

## CHAPTER 46A-1

## STATE WATER RESOURCES MANAGEMENT

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46A-1-1. Legislative findings and policy. The general health, welfare, and safety of the people of the State of South Dakota are dependent upon the conservation, development, management, and optimum use of all this state's water resources. To achieve this objective it is essential that a coordinated, integrated, multiple use water resource policy be formulated and a plan developed to activate this policy as rapidly as possible. It is in the public interest that these functions be carried out through a coordination of all state agencies and resources.

**Source:** SL 1972, ch 241, § 2; SL 1981 (2d SS), ch 1, § 17; SDCL Supp, § 46-17A-1; SL 1983, ch 321.

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46A-1-2. Legislative purpose for state water plan--Composition of plan. It is the object of this chapter to provide the means for the planning, funding, and construction of a state water plan. This plan is comprised of the State Water Resources Management System and the State Water Facilities Plan.

**Source:** SL 1972, ch 241, § 3; SDCL Supp, § 46-17A-2; SL 1983, ch 321, § 2.

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46A-1-2.1. Legislative finding--Preferred, priority objectives. The Legislature finds that the following water resources projects are necessary for the general welfare of the people of the State of South Dakota and authorizes the projects pursuant to § 46A-1-2 to be included in the state water resources management system to serve as the preferred, priority objectives of the state: Belle Fourche irrigation upgrade project, Big Sioux flood control study, hydrology and water management studies to manage and protect state water resources for current and future generations, Cendak irrigation project, Gregory County pumped storage site, Lake Andes-Wagner/Marty II irrigation unit, Lewis and Clark rural water system, Sioux Falls flood control project, Southern Black Hills Water System, and Vermillion basin flood control project.

**Source:** SL 1988, ch 362, § 17; SL 1989, ch 385, § 19; SL 1994, ch 346, § 13; SL 2000, ch 218, § 6; SL 2004, ch 52, § 4, eff. Feb. 25, 2004; SL 2006, ch 227, § 2, eff. Feb. 17, 2006; SL 2008, ch 235, § 7, eff. Feb. 27, 2008; SL 2011, ch 200, § 11, eff. Mar. 15, 2011; SL 2012, ch 221, § 3, eff. Mar. 2, 2012; SL 2015, ch 224, § 1, eff. Mar. 12, 2015.

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46A-1-2.2. Repealed by SL 1994, ch 346, § 14

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46A-1-2.3. Previous designations of projects superseded. Section 46A-1-2.1 serves as the exclusive component of the State Water Resources Management System established pursuant to § 46A-1-2 and supersedes all previous designations of projects not included in § 46A-1-2.1.

**Source:** SL 1994, ch 346, § 15.

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46A-1-2.4. Executed

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46A-1-2.5. Executed

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46A-1-2.6. Executed

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46A-1-2.7. Executed

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46A-1-2.8. Executed

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46A-1-2.9. Executed

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46A-1-2.10. Executed

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46A-1-2.11. Executed

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46A-1-2.12. Executed

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46A-1-2.13. Executed

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46A-1-2.14. Executed

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46A-1-3. Definition of terms. Terms as used in this chapter, unless the context otherwise requires, shall mean:

