

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

471H0463

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1236** - 01/31/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Duenwald, Duniphan, Eccarius, Hanson (Gary), Hennies (Thomas), Jaspers, Jensen, Juhnke, Klaudt, Lintz, Madsen, McCoy, Napoli, Pederson (Gordon), Peterson (Bill), Pummel, Rhoden, and Van Etten and Senators Apa, Bogue, Brown (Arnold), Diedrich (Larry), Ham, Kleven, Madden, McCracken, Symens, Vitter, and Whiting

1 FOR AN ACT ENTITLED, An Act to declare a disaster in certain federal forest areas and to
2 authorize state and local remedial action.

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

4 Section 1. The Legislature finds that:

5 (1) Numerous citizens and government officials in the state of South Dakota have
6 repeatedly petitioned the United States Forest Service both collectively and
7 individually at public meetings, by correspondence, and by telephone to request that
8 the United States Forest Service take appropriate action to remove or eliminate the
9 conditions that have created a state of emergency caused by a present risk to the lives
10 and property of citizens in and adjacent to the Black Hills National Forest;

11 (2) All the petitions have for all practical purposes been either ignored or discounted by
12 the United States Forest Service resulting only in what can be reasonably
13 characterized as inaction on the part of the United States Forest Service to



1 appropriately reduce, if not remove, the risk to the lives and property of the citizens
2 of South Dakota;

3 (3) Because the United States Forest Service has failed to exercise its responsibilities as
4 a sovereign to protect the lives and property of the citizens of South Dakota and
5 because it is a fundamental principle under the laws of any just society that the
6 persistent failure of a sovereign to fulfill such obligations constitutes grounds for the
7 forfeiture of jurisdictional supremacy, such a forfeiture must hereby be recognized and
8 declared; and

9 (4) Because of recognition and declaration of this forfeiture of jurisdictional supremacy,
10 a jurisdictional vacuum has been created that requires the state of South Dakota to
11 acknowledge its obligations as a sovereign power to protect the lives and property of
12 its citizens and consequently to authorize any action it presently deems necessary to
13 fill the vacuum created by the federal government by assuming jurisdiction to reduce
14 to acceptable levels, if not remove, the threat of catastrophic fires posed by present
15 conditions in national forests within its borders.

16 Section 2. The Legislature declares a disaster within those areas of the Black Hills National
17 Forest, as determined by the secretary of agriculture in cooperation with the local board of
18 county commissioners, that have suffered severe fire damage, that have suffered damage caused
19 by weather events or other natural disasters that increase the risk of fire, that face severe risk
20 posed by the infestation and spread of the mountain pine beetle or other noxious weeds and
21 pests, or areas in which large amounts of forest undergrowth have created the potential for
22 damaging fires in the future. The Legislature also declares that the disaster is of such magnitude
23 that the police power of the state may be exercised to the extent necessary to provide the
24 resources and services that will end the disaster and mitigate its effects.

1 Section 3. After consulting with the state forester, state wildland fire coordinator, and the
2 United States Forest Service regional forester, taking surveys, holding public hearings as may
3 be necessary, and developing a plan to mitigate the effects of the disaster, a board of county
4 commissioners for a county in which a disaster has been declared pursuant to section 2 of this
5 Act may take such actions as are necessary to clear and thin undergrowth and to remove or log
6 fire-damaged or pest-damaged trees within the area of the disaster. A county may enter into an
7 agreement with a contractor, licensee or other agent to carry out the purposes of this section.