows:

46A-11-20. Any assessment made by a board upon land in another county shall be paid to the county treasurer of the county having charge of the project. If the assessment becomes delinquent, the treasurer of the county having charge of the project shall certify the amount delinquent on any separate tract of land outside of the county to the treasurer of the county in which the land is situated. That treasurer shall collect the assessment as provided by this chapter and shall remit the collections to the treasurer of the county having charge of the project within thirty days.

Section 505. That § 46A-13-1 be amended to read as follows:

46A-13-1. At least fifty affected South Dakota resident landowners, or the county commissioners of any affected county, may file a petition with the clerk of the circuit court for the affected county requesting the formation of a drainage district as provided in this chapter. The provisions of this section apply to any land bordering upon any body of water or stream forming the boundary line between this state and any other state, or any land included in a natural drainage basin along or extending across the boundary line of the state. For purposes of this section, an affected county is a county that lies within or partly within such territory, and an affected landowner is a South Dakota resident landowner who owns at least ten acres of such land as shown by the records of the register of deeds and clerk of courts of the county in which the land is situated. If the land is sold under a contract for deed, which is of record in the office of the register of deeds, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners of the territory described in the petition.

Within ten days after the petition is filed, the court shall, by order, fix a time and place within the territory named in the petition for a hearing upon the petition. Notice of the hearing shall be published in at least one legal weekly newspaper published in each affected county, for two successive weeks,

the last publication to be at least ten days before the day set for hearing.

Section 506. That § 46A-13-4 be amended to read as follows:

46A-13-4. After the formation of the drainage district as prescribed in §§ 46A-13-1 to 46A-13-3, inclusive, a governing commission of three members shall be chosen as provided in this section. If the territory included within the district is within a single county, the governing board shall be chosen by the county commissioners of the county. If the territory included within the district lies within two counties, the governing board shall be chosen by the joint meeting and action of the boards of county commissioners of the counties. If the territory included within the district lies within three or more counties, the governing board shall be chosen by the chairs of the boards of county commissioners of the counties meeting and acting jointly. The boards of county commissioners, or the chair of the boards, as the case may be, shall promptly meet and appoint the governing board of the district.

Section 507. That § 46A-13-7 be amended to read as follows:

46A-13-7. The commissioners shall, within ten days after their appointment, meet at some convenient place within the drainage district and elect one of their members as chair. They shall appoint the county auditor of one of the counties having territory included within the district clerk of the commission, whose duties are to keep and preserve the records of the commission in his or her office and to act generally as the clerical officer of the commission. Thereafter, the office of the county auditor is the office of the drainage commission. The board of county commissioners of the county shall provide additional help and facilities necessary for the auditor to act as clerk of the commission. The cost of the additional help and facilities shall be ascertained by the commission, and included as part of the cost of the drainage proceeding conducted by the commission, and shall be collected by the commission and repaid to the county. The filing of any petition, report, or document with the county auditor for all purposes of this chapter is deemed a filing with the commission.

Section 508. That § 46A-13-9 be amended to read as follows:

46A-13-9. The commissioners of a drainage district formed pursuant to this chapter may, if necessary or expedient to carry out the purposes of this chapter, enter into a contract or agreement with the court, board, or tribunal of an adjoining state having authority relative to drainage matters in that state, including the right to raise, lower, or fix the stage of water in boundary waters, or with the United States government under its authorized authority. The contract or agreement shall be for joint action with the adjoining state for drainage or flood control measures that cause benefits or damages to, or otherwise affect, property in this state and the adjoining state. The provisions of this section apply to any lake, pond, or other body of water, or any river, stream, or watercourse that forms to any extent a boundary line between this state and any other state, and to any land included within a natural drainage basin lying along or extending across the boundary line of the state. The contract or agreement may be for the following purposes:

(1) To facilitate drainage into or from, or to control to any extent flood waters into, through, or from any such lake, pond, body of water, river, stream, or watercourse, or into or from any such land;

(2) For purposes of flood control, to raise, lower, or otherwise affect the stage or depth of water;

(3) For the joint establishment and construction of all necessary ditches, drains, canals, dikes, levees, dams, locks, spillways, or other structures necessary to provide a proper watercourse;

(4) For deepening, widening, and straightening of the channels of any river, stream, or watercourse;

(5) For controlling by dikes or levees the flow of water in a manner necessary to effectuate the provisions of this chapter; and

(6) For securing and providing the necessary drainage facilities and control of flood waters

into, through, and from the boundary waters and the rivers, streams, or ditches connected with the boundary waters and for properly draining any natural drainage basin.

