



2021 South Dakota Legislature

House Bill 1028

Introduced by: The Committee on Agriculture and Natural Resources at the request of the Department of Environment and Natural Resources

1 **An Act to revise petition requirements and the criteria for issuance of a water right**
 2 **permit.**

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

4 **Section 1.** That § 46-2A-4 be AMENDED.

5 **46-2A-4. Publication of application and recommendation of chief engineer--**
 6 **Time for publication--Contents of notice.**

7 Except in the case of an application for a well driller license or a well pump installer
 8 license, if a recommendation is to approve or defer an application or if an applicant has
 9 filed a petition to oppose a recommendation to deny an application, the applicant shall
 10 publish notice of the application and recommendation at least once in at least one official
 11 newspaper in each county where the water will be diverted or used or where project works
 12 will be located. The official newspaper shall be selected by the chief engineer and shall be
 13 a newspaper designated as an official newspaper pursuant to § 7-18-3. If the official
 14 newspaper is a weekly newspaper, then the notice shall also be published at least once in
 15 a daily newspaper. The daily newspaper selected by the chief engineer shall be located as
 16 near as possible to the location where the water will be diverted or used. Public notice of
 17 the application shall also be posted on the department's website until final action is taken
 18 on the application. The publication shall be at least twenty days before the first day of the
 19 Water Management Board meeting at which the matter is noticed to be heard. No
 20 application for a permit, license, or amendment may be considered and approved by the
 21 board until proof of all required publications has been filed with the chief engineer. The
 22 notice, which shall be provided by the chief engineer to the applicable newspapers, shall
 23 include the following, as applicable:

24 (1) The name and address of the applicant;

- 1 (2) A brief description of the project, including, where applicable, the proposed place
2 or places of use of the water or facilities, including the point of diversion, the amount
3 of water to be used and the purpose for which the water or facility is to be used;
- 4 (3) A brief statement describing the recommendation and the reasons for the
5 recommendation;
- 6 (4) A statement that ~~any interested person who intends to~~ a person may only
7 participate in the hearing shall file if:
- 8 (a) The person alleges that the application, upon approval, will cause injury to
9 the person that is unique from any injury suffered by the public in general;
- 10 (b) The person's injury concerns a matter either within the regulatory authority
11 found in § 46-2A-9 for approval or denial of the application, or other matter
12 concerning the application within the regulatory authority of the board to
13 act upon as defined by §§ 46-2-9 and 46-2-11, or both; and
- 14 (c) The person files a petition to oppose or support the application and that the
15 petition shall be filed with the chief engineer and applicant at least within
16 ten days before of the published date for hearing notice;
- 17 (5) A statement that a petition to oppose ~~or support~~ an application ~~may be informal,~~
18 ~~but~~ shall be in writing, on a form provided by the chief engineer, and shall contain
19 the following:
- 20 (a) A statement describing the ~~petitioner's interest in the application~~ unique
21 injury upon approval of the application on the petitioner;
- 22 (b) The reasons for the petitioner's opposition to ~~or support for~~ the application;
23 and
- 24 (c) The ~~signature~~ name and mailing address of the petitioner or the petitioner's
25 legal counsel;
- 26 (6) A statement that if the applicant intends to contest the recommendation, the
27 applicant shall file a petition with the chief engineer within ten days of the published
28 notice;
- 29 (7) A statement that any interested person may file a comment on an application with
30 the chief engineer within ten days of the published notice, and the comment shall
31 be filed on a form provided by the chief engineer. Filing a comment does not make
32 the commenter a party of record to, or a participant in, the hearing;
- 33 (8) A statement telling where copies of the recommendation, application, or other
34 information may be obtained;
- 35 (7)(9) The time when and the place where the application will be considered by the board;

1 ~~(8)~~(10) A statement that the recommendation of the chief engineer is not final or
2 binding upon the board and is subject to the approval of the board after it reaches
3 a conclusion based on facts at the public hearing;

4 ~~(9)~~(11) A statement that the time of hearing will be automatically extended for at
5 least twenty days upon written request of the applicant or any person who has filed
6 a petition to oppose ~~or support~~ the application and a statement that any such
7 request by the applicant or person filing a petition shall be made ~~at least~~ within ten
8 days ~~before~~ of the published ~~date for hearing~~ notice; and

9 ~~(10)~~(12) A statement that if the applicant does not contest the recommendation of the
10 chief engineer and no petition to oppose the application is received, the chief
11 engineer shall act on the application pursuant to the chief engineer's
12 recommendation and no hearing may be held before the board, unless the chief
13 engineer makes a finding that an application, even if uncontested, presents
14 important issues of public policy or public interest that should be heard by the
15 board.