- (1) "Basis point," one hundredth of one percent of interest;
- (2) "Board," the Board of Water and Natural Resources created by § 1-40-5;
- (3) "District," the South Dakota Conservancy District;
- (4) "Facilities" or "state water facilities," all water facilities included or being studied or recommended for inclusion within the comprehensive statewide water plan or state water resources management system;
- (5) "Facilities plan" or "state water facilities plan," those parts of the statewide water plan established by the Board of Water and Natural Resources;
- (6) "Free flowing," as applied to any river, existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway;
- (7) "Fund," the South Dakota water and environment fund;
- (8) "Person," a person as that term is defined in subdivision 46A-2-4(6);
- (9) "Plan" or "water plan" or "statewide water plan" or "comprehensive statewide water plan," plans developed or to be developed by the South Dakota Conservancy District as provided by this chapter;
- (10) "Project," a water resources project as that term is defined in subdivision 46A-2-4(14);
- (11) "Public entity," a public entity as that term is defined in subdivision 46A-2-4(7);
- (12) "Recreational river areas," those rivers or sections of rivers that are readily accessible by road, that may have some development along their shorelines and that may have undergone some impoundment or diversion in the past, and the public areas adjacent to the rivers or sections of rivers;
- (13) "Regulated public water utility," a public entity or person with which the district has entered into a financing arrangement pursuant to § 46A-1-18 or a financing agreement pursuant to § 46A-1-49, with respect to a project;
- (14) "River," a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, and small lakes, provided that no flowing body of water shall be considered a "wild, scenic, or recreational river" unless it has a sufficient quantity of water to support a year-round game fish population;
- (15) "Scenic river areas," those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive but which are accessible in places by roads, and the public use

and access areas adjacent to the rivers or sections of rivers;

(16) "System" or "state water resources management system," those parts of the statewide water plan established by the Legislature as a needed objective for water resources management in South Dakota and for which the Legislature may authorize construction and financing in whole or in part;

(17) "Wild river area," those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and with waters which are unpolluted, and the public use and access areas adjacent to the rivers or sections of rivers.

**Source:** SL 1972, ch 241, § 5; SL 1976, ch 282, § 2; SL 1979, ch 301, § 2; SL 1981 (2d SS), ch 1, § 6; SDCL Supp, § 46-17A-3; SL 1983, ch 321, § 3; SL 1992, ch 254, § 8.

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46A-1-4. Water rights not affected by chapter. The enactment of this chapter does not create any right to water or the use of water and does not affect any existing legislation with respect to water or water rights, except as expressly provided in this chapter. Nothing in this chapter affects vested water rights.

**Source:** SL 1972, ch 241, § 4; SDCL Supp, § 46-17A-57; SL 2011, ch 165, § 285.

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46A-1-5. Repealed by SL 2011, ch 165, § 286.

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46A-1-6. Omitted

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46A-1-7. Establishment of state policy on water facilities--Recommended comments on federal policy. The Board of Water and Natural Resources shall establish the statewide policy on all multi-purpose water facilities, and shall maintain readiness to recommend significant factors to the Governor or his designated representative concerning official comments on behalf of the State of South Dakota pursuant to any requirements of federal law.

**Source:** SL 1972, ch 241, § 13; SDCL Supp, § 46-17A-12.

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46A-1-8. Resolution of conflicting interests. The objectives and purposes to be served by the Board of Water and Natural Resources shall be to resolve conflicting special interests of federal, state, and local agencies or entities or private interests in proposed water projects, including federal projects and the designation and preservation of certain rivers or portions thereof as scenic rivers so that the public interest in such project proposals will be protected and enhanced, optimum over-all benefits will accrue to the people of South Dakota, and maximum consideration of all needs and desires in such water projects will be ensured, especially in those involving multiple purposes such as combinations of irrigation, flood control, navigation, electric power, domestic and stock water, municipal and industrial water supplies, lake stabilization, pollution control, water quality enhancement, fish and wildlife, recreation, groundwater recharge, erosion control, or other beneficial purposes and uses.

**Source:** SL 1972, ch 241, § 14; SDCL Supp, § 46-17A-13.

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46A-1-9. Repealed by SL 2015, ch 192, § 3.

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46A-1-10. Recommendations to Governor and Legislature as to facilities needed in water resources management system. Upon submission of the statewide water plan to the Governor and the Legislature by the Board of Water and Natural Resources, or prior or subsequent thereto as conditions may warrant, the board shall recommend to the Governor and the Legislature those portions of the statewide water plan, including a list of proposed wild, scenic, or recreational rivers, considered to be necessary for the needs and general welfare of the people of the State of South Dakota with a request that the Legislature establish such recommended water facilities as the State Water Resources Management System, said system to serve as the preferred, priority

objectives and guidelines for all efforts to accomplish optimum water resources management in this state. No project in the State Water Resources Management System may also be in the state water facilities plan.