In order to implement the contract or agreement the commissioners may determine the damages and benefits that may result to property located within the drainage district, and may provide funds to implement the contract or agreement by special assessment upon the property benefited according to the benefits received, as provided in this chapter.

Section 509. That § 46A-13-10 be amended to read as follows:

46A-13-10. At least twenty-five South Dakota resident owners of not less than ten acres of land each within an interstate drainage district formed pursuant to this chapter, or the governing body of any county or municipality located within the district that is likely to be affected by a proposed improvement, may file a petition with the district commission setting forth the necessity for an improvement to be constructed by joint arrangement and cooperation with the authorities of another state. The petition shall include a general description of the proposed improvement. If the proposed improvement involves a ditch or watercourse, the petition shall describe the starting point, the general route, and terminus, together with a description of the territory likely to be affected. If the improvement involves the raising, lowering, or impounding of water in any body of water or stream, the petition shall include a description of the body of water or watercourse and the proposed changes to be made, and shall state the purpose for the changes and a description of the land likely to be affected by the changes. The petition shall request the construction of any of the drainage or flood control improvements referred to in this chapter.

The district commission has jurisdiction over all matters referred to in the petition in the counties named within the limits of the district. In addition, the commission may make joint contracts or agreements with the court, tribunal, or other body in the adjoining state, having authority relative to drainage and control of flood waters, for the appointment of one or more engineers to secure a joint

survey of the territory affected by the proposed improvement. The joint survey shall be for purposes of considering the adoption of a joint plan for cooperation in supplying the necessary drainage of lands affected by the improvement, and impounding and controlling flood waters in and the outlet from the affected lands. In selecting the engineers, preference shall be given to state engineers or engineers in charge of state drainage in the respective states.

For purposes of this section, status as a resident owner of land within an interstate drainage district is as shown by the records in the offices of the register of deeds and the clerk of courts of the county in which the land is situated. If the land is sold under contract for deed, which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as owners.

Section 510. That § 46A-13-12 be amended to read as follows:

46A-13-12. The interstate drainage district commission and the authorities representing drainage in the adjoining state may make all necessary orders and regulations relative to the making of the survey and report of the engineers appointed under § 46A-13-10 and may specify all information required in such report and the time within which the report shall be completed and filed with the commission and with the authorities in the adjoining state.

Section 511. That § 46A-13-14 be amended to read as follows:

46A-13-14. Upon the filing of the report of the engineers appointed to make the joint survey, which in all instances shall be made at the earliest possible date, the interstate drainage district commission, together with the representatives of the adjoining state or states, shall consider the report with the view of providing a joint plan for the construction of the proposed improvement. After full consideration of the report and all information obtainable about the matters included in the report and the proposed improvement, the commission may arrange for a joint plan with the authorities or representatives of the other state or states, and adopt the joint plan for the construction of the

proposed improvement, if the commission determines that the plan is practicable and for the best interests of the district. The order of the commission determining the joint plan, together with a copy of the plan, shall be made a record of the commission.

Section 512. That § 46A-13-15 be amended to read as follows:

46A-13-15. Upon the adoption of the joint plan, the interstate drainage district commission, together with the representatives of any adjoining state, may appoint a commission of viewers consisting of three disinterested persons, at least one of whom shall be a citizen of this state, who may examine in detail the full improvement proposed and all property affected by the proposed improvement. The commission of viewers shall report of its findings, as the commission of the drainage district and the representatives of any adjoining state require, relative to all benefits and damages that will result from the improvement. The report shall address benefits and damages from the improvement affecting highways, railway companies, and municipal corporations, and shall include a description of each piece of property and the name of each company or corporation affected by the improvement. The report shall give the amounts of benefits and damages that may result to the property or corporations from the construction of the improvement, together with the estimated cost of the improvement including all damages and expenses connected with the improvement, and the aggregate amount of benefits that will result from the improvement.

