

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

653W0066

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of river basin natural
2 resource districts and to repeal certain provisions regarding county drainage management.

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

4 Section 1. Pursuant to the provisions of this Act, the state shall be divided into nine river
5 basin natural resource districts. Each district is a political subdivision of the state.

6 Section 2. For the purposes of this Act, the term, district, means one of the river basin
7 natural resource districts created by this Act.

8 Section 3. The Red River and Little Minnesota River Basin Natural Resource District is
9 hereby established. The district shall include the portions of Marshall, Roberts, Grant, Deuel,
10 Codington, and Brookings counties located in the Red River hydrologic basin and the Little
11 Minnesota River hydrologic basin.

12 Section 4. The Big Sioux River Basin Natural Resource District is hereby established. The
13 district shall include the portions of Roberts, Day, Codington, Clark, Hamlin, Grant, Deuel,
14 Kingsbury, Brookings, Lake, Moody, Minnehaha, Lincoln, and Union counties located in the
15 Big Sioux River hydrologic basin.

16 Section 5. The Vermillion River Basin Natural Resource District is hereby established. The



1 district shall include the portions of Clark, Kingsbury, Miner, Lake, McCook, Minnehaha,
2 Turner, Lincoln, Yankton, and Clay counties located in the Vermillion River hydrologic basin.

3 Section 6. The James River Basin Natural Resource District is hereby established. The
4 district shall include the portions of McPherson, Edmunds, Brown, Marshall, Day, Potter, Faulk,
5 Spink, Clark, Hand, Hyde, Beadle, Kingsbury, Jerauld, Sanborn, Miner, Aurora, Davison,
6 Hanson, McCook, Douglas, Hutchinson, Bon Homme, and Yankton counties located in the
7 James River hydrologic basin.

8 Section 7. The Upper Missouri River Trench Basin Natural Resource District is hereby
9 established. The district shall include the portions of Corson, Dewey, Ziebach, Stanley, Hughes,
10 Sully, Potter, Walworth, Campbell, McPherson, Edmunds, and Hyde counties located in the
11 Upper Missouri River Trench hydrologic basin.

12 Section 8. The Lower Missouri River Trench Basin Natural Resource District is hereby
13 established. The district shall include the portions of Stanley, Haakon, Pennington, Jackson,
14 Jones, Lyman, Hughes, Sully, Hyde, Faulk, Jerauld, Brule, Buffalo, Aurora, Tripp, Gregory,
15 Charles Mix, Douglas, Bon Homme, Yankton, and Union counties located in the Lower
16 Missouri River Trench hydrologic basin.

17 Section 9. The Little Missouri River, Moreau River, and Grand River Basin Natural
18 Resource District is hereby established. The district shall include the portions of Harding,
19 Perkins, Corson, Dewey, Ziebach, Butte, and Meade counties located in the Little Missouri
20 River hydrologic basin, the Moreau River hydrologic basin, and the Grand River hydrologic
21 basin.

22 Section 10. The Belle Fourche River and the Cheyenne River Basin Natural Resource
23 District is hereby established. The district shall include the portions of Butte, Meade, Ziebach,
24 Haakon, Pennington, Lawrence, Custer, Fall River, and Shannon counties located in the Belle

1 Fourche River hydrologic basin and the Cheyenne River hydrologic basin.

2 Section 11. The White River and Niobrara River Basin Natural Resource District is hereby
3 established. The district shall include the portions of Shannon, Fall River, Pennington, Bennett,
4 Jackson, Todd, Mellette, Lyman, Jones, Tripp, and Gregory counties located in the White River
5 hydrologic basin and the Niobrara River hydrologic basin.

6 Section 12. There is hereby established the River Basin Natural Resource District Oversight
7 Advisory Task Force. The task force shall consist of the following sixteen members:

8 (1) The speaker of the House of Representatives shall appoint four members of the
9 House of Representatives, no more than two of whom may be from one political
10 party;

11 (2) The speaker of the House of Representatives shall appoint four members of the
12 general public, at least one of the members shall have an agricultural background, at
13 least one of the members shall be a representative of a conservation district, at least
14 one of the members shall be a representative of county government, and at least one
15 of the members shall be a representative of municipal government;

16 (3) The president pro tempore of the Senate shall appoint four members of the Senate,
17 no more than two of whom may be from one political party; and

18 (4) The president pro tempore of the Senate shall appoint four members of the general
19 public, at least one of the members shall have an agricultural background, at least one
20 of the members shall be a representative of a conservation district, at least one of the
21 members shall be a representative of county government, and at least one of the
22 members shall be a representative of municipal government.