**Source:** SL 1972, ch 241, § 16; SDCL Supp, § 46-17A-15; SL 1986, ch 291, § 1A.

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46A-1-11. Estimates of costs and revenues from proposed water facilities--Requests for legislative authorization of construction. If the Board of Water and Natural Resources determines that it is necessary to carry out any of the objects and purposes of the water plan, through the construction of a water facility that has been established by the Legislature as a part of the State Water Resources Management System, the board shall, in cooperation with such federal, state, and local agencies or entities or private interests as may be concerned, prepare preliminary cost estimates, estimates of resources, if any, to be contributed from all other sources to aid in the construction, and estimates of the revenues that might be anticipated from the facility from all purposes and functions. The board shall adopt a resolution declaring that the public interest and necessity require the carrying out of these objects and purposes and requesting that the Legislature authorize the construction of this part of the State Water Resources Management System.

**Source:** SL 1972, ch 241, § 17; SDCL Supp, § 46-17A-16; SL 2011, ch 165, § 287.

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46A-1-12. Allocation of benefits and costs among governmental and private interests--Determination of priorities. The Board of Water and Natural Resources shall make a comprehensive evaluation and allocation of the comparative benefits and costs of all water facilities included in the State Water Resources Management System among and between the various levels of government and private interests in accordance with § 46A-2-3. Its recommendations shall include with respect to each such facility the amount or amounts to be shared by each and every level of beneficial user and may provide that the state's share will be apportioned over a period of years and may be funded by appropriations or as may otherwise be provided. These benefit-cost ratios shall be set forth in detail.

The board shall formulate and determine the priority or priorities of any or all such facilities and the sufficient financing thereof.

**Source:** SL 1972, ch 241, § 18; SDCL Supp, § 46-17A-17; SL 1986, ch 291, § 1.

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46A-1-13. Presentation of cost data to Governor and Legislature--Requests for financing authorization. The Board of Water and Natural Resources shall present the findings of benefits, costs, cost-sharing, and other pertinent factors to the Governor and the Legislature, and shall request legislative appropriations and other means of financing state government's share of the costs of the water facilities as may be authorized by the Legislature for construction.

**Source:** SL 1972, ch 241, § 19; SDCL Supp, § 46-17A-18.

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46A-1-13.1. Repealed by SL 2013, ch 166, § 99.

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46A-1-13.2. Authorization of Belle Fourche irrigation rehabilitation project--Financial assistance limited. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a fourteen million dollar Belle Fourche Irrigation Rehabilitation Project as generally described in the report entitled "Analysis of Request for Additional Funding Costs and Priority Summary" dated January 1994, is hereby authorized for the purpose of stabilizing crop and forage production in central western South Dakota to offset the effects of drought conditions which naturally devastate South Dakota's economic viability.

The Board of Water and Natural Resources may provide financial assistance in amounts not to exceed four million dollars (\$4,000,000), or so much thereof as may be necessary, to the Belle Fourche Irrigation Rehabilitation Project to provide the nonfederal matching requirements for the project authorized pursuant to P.L. 103-434 as amended to January 1, 1995. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

**Source:** SL 1995, ch 251, § 24.

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46A-1-13.3. Repealed by SL 2013, ch 166, § 113.