Section 513. That § 46A-13-17 be amended to read as follows:

46A-13-17. Upon the filing of a copy of the viewers' report with the commission of the drainage district, the commission and the proper representatives of any adjoining state shall agree upon the proportionate amount of the cost of the improvement that shall be borne by the property located within the respective states, which shall be according to the benefits received. For the purpose of arriving at the determination of costs and benefits, the commission, with or without the representatives of any adjoining state, may hold hearings. From all the information obtained from the

report of the viewers and from the hearings, the commission shall arrive at and agree with the representatives of any adjoining state upon the proportionate amount of the cost of the improvement to be borne by the property located within the drainage district, and shall enter the determination of record.

Section 514. That § 46A-13-23 be amended to read as follows:

46A-13-23. If the drainage commission has fully heard and considered the petition and the joint plan as adopted or modified, the report of the engineers and viewers, and the determination as to the proportion of cost to be borne by this state, and if the commission finds the proposed drainage improvement not conducive to the public health, convenience, or welfare, or not needed or practicable for the purpose of draining agricultural lands, or that the proportion of the cost of the proposed improvement to be borne by this state will be greater than the benefits conferred, the commission shall deny the petition for the drainage improvement. The petitioners are jointly and severally liable for the cost and expenses of the proceeding thus far made and incurred by the drainage commission, and the costs and expenses may be recovered in a civil action.

Section 515. That § 46A-13-32 be amended to read as follows:

46A-13-32. If the funds necessary to complete the improvement are provided by the proper authorities of each affected state, the commission in this state may join with the court or tribunal of any other affected state and, by acting jointly or by a commission appointed by the affected states for that purpose, construct the drainage improvement. The affected states or the commission may make all necessary arrangements for the letting of a contract for the construction of the drainage improvement and may advertise for bids for the construction in accordance with the plans and specifications which shall be reported and provided by the engineers appointed to make the joint survey. The bids shall be received and opened at a time and place designated in the notice, and the contracts shall be let in a manner designated in the notice. All or any portion of the improvement may

be contracted for separately, and the contract shall contain such conditions and provisions as the respective authorities acting jointly may require. All provisions for the completion of the improvement, the supervision of the work, and the payment for the work may be provided for by joint arrangement between the representatives of the several states. The authorities of each state, however, are responsible only for the sums arranged to be furnished by assessment or otherwise within the limits of the state.

Section 516. That § 46A-13-33 be amended to read as follows:

46A-13-33. The maintenance and repair of any drainage improvement constructed by joint arrangement with the authorities of any other state, under the provisions of this chapter, may be provided for by joint arrangement with the other state in the same manner as the drainage improvement was originally established and constructed. Any provision of this chapter relating to the construction of a drainage improvement by joint action applies to the maintenance and repair of the drainage improvement if action is taken for maintenance and repair under the provisions of this chapter. The drainage commission may make assessments upon the property benefited, according to the benefit received, for the proportionate share of the maintenance and repair of any drainage improvement the maintenance and repair is arranged for under the provisions of this chapter.

Section 517. That § 46A-13-34 be amended to read as follows:

46A-13-34. In the absence of such an arrangement for joint action, the repair and improvement of any such drainage shall be treated as a drainage improvement within the state, and its repair and maintenance within the limits of this state shall be provided for in accordance with the drainage laws of this state. The repair and maintenance shall be made by the drainage commission of the drainage district, and the commission for the purpose of making the repair and maintenance shall exercise all the powers conferred upon it by this chapter in drainage matters and may make assessments for the repair and maintenance of the improvement within this state on the property benefited by the

improvement as provided in this chapter to raise money for the construction of the improvement.

