

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

792W0132

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **SB 3** - 02/17/2015

Introduced by: Senators Vehle, Frerichs, and White and Representatives Gosch, Feickert, Hawley, and Heinemann (Leslie) at the request of the Regional Watershed Advisory Task Force

1 FOR AN ACT ENTITLED, An Act to provide for mediation of certain drainage disputes.

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

3 Section 1. The Department of Agriculture shall establish and administer a statewide  
4 mediation program to provide assistance to property owners who seek to use mediation as a  
5 method to resolve disputes over the surface or subsurface drainage of water.

6 The secretary of the Department of Agriculture shall promulgate rules pursuant to chapter  
7 1-26 necessary for mediation, including the establishment of fees, training requirements for  
8 mediators, mediation request forms, mediation timeline, notification and intervention  
9 procedures, and any other mediation procedures as may be necessary for the mediation of  
10 drainage disputes. The parties to the mediation created under this Act shall be limited to the  
11 person or parties that own or administer real property impacted by the planned drainage or  
12 drainage dispute.

13 Section 2. All staff services required by the drainage mediation program shall be provided  
14 by the Department of Agriculture. The secretary of agriculture may employ agents and



1 employees as the secretary deems necessary. The mediation services shall be administered under  
2 the direction and supervision of the Department of Agriculture. All expenses incurred in  
3 carrying on the work of the drainage mediation program, including the per diem and expenses  
4 of the staff, salaries, contract payments, department notice requirements, and any other items  
5 of expense shall be paid out of funds appropriated or otherwise made available to the farm  
6 mediation operating fund.

7 Section 3. Any fees incurred in the mediation process provided under this Act and by rule  
8 shall be borne equally between the parties to the drainage dispute. The fees shall be deposited  
9 in the farm mediation operating fund. All money in the farm mediation operating fund is  
10 continuously appropriated for the purposes of administering the drainage mediation program.  
11 Any disbursements from the farm mediation operating fund shall be by authorization of the  
12 secretary of agriculture.

13 Section 4. The Department of Agriculture, in the administration of this Act, may contract  
14 with one or more governmental entities, nonprofit corporations, individuals, or other entities as  
15 determined by the Department of Agriculture to provide mediation services of drainage disputes.

16 Section 5. The requesting party shall promptly provide to the Department of Agriculture,  
17 upon the agreement of at least two parties to enter into the mediation program created under this  
18 Act, a list of other parties to the drainage dispute and any property owner and any county,  
19 municipality, township, or any agency of state or federal government reasonably determined by  
20 the requesting party to be affected by the drainage activity. The Department of Agriculture shall  
21 send a mediation meeting notice to the identified parties, setting a time and place for an initial  
22 mediation meeting between the parties to the dispute and a mediator. This notice shall be in  
23 conjunction with a public notice of the mediation by the Department of Agriculture that shall  
24 be published once each week for two consecutive weeks in one of the official newspapers

1 designated by the county or counties where the real property involved in the drainage dispute  
2 is located. The last publication shall be published before the initial mediation meeting. The  
3 unintentional failure to notify any party who may potentially be impacted by the drainage  
4 activity may not prevent the mediation from being scheduled or completed. No notice is  
5 necessary to any property owner within the boundaries of a municipality.

6 Section 6. Any agreement reached between the parties to the drainage dispute as a result of  
7 mediation shall be drafted into a written agreement. If signed by the parties, the agreement  
8 constitutes a binding contract, and the mediator shall so certify.

9 Section 7. Information relating to the dispute between the parties to the drainage dispute  
10 which is disclosed to the mediator or which is created, collected, or maintained by the  
11 Department of Agriculture mediation program pursuant to the terms of this Act is confidential  
12 to the extent agreed by the parties or provided by state law.

13 All mediation meetings, and all mediation activities provided by this Act, are exempt from  
14 the provisions of chapter 1-27.

15 Section 8. Any person serving as a mediator pursuant to this Act is immune from civil  
16 liability in any action brought in any court in this state on the basis of any act or omission  
17 resulting in damage or injury if the person was acting in good faith, in a reasonable and prudent  
18 manner, and within the scope of such person's official functions and duties as a mediator.

19 Section 9. Any person or party that claims to be impacted by the planned drainage activities,  
20 upon timely notice, is allowed to intervene in the mediation process if the person's or party's  
21 claim of impact is supported by a claim that the person or party owns or administers real  
22 property impacted by the planned drainage. The request for intervention shall be supported by  
23 evidence that the intervention is necessary to protect the person's or party's property interests and  
24 that those interests will not be adequately represented by the existing parties. In considering the

1 application for intervention, the mediator shall determine whether an applicant may intervene  
2 and whether the interest of the applicant presents a property, health, or safety issue impacted by  
3 the mediation and whether the interests of the potential interveners will not be protected by the  
4 existing parties.