

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

444A0423

HOUSE BILL NO. 1108

Introduced by: Representatives Wetz, Cerny, Crisp, Diedrich, Fischer-Clemens, Johnson (Doug), Madden, McNenny, and Napoli and Senators Symens, Drake, Dunn (Jim), Hutmacher, and Johnson (William)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to soil erosion and
2 sediment damage control.

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

4 Section 1. That § 38-8A-1 be amended to read as follows:

5 38-8A-1. Terms as used in this chapter, ~~unless the context otherwise requires,~~ mean:

- 6 (1) "Commission," the State Conservation Commission established by § 38-7-3;
- 7 (2) "Conservation standards" or "standards," soil loss tolerance limits as developed
8 pursuant to this chapter;
- 9 (3) "Districts," conservation districts established pursuant to chapter 38-8;
- 10 (4) "Person," a person as that term is defined by ~~subdivision 2-14-2 (18)~~ § 2-14-2 and
11 also any public agency or political subdivision of this state, any interstate body, or any
12 other legal entity;
- 13 (5) "Guidelines," recommendations of the commission to the conservation districts not
14 possessing the force or effect of rules, ~~regulations or standards~~ or statute;
- 15 (6) "Permit-issuing authority," a municipality or other political subdivision normally

1 responsible for granting or issuing zoning ~~or, subdivision,~~ building, or drainage
2 permits;

3 (7) "Silviculture," the science and art of managing forest resources for the timber,
4 protection, recreation, wildlife, water, and aesthetic purposes.

5 Section 2. That § 38-8A-2 be amended to read as follows:

6 38-8A-2. ~~Land-disturbing~~ The term, land-disturbing activity, as used in this chapter, unless
7 ~~the context otherwise requires,~~ means any land alteration clearing, tilling, grazing, grading,
8 excavating, transporting and filling of land, and the implementation of silviculture activities
9 resulting in soil erosion from water or wind and the movement of sediments:

10 ~~—(1)—~~ Into into any and all waters, public or private, on the surface of the ground, which are
11 contained within, flow through or border lands in the state; or

12 ~~—(2)—~~ Onto onto lands in the state, including, but not limited to, clearing, tilling, grading,
13 excavating and transporting and filling of land. Land disturbing activities specifically
14 regulated by other state or federal agencies which are accompanied by a resource
15 management plan are exempt.

16 Section 3. That § 38-8A-3 be amended to read as follows:

17 38-8A-3. The State Conservation Commission shall ~~develop~~ review and revise
18 comprehensive state erosion and sediment control guidelines before July 1, 1977. These
19 guidelines are to be developed with full opportunity for citizen participation in accordance with
20 chapter 1-26.

21 Section 4. That § 38-8A-6 be amended to read as follows:

22 38-8A-6. The conservation district supervisors of each district in the state in cooperation and
23 consultation with counties, municipalities, permit-issuing authorities and other affected units of
24 local and state government shall, ~~within twelve months after the adoption of the state guidelines,~~
25 develop proposed district conservation standards. These standards may designate as "fragile

1 land" any area of the district which is Class IVe, VI, VII₂ or VIII according to the United States
2 Department of Agriculture classification system, as described in "Land Capability Classification",
3 Agricultural Handbook 210, ~~Soil~~ Natural Resources Conservation Service, United States
4 Department of Agriculture, issued September, 1961, and in effect on January 1, ~~1984~~ 1997; and
5 is so erosive as to cause a public hazard when converted to cropland use.

6 Section 5. That § 38-8A-7 be repealed.

7 ~~38-8A-7. The State Conservation Commission may, in carrying out its responsibilities~~
8 ~~under this chapter, grant a variance to a conservation district to allow it~~
9 ~~additional time to carry out its responsibilities pursuant to this chapter.~~

10 Section 6. That § 38-8A-11 be amended to read as follows:

11 38-8A-11. To carry out its program, each district, in cooperation with other state and local
12 units of government, shall, within three months after the guidelines have been reviewed by the
13 commission, adopt conservation standards consistent with the control of erosion and sediment
14 resulting from land-disturbing activities.

15 Section 7. That § 38-8A-12.2 be amended to read as follows:

16 38-8A-12.2. An election under the provisions of §§ 38-8A-12 and 38-8A-12.1 shall generally
17 follow the procedures provided in chapter 7-18A. Wherever those procedures are not applicable,
18 the district supervisors shall establish procedures for voting as closely to the procedures in
19 chapter 7-18A as practicable be conducted at the next general election within the counties
20 comprising the territory of the conservation district. Unless otherwise provided for in this
21 chapter, the conduct of any election held under §§ 38-8A-12 and 38-8A-12.1 shall be governed
22 by the general election laws of South Dakota. The results of the election shall be certified to the
23 conservation district by the county commissioner of each county in which the election is
24 conducted.

25 Section 8. That § 38-8A-17 be amended to read as follows:

1 38-8A-17. ~~Any~~ No person engaging in ~~agricultural~~ land-disturbing activities and ~~minor~~
2 ~~land-disturbing activities, such as individual resident landscaping and home gardening by an~~
3 ~~owner, operator or tenant,~~ is ~~not~~ required to prepare a plan, file an application or otherwise
4 report these activities to the conservation district, except as provided for in § 38-8A-18. The
5 district may require a conservation plan preceding the conversion to cropland of any land which
6 has been designated "fragile land" as provided by § 38-8A-6.

7 Section 9. That § 38-8A-18 be amended to read as follows:

8 38-8A-18. Upon the determination by the conservation district ~~that an agricultural,~~ pursuant
9 to § 38-8A-20, or on its own volition, that a land-disturbing activity and minor land-disturbing
10 ~~activities, such as individual resident landscaping and home gardening by the owner, operator~~
11 ~~or tenant~~ is violating adopted standards, the land disturber shall be required to prepare an erosion
12 and sediment control plan within six months, and have ~~such~~ the plan approved by the local
13 conservation district. Upon approval of the plan by the conservation district, the land disturber
14 shall be allowed six months to implement ~~such~~ the plan.

15 Section 10. That chapter 38-8A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The conservation districts shall file with the conservation commission an itemized annual
18 report noting the number and nature of violations of this chapter. The report shall be filed within
19 sixty days after the end of the conservation district's fiscal year. A conservation district is
20 ineligible for financial assistance through the state conservation commission if this reporting
21 requirement is not met.