23 The initial appointments shall be made no later than July 1, 2015, and serve until January 1,
24 2017. The speaker of the House of Representatives and the president pro tempore of the Senate

1 shall, before the close of the regular session of the Legislature in 2017, appoint members to the
2 task force for a term to end January 1, 2019. If there is a vacancy on the task force, the vacancy
3 shall be filled in the same manner as the original appointment.

4 Section 13. The task force shall meet between July 1, 2015, and December 31, 2015, to
5 recommend to the 2016 Legislature the specific boundaries of the river basin natural resource
6 districts established by this Act. The recommended boundaries of the districts shall follow as
7 closely as possible the hydrologic patterns of the river basins. However, the task force
8 recommendations may follow existing boundaries of political subdivisions or voting precincts,
9 wherever feasible. The specific boundaries shall be established by the Legislature in statute. The
10 task force shall also recommend to the Legislature a procedure by which the initial terms of
11 council members shall be staggered.

12 Section 14. The task force shall also establish recommendations for the 2016 Legislature that
13 divide each district into three subdistricts of nearly equal size of population based on the last
14 preceding federal census. In creating these subdistricts, the task force may follow existing
15 boundaries of political subdivisions or voting precincts, wherever feasible.

16 Section 15. The task force shall continue to meet until January 1, 2019. The task force shall
17 advise the Legislature and districts created pursuant to this Act regarding the implementation
18 of this Act, including the establishment of guidelines to be used by the districts to establish a
19 water management plan pursuant to this Act. The task force shall review the provisions of
20 chapter 46A-10A and determine which provisions need to be incorporated in legislation to assist
21 in the implementation of this Act. The task force may present draft legislation and policy
22 recommendations to the Legislative Research Council Executive Board to facilitate the
23 implementation of this Act.

24 Section 16. Each district shall be governed by a council. The size of each council shall be

1 determined by the population of each district based on the last preceding federal census. Each
2 district with a population of less than thirty thousand residents shall have a council of three
3 members with a member elected from each subdistrict. Each district with a population of thirty
4 thousand residents to one hundred thousand residents, inclusive, shall have a council of six
5 members with two members elected from each subdistrict. Each district with a population of
6 over one hundred thousand residents shall have a council of nine members with three members
7 elected from each subdistrict.

8 Section 17. The initial members to a district council shall be elected at the next general
9 election following the effective date of this Act. The initial members, as provided pursuant to
10 section 13 of this Act, shall be elected to serve for staggered terms at the next succeeding
11 general election. Council members shall thereafter be elected to four-year terms at each
12 subsequent general election to succeed those council members whose terms expire at the end
13 of the year in which the election is held.

14 Section 18. A district council shall create, by July 1, 2017, a comprehensive water
15 management plan for the district. The plan shall contain proposed ordinances, long-term plans,
16 permit rules, and any other details necessary to orchestrate the management plan as provided
17 in guidelines established by the oversight advisory task force pursuant to this Act.

18 Section 19. A district council may acquire by purchase or lease all real and other property
19 as may be necessary to carry out the purposes of this Act. The council may hold and use the
20 property, lease or otherwise dispose of any part or parcel thereof, or sell the property if it is no
21 longer needed. The council shall follow the procedures in chapters 6-13 and 7-30 for the sale,
22 exchange, leasing, and disposal of property.

23 Section 20. A district council may exercise the power of eminent domain for acquiring and
24 securing any right, title, interest, estate, or easement necessary to carry out the purposes of this

1 Act if the district is unable to acquire it by negotiation.

2 Section 21. A district council may accept funds, property, and services or other assistance,
3 financial or otherwise, from federal, state, and other public or private sources to carry out the
4 purposes of this Act. The district council may establish the per diem and expenses of the council
5 to be paid by the council.

6 Section 22. A district council may equip, maintain, and operate an office within the district
7 as its principal place of business and establish other offices as necessary. The council may
8 appoint and fix compensation of any employees deemed necessary by the council to conduct the
9 business and affairs of the district and to carry out the intent of this Act. No employee of the
10 district may hold office as a natural resource district council member while so employed.

11 Section 23. A district council may cooperate or contract with any person, state, or
12 subdivision thereof or federal agency or private or public corporation to carry out the purposes
13 of this Act.

14 Section 24. A district council may levy a fine, file an injunction, or take other disciplinary
15 action as deemed appropriate against any person or persons within the district in violation of any
16 section of this Act, any ordinance created by the council pursuant to this Act, or any permit
17 issued by the council. No fine may exceed more than ten thousand dollars per day of violation
18 or exceed one hundred thousand dollars total.

19 Section 25. A district council may create by ordinance rules necessary for the management
20 and maintenance of each river basin located within the natural resource district.