Section 518. That § 46A-13-35 be amended to read as follows:

46A-13-35. Any defect or irregularity not affecting the substantial rights of the parties interested, occurring in any proceeding under this chapter, shall be disregarded in any action or proceeding seeking to avoid any assessment or to cancel, annul, or declare void any proceeding held under this chapter. If the defect is substantial, the court shall of its own motion determine the rights of the parties, validate the proceeding, and assess the costs as justice may require, if the court finds cause for the validation or that the action should have been taken in the first instance and all parties interested are before the court. If for any reason an assessment is held void or set aside, the court shall immediately make an order directing the reassessment of a proper sum, with interest, against all property on which the assessment is held invalid. Upon filing the order with the drainage commission, reassessment shall be made and enforced in accordance with the order.

Section 519. That § 46A-13-36 be amended to read as follows:

46A-13-36. An appeal shall lie from any final order or determination of the drainage commission fixing damages occasioned by the making of the drainage improvement, or fixing the proportion of assessments of benefits, to the circuit court for the county in which the property affected is located, by anyone aggrieved by any such order or determination. The appeal may be taken in the manner and within the time provided by law for appeals from the action of boards of county commissioners in drainage matters. The taking of such an appeal has the same effect and is determined by the court in like manner as appeals from boards of county commissioners in drainage matters, but does not stay the drainage proceedings. No appeal may be allowed from any action of the drainage commission except as provided in this section.

Section 520. That § 46A-14-3 be amended to read as follows:

46A-14-3. Conservation districts, upon filing of an initiating petition, may hold hearings and put

to a vote the creation of a district and, if favorable, establish a watershed district and define and fix the boundaries of the watershed district. The boundaries may be entirely within or partly within a county or conservation district and may include the whole or any part of one or more counties or conservation districts. The conservation district may appoint the first board of managers of the watershed district, as provided in this chapter. If the proposed district embraces land in more than one conservation district, the supervisors of all such conservation districts shall act jointly as a board of supervisors with respect to all matters concerning watershed districts which are specified in this chapter for a single conservation district. If no conservation district exists that embraces lands proposed for inclusion in a proposed watershed district, the Board of Water and Natural Resources shall function in lieu of a conservation district.

Section 521. That § 46A-14-6 be amended to read as follows:

46A-14-6. The land ownerships embraced within a watershed district shall be contiguous. If feasible, the district shall include all territory within the affected watershed or drainage basin, or all territory from which the water from natural or artificial channels finds its outlet through a main stream or channel. However, lands, the ownership of which is not a matter of record in the office of the register of deeds of the county in which the lands are situated, and lands that are not subject to payment of taxes or special assessments, may be excluded from a proposed or existing watershed district.

Section 522. That § 46A-14-30 be amended to read as follows:

46A-14-30. After creation of a watershed district, minor adjustments to the boundaries of the district may be made by the managers, without referendum, if the adjustments do not delete lands from the district that have been subject to a special assessment during the budget year or the current year and if the adjustments do not include additional land in the district without the written approval of the landowner of the land.

Section 523. That § 46A-14-31 be amended to read as follows:

46A-14-31. A watershed district may annex additional areas, if the additional areas constitute a watershed as specified for a watershed district in § 46A-14-6. The annexation shall be accomplished by either:

(1) An initiating petition for the annexation by the landowners in the new area and in the existing watershed district, similar to the initiating petition specified in §§ 46A-14-5 and 46A-14-8; or

(2) An initiating petition by the landowners in the new area and a resolution by the managers of the watershed district.

Upon receipt of the initiating petition and the resolution by the managers, the appropriate conservation district supervisors shall proceed with the annexation in the same manner as prescribed for creation of a new watershed district.

Section 524. That § 46A-14-39 be amended to read as follows:

46A-14-39. Any vacancy in an unexpired term shall be filled by appointment within thirty days of the vacancy by the remaining managers. Any vacancy in an expired term for which no candidate's application has been filed pursuant to § 46A-14-38 shall be filled by appointment within thirty days of the election by the remaining managers. An appointed manager shall hold office for the remainder of the term for which he or she has been appointed.

Section 525. That § 46A-14-45 be amended to read as follows:

46A-14-45. Vested water rights, as defined by §§ 46-1-9 and 46-1-10, are excluded from the operation of this chapter. No watershed district and no members of the watershed district have any jurisdictional authority or control over waters subject to such vested rights.