16 **Section 2.** That § 46-2A-5 be AMENDED.

17 **46-2A-5. Postponement of hearing on application--Time for notice.**

18 The applicant or any person who has filed a petition to oppose ~~or support~~ an
19 application, may ~~submit~~ file a written notice to the chief engineer requesting a
20 postponement of the date set for hearing on the application. Upon receipt of the written
21 notice, the chief engineer shall cancel the original hearing on the application and
22 reschedule the application for hearing by the Water Management Board not less than
23 twenty days after the published date for hearing. The notice shall be filed ~~at least~~ within
24 ten days ~~before~~ of the published ~~date for hearing~~ notice as provided for by §§ 46-2A-4
25 and 46-2A-23.

26 **Section 3.** That § 46-2A-6 be AMENDED.

27 **46-2A-6. Service and filing of pleadings, petitions, and motions.**

28 The originals of all pleadings, including petitions to contest, petitions to intervene,
29 and motions, shall be filed with the chief engineer and served upon other parties, either
30 personally or by mail. The chief engineer shall provide copies to all Water Management
31 Board members. Service and filing by mail shall be deemed complete upon mailing. Any
32 comment filed pursuant to subdivision 46-2A-4(7) shall be provided by the chief engineer
33 to all Water Management Board members and become part of the public record.

1 **Section 4.** That § 46-2A-9 be AMENDED.

2 **46-2A-9. Appropriation of water--When permit may be issued.**

3 A permit to appropriate water may only be issued ~~only~~ if there is reasonable
4 probability that ~~there is~~ unappropriated water is available for the applicant's proposed use,
5 ~~that,~~ the proposed diversion can be developed without unlawful impairment of existing
6 domestic water uses and water rights ~~and that,~~ the proposed use is a beneficial use, and
7 the permit is in the public interest as it pertains to matters of public interest within the
8 regulatory authority of the Water Management Board as defined by §§ 46-2-9 and 46-2-
9 11.

10 **Section 5.** That § 46-2A-23 be AMENDED.

11 **46-2A-23. Publication of notice to determine opposition to application or**
12 **recommendation of chief engineer--Petition to contest--Notice of hearing.**

13 Following the issuance of a recommendation to approve an application pursuant to
14 § 46-2A-2, the chief engineer may publish, at the expense of the applicant, a notice to
15 determine whether any person opposes the application or recommendation of the chief
16 engineer. The notice shall be published as provided for in § 46-2A-4, and the notice shall
17 contain the information provided for in subdivisions 46-2A-4(1), ~~(2), (3), (5), (6)~~ to (8),
18 inclusive, and ~~(10) (12).~~ The notice is not required to refer to a board meeting or hearing
19 date. In addition, the notice shall include a statement that if the applicant intends to
20 contest the recommendation, the applicant shall file a petition with the chief engineer, and
21 any interested person meeting petitioner requirements found in subdivision 46-2A-4(4)
22 who intends to oppose ~~or support~~ the application or recommendation shall file a petition
23 with the chief engineer and the applicant. Any petition shall be filed within ten days of the
24 published notice. A statement shall also be included that any comment filed pursuant to
25 subdivision 46-2A-4(7) will not cause a hearing to be held.

26 If no petition to contest the recommendation or to oppose an application is timely filed,
27 the chief engineer, following receipt of proof of publication, shall act on the application
28 consistent with the chief engineer's recommendation as provided by rules promulgated by
29 the Water Management Board pursuant to chapter 1-26 delegating authority to the chief
30 engineer to issue uncontested permits pursuant to §§ 46-1-16 and 46-2-3.1, without
31 hearing by the board.

32 If a petition to contest the recommendation or to oppose the application is timely filed,
33 the chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The

1 notice shall also include a statement that the recommendation of the chief engineer is not
2 final or binding upon the board and is subject to the decision of the board based on
3 evidence and record of the public hearing. A statement shall also be included in the notice
4 that the applicant or any interested person who has filed a petition to oppose ~~or support~~
5 an application, may file a written notice with the chief engineer requesting postponement
6 of the original hearing date. The written notice requesting postponement shall be filed
7 within twenty ten days of the date of the notice scheduling the board hearing, ~~but not less~~
8 ~~than ten days before the date the application is scheduled for hearing.~~ Upon timely receipt
9 of a written notice, the chief engineer shall cancel the original hearing and reschedule the
10 hearing not less than twenty days after the original hearing date. Notice of hearing shall
11 be provided by personal service or by first class mail to the applicant and parties of record.