21 Section 26. A district council may establish a position for a district hydrologist, engineer,
22 or similar position to offer technical assistance to any person seeking assistance for watershed
23 management within the district.

24 Section 27. A district council may create and maintain a registry of water assets located in

1 the district.

2 Section 28. A district council may issue permits for land changes and other watershed
3 management to a person, municipality, or county. The council shall issue a permit if the person
4 or entity seeking the permit has filed an application for a permit, and the council finds the action
5 requested by the permit is not unnecessarily damaging to property surrounding or downstream
6 from the permitted activity. If there is a conflict in the determination of the damage caused by
7 the permitted action, the parties involved in the permitted action, including those affected by the
8 action, may seek mediation services.

9 Section 29. Each district council may levy a tax, not to exceed thirty cents per thousand
10 dollars of taxable valuation in the district for the accomplishment of the purposes of this Act.
11 Taxable property will be appropriated by parcel, all or majority of land situated within the
12 confines of the district and designated by the natural resource district council.

13 Section 30. Each district council may make special assessments against real property
14 specially benefited by a project, provided that any person seeking the assessment or an entity
15 authorized to act on the person's behalf have contractually agreed to the special assessments as
16 a means of providing local funding.

17 Section 31. Only those landowners who contractually agree for special assessments to
18 finance a project pursuant to this Act may be specially assessed. Any person who wishes to join
19 a project after a petition has been filed with the council pursuant to this Act may contractually
20 agree to join the project. However, a person contractually joining a project late may be required
21 to make special payments in addition to special assessments in order to bear the person's fair
22 share of project costs.

23 Section 32. Upon receipt of a petition requesting a special assessment, the council shall hold
24 a hearing on the question. Notice of the time and place of the hearing shall be published at least

1 once each week for two consecutive weeks before the hearing in the official newspapers of the
2 district. The last publication shall be at least ten days prior to the hearing. If, after hearing, the
3 council determines that the project is consistent with the best interests of the district, it may
4 adopt a resolution of intent to specially assess.

5 Section 33. Within twenty days after adoption of a resolution of intent to specially assess,
6 the council shall give written notice to owners of real property described in the resolution.
7 Owners entitled to notice are those listed as the owners of the real property to be assessed in the
8 records in the office of the register of deeds of the county where the real property is located. If
9 real property is sold under a contract for deed which is of record in the office of the register of
10 deeds, both the landowner and the purchaser of the land, as named in the contract for deed, shall
11 be treated as owners.

12 Notice shall be by registered or certified mail, shall be effective upon the date mailed, and
13 shall contain the following:

- 14 (1) A description of the contract under which the assessment is to be made;
- 15 (2) A legal description of the real property of the affected owner to be specially assessed;
- 16 (3) A description of the nature of the benefit to be returned to the property; and
- 17 (4) Notice of the right to protest by petition.

18 Section 34. Any special assessment by a district is effective thirty days after adoption of the
19 resolution of intent to specially assess, unless a written protest is filed with the office of the
20 district within thirty days of adoption of the resolution, excluding the date of adoption. The
21 written protest shall be in the form of a petition signed by not less than sixty percent of the
22 owners of real property described in the resolution of intent to specially assess.

23 Section 35. A district may assist, sponsor, or construct a project pursuant to this Act. Each
24 project shall provide that specific geographic areas finance those phases of the project that

1 provide general benefits to people in such geographic areas, that direct beneficiaries shall
2 finance those phases of the project that protect or enhance the value of their property, and that
3 administrative jurisdiction and responsibility for the various phases of the project are related to
4 the variable degrees of benefits.

5 Section 36. A district may levy taxes and special assessments, as provided and limited by
6 this Act to cover obligations contained in contracts with the United States, or any agency
7 thereof, with agencies of the State of South Dakota, or with any other entity, public or private,
8 to accomplish the purposes of this Act. Except for special assessments, however, a district may
9 not obligate any funds or revenues that are not to be collected or on hand during the fiscal year
10 in which the obligation is incurred.

11 Section 37. A district council may levy a tax or special assessments or both against taxable
12 property within the boundaries of the district, to be collected by the appropriate tax listing
13 entities. Collections from the tax shall be deposited monthly with the council by the appropriate
14 tax collecting officials. The council shall deposit the funds received from the appropriate tax
15 collecting officials in depositories designated by the council. Disbursements from the designated
16 depository account shall be made pursuant to procedures adopted by the council.