Section 526. That § 46A-14-49 be amended to read as follows:

46A-14-49. The Board of Water and Natural Resources is hereby designated the state agency to

act on behalf of the State of South Dakota with respect to watershed projects in order to fulfill the provisions of the Federal Watershed and Flood Prevention Act (P. L. 566, 83rd Congress), as amended to January 1, 2011.

Section 527. That § 46A-14-55 be amended to read as follows:

46A-14-55. No construction or related commitments requiring district payments may be entered into, no taxes or assessments levied, no bonds issued, or other financing arrangement made except as provided in § 46A-14-34, unless the managers have initiated adequate hearings to clearly demonstrate the works proposed for construction and the benefits to accrue from the proposed works and have conducted a referendum in accordance with this chapter in which at least sixty percent of the landowners voting in the referendum vote in favor of the tax levy, bond issue, or other permissible financing arrangement.

Section 528. That § 46A-14-60 be amended to read as follows:

46A-14-60. When adopting a financing plan or levying taxes to cover the estimated costs of district business, as provided in §§ 46A-14-51 and 46A-14-54 to 46A-14-59, inclusive, no annual general tax levy against taxable land and buildings within the district may exceed the amount that can be collected by a one-mill levy. This limitation does not apply to special assessments nor to assessments required to meet payments, including interest, on district bonds.

Section 529. That § 46A-14-63 be amended to read as follows:

46A-14-63. Following a favorable vote by the voters as provided in § 46A-14-55 and in anticipation of tax or special assessment collections, the managers may issue no-fund warrants to pay district obligations. However, the outstanding amounts of the no-fund warrants may not exceed the product of two mills times the assessed valuation of the landowner's taxable land and buildings within the district.

Section 530. That § 46A-14-64 be amended to read as follows:

46A-14-64. If a bond issue or other authorized long-term financing arrangement is authorized by the voters of the district, the managers shall immediately cause a written notice to be mailed to the owner or owners of each tract of land assessed of the amount of the assessment. The notice shall state that if the amount is not paid in full within thirty days after the date of the notice, bonds will be issued or payment contracts negotiated and that an assessment will be levied annually against the tract of ground for a period of not to exceed fifty years in an amount sufficient to pay the total assessment plus the interest due on the bonds. No suit to set aside the assessment may be brought after the expiration of thirty days from the date of the notice. The amount levied against each tract of land to pay for the bonds, or contract commitments, falling due each year and the interest on the bonds or contract commitments, shall be levied, certified to the proper county auditor, and collected the same as other taxes.

Section 531. That § 46A-14-69 be amended to read as follows:

46A-14-69. Tax or special assessment levies in amount sufficient to cover the budgeted operation and maintenance expense shall be included by the managers in their tax assessment list as provided in § 46A-14-58, if the levies do not exceed the limitations specified in this chapter or do not exceed the amounts of taxes or special assessments voted favorably by the voters of the district.

Section 532. That § 46A-14-70 be amended to read as follows:

46A-14-70. On or before the first day of August in each year, the managers shall certify to the county auditor of the county in which the land is located, all taxes and assessments against the landowners' lands and buildings in the district. Extension of the taxes and assessments upon the tax and assessment lists shall be made as specified in § 46A-14-58. The taxes and assessments shall be collected in the same manner as other county taxes and assessments, and shall be deposited with the secretary-treasurer of the watershed district, who shall place them in the depository designated by the managers. The taxes and assessments shall be disbursed according to § 46A-14-75.

Section 533. That § 46A-14-73 be amended to read as follows:

46A-14-73. The managers may enter into contracts or other arrangements with any agency of the United States government; with persons, railroads, or other corporations; with public and municipal corporations and the state government of this state; or with drainage, soil and water conservation, conservancy, sewer, park, sanitary, reclamation, public power, public power and irrigation, watershed, or other improvement districts, in this or other states, for cooperation, or assistance in constructing, maintaining, using, and operating the works of the districts, the waters of the districts, or in minimizing or preventing damage to the properties, works, and improvements of the districts from soil erosion; or for making surveys and investigations or reports on the surveys and investigations. However no contract or agreement that will require the levy of increased taxes or assessments may be signed by the managers without submitting the increased taxes or assessments to the voters of the watershed district for approval.