17 Section 38. The council shall, by July 1, 2017, and annually thereafter on a date established
18 by the district, but before the first of October, adopt a budget and prepare an operations and
19 budget report. The report shall present estimates and itemizations of all the expenses and
20 obligations of the district, including expenses of council members, expenses of operating the
21 office, debt service and retirement, and obligations and liabilities to the United States. Before
22 approval of the budget by the council, a public hearing shall be held. Notice of the hearing shall
23 be published once each week for two successive weeks in the district's official newspapers. The
24 notice shall state the time and place of the hearing, its purpose, and that at the hearing all

1 persons interested may appear, either in person or by representative, and be heard and given an
2 opportunity for a full and complete discussion of all items in the budget. With the first notice,
3 the budget shall be published in a form approved by the auditor general. At the conclusion of
4 the hearing, the district council may eliminate or amend any portion of the budget before
5 adoption.

6 Section 39. Upon completion and adoption of a budget, a district council shall make a tax
7 levy or special assessment or both in dollars sufficient to fund the budget. Any tax levy made
8 against the property in any given county in a district shall be in an amount equal to the total
9 district tax levy in dollars multiplied by the county's proportional share. The county's
10 proportional share shall be determined by dividing the equalized assessed valuation of the area
11 within the district for that county by the total district equalized assessed valuation. The
12 provisions of § 10-12-34.1 may not prohibit apportionment of the tax among the counties as
13 provided in this section. No tax levy may be in excess of the limitation specified in this Act.
14 Any tax levy shall be in the form of a resolution adopted by a majority vote of the members of
15 the council.

16 Section 40. Immediately after completion of a budget and adoption of special assessments
17 and a tax levy by a district council, but not later than the first of October, the district shall send
18 one certified copy of the levy as adopted and one certified copy of such budget to appropriate
19 tax collecting officials of the affected counties and to the state secretary of revenue.

20 Section 41. Appropriate officials shall extend the levy or special assessments upon the tax
21 list of the county, municipality, or other appropriate tax paying entity for the tax year against
22 each description of taxable property or, in the case of special assessments, against each
23 description of taxable property to be specially assessed within the district in the same manner
24 and with the same effect as other taxes and assessments are extended, including the authority,

1 requirements, and procedures contained in chapter 9-43.

2 Section 42. Appropriate tax collecting officials shall collect all district taxes and
3 assessments, together with interest and penalty thereon, if any, in the same manner as the
4 general taxes and assessments are collected and shall pay over monthly to the district all taxes
5 so collected during the preceding month, with interest and penalties. The district shall
6 immediately enter these receipts to the credit of the depository accounts designated by the
7 council pursuant to this Act.

8 Section 43. All moneys collected pursuant to the tax levies, special assessments and other
9 funds authorized by this Act accruing to the district shall be deposited either in the accounts of
10 the state treasurer to the credit of the "(name) district fund" to be disbursed only as provided by
11 this Act, or in any depository designated and approved by the council at a regular meeting and
12 from which all valid claims against the district shall be paid by order duly drawn by the council
13 pursuant to procedures adopted by the council.

14 Section 44. That § 46A-10A-20 be repealed.

15 ~~46A-10A-20. Official controls instituted by a board may include specific ordinances,~~
16 ~~resolutions, orders, regulations, or other such legal controls pertaining to other elements~~
17 ~~incorporated in a drainage plan, project, or area or establishing standards and procedures to be~~
18 ~~employed toward drainage management. Any such ordinances, resolutions, regulations, or~~
19 ~~controls shall embody the basic principle that any rural land which drains onto other rural land~~
20 ~~has a right to continue such drainage if~~

21 ~~(1) The land receiving the drainage remains rural in character;~~

22 ~~(2) The land being drained is used in a reasonable manner;~~

23 ~~(3) The drainage creates no unreasonable hardship or injury to the owner of the land~~
24 ~~receiving the drainage;~~

1 ~~(4) The drainage is natural and occurs by means of a natural water course or established~~
2 ~~water course;~~

3 ~~(5) The owner of the land being drained does not substantially alter on a permanent basis~~
4 ~~the course of flow, the amount of flow, or the time of flow from that which would~~
5 ~~occur; and~~

6 ~~(6) No other feasible alternative drainage system is available that will produce less harm~~
7 ~~without substantially greater cost to the owner of the land being drained.~~

8 ~~Such provisions do not necessarily apply within municipalities, but if a municipality drains~~
9 ~~water onto rural lands lying outside the boundaries of the municipality, the municipality is~~
10 ~~subject to the above provisions, if adopted by the board.~~

11 Section 45. That §§ 46A-10A-1 to 46A-10A-19, inclusive, and §§ 46A-10A-21 to 46A-10A-
12 123, inclusive, be repealed.

13 Section 46. The effective date of sections 44 and 45 of this Act is July 1, 2017.