Section 534. That § 46A-14-75 be amended to read as follows:

46A-14-75. All claims against watershed districts shall be paid by warrants or orders drawn on the district secretary-treasurer, signed by the chair of the district and countersigned by its secretary-treasurer. When warrants or orders have been issued and delivered, they may be presented to the treasurer of the watershed district. If necessary, the treasurer shall endorse them "not paid for want of funds." These orders or warrants shall be registered by the secretary-treasurer in order of presentation and shall draw interest per year at a rate negotiated by the parties from the date of registration. They shall be registered by the district secretary-treasurer in anticipated receipt of watershed district taxes or assessments due the district.

Section 535. That § 46A-15-2 be amended to read as follows:

46A-15-2. The Governor may use funds appropriated by the Legislature or which may be received from any other source for such specific purpose in carrying out the provisions and intent of § 46A-15-

1. The funds shall be disbursed by warrant of the state auditor upon the state treasurer upon vouchers approved by the Governor.

Section 536. That § 46A-15-4 be amended to read as follows:

46A-15-4. The county commissioners of any county bordering the Missouri River may, upon an affirmative vote of the qualified voters of the county, expend money for the purpose of improving navigation on the river where the river borders the county. The funds shall be expended in conjunction with appropriations made by the United States government in proportionate amounts as may be agreed upon by the county board of commissioners and the chief of engineers of the United States Army for the purpose of aiding in the securing of a permanent navigable channel in the river. The funds shall be expended in accordance with plans conforming to the character and approved methods of improvement of the river as determined by the chief of engineers of the United States Army.

The county commissioners may appropriate moneys out of the general funds of the county available for county purposes to meet the expense of any such improvements.

Section 537. That § 46A-16-4 be amended to read as follows:

46A-16-4. The South Dakota-Minnesota Boundary Waters Commission may investigate and determine the most desirable and beneficial levels of boundary waters artificially controlled and may prescribe a plan for controlling and regulating the water levels.

Section 538. That § 46A-16-5 be amended to read as follows:

46A-16-5. The South Dakota-Minnesota Boundary Waters Commission s may hold hearings and take evidence that is presented, either after complaint or upon its own initiative, as to the desirability of any water level and plan of regulation and may make orders concerning the water level and plan of regulation as in the opinion of the commission are for the best interests of the public.

Section 539. That § 46A-16-7 be amended to read as follows:

46A-16-7. The South Dakota-Minnesota Boundary Waters Commission may make orders necessary to further the purposes of this chapter.

Section 540. That § 46A-16-11 be amended to read as follows:

46A-16-11. The South Dakota-Minnesota Boundary Waters Commission may not incur any obligation for expenses except after an adequate legislative appropriation.

Section 541. That § 46A-16-12 be amended to read as follows:

46A-16-12. The Game, Fish and Parks Commission may participate with the state of Minnesota in the construction of artificial controls deemed necessary to maintain the most desirable and beneficial levels of boundary waters as determined by the South Dakota-Minnesota Boundary Waters Commission. The Game, Fish and Parks Commission may expend funds for that purpose.

Section 542. That § 46A-18-68 be amended to read as follows:

46A-18-68. All claims against water project districts shall be paid by warrants or orders drawn on the district secretary-treasurer, signed by the chair of the district, and countersigned by its secretary-treasurer. If warrants or orders have been issued and delivered, they may be presented to the secretary-treasurer of the district. If necessary, the secretary-treasurer shall endorse them "not paid for want of funds." These orders or warrants shall be registered by the secretary-treasurer in order of presentation and shall draw interest annually at a rate negotiated by the parties from the date of registration. They shall be registered by the district secretary-treasurer in anticipated receipt of water project district taxes or assessments due the district.

An Act to make form and style revisions to certain statutes related to natural resources.

I certify that the attached Act originated in the

SENATE as Bill No. 1

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. _1_
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