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46A-1-13.4. Authorization of Mni Wiconi rural system--Loans--Accrual of interest. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a two hundred sixty-three million two hundred forty-one thousand dollar (\$263,241,000) Mni Wiconi Rural Water System as generally described in the report "Mni Wiconi Rural Water Supply Project Final Engineering Report" dated May 21, 1993, is hereby authorized for the purpose of providing safe and adequate municipal, rural, and industrial water supplies as well as promoting benefits to fish and wildlife and the natural environment of South Dakota on the Pine Ridge Indian Reservation, the Rosebud Indian Reservation, the Lower Brule Indian Reservation and in the counties of Stanley, Haakon, Lyman, Jones, Jackson, Mellette, and Pennington.

The Legislature finds that it is in the best interest of the Mni Wiconi Rural Water System to provide the nonfederal matching requirements as enumerated in P.L. 100-516 as amended on January 1, 1995, through the State Water Resources Management System revolving loan program. Therefore, all grants authorized for expenditure out of the South Dakota Water and Environment for the Mni Wiconi Rural Water System since January 1, 1989, shall convert to loans.

The Board of Water and Natural Resources may provide loans under the State Water Resources Management System revolving loan program in amounts not to exceed a total of twelve million nine hundred one thousand eight hundred dollars (\$12,901,800) to the Mni Wiconi Rural Water System to provide the nonfederal matching requirements for the West River Rural Water System component and the Lyman-Jones Rural Water System component as enumerated in P.L. 100-516 as amended on January 1, 1995. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

Notwithstanding the provisions of § 46A-1-66 no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment shall be due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources.

The loans authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1992, as indicated by engineering costs indices applicable for the type of construction involved.

**Source:** SL 1992, ch 254, § 13; SL 1995, ch 251, § 28.

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46A-1-13.5. Repealed by SL 2013, ch 166, § 114.

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46A-1-13.6. Authorization of Lake Andes-Wagner/Marty II Irrigation Project--Research demonstration project required--Loans authorized--Indian lands exempted from payments. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a one hundred seventy-five million dollar Lake Andes-Wagner Irrigation Project, as generally described in the report "Planning Report/Environmental Statement" dated September 1985 and a twenty-four million dollar Marty II Irrigation Project as generally described in the report "Planning Report and Environmental Assessment" dated January 1990 is hereby authorized for the purpose of stabilizing crop and forage production in south central South Dakota to offset the effects of drought conditions which naturally devastate South Dakota's economic viability.

Prior to construction of the authorized Lake Andes-Wagner/Marty II Irrigation Project the Legislature finds it necessary and prudent to develop accurate and quantitative means of addressing the reliable drainage requirements with respect to glacial till soils and to develop sound management practices that are beneficial to all irrigation in South Dakota. This phase of the project shall hereby be referred to as the Lake Andes-Wagner/Marty II Research Demonstration Program and shall conclude when the Legislature and the United States Congress accept a final report.

The Board of Water and Natural Resources may provide loans under the State Water Management Resources System revolving loan program in amounts not to exceed a total of seven million dollars to the Lake Andes-

Wagner/Marty II Irrigation Project to provide the nonfederal requirements for the federally authorized project. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

Indian lands shall be exempted from any payments due to the State of South Dakota. Notwithstanding the provisions of § 46A-1-66, no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment shall be due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources.

The loans authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1989, as indicated by engineering costs indices applicable for the type of construction involved.

**Source:** SL 1992, ch 254, § 14.

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46A-1-13.7. Sioux Falls Flood Control Project authorized. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a twenty-six million nine hundred thousand dollar Sioux Falls Flood Control Project as generally described in the report "Draft Feasibility Report--Local Flood Protection Big Sioux River and Skunk Creek at Sioux Falls, South Dakota" dated September 1991 is hereby authorized for the purpose of providing flood control protection along the Big Sioux River and Skunk Creek in the city of Sioux Falls.

**Source:** SL 1992, ch 254, § 17.

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46A-1-13.8. Black Hills Water Management Project and Black Hills Hydrology Study authorized. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, the ten million dollar Black Hills Water Management Project and the Black Hills Hydrology Study are hereby authorized for the purpose of assessing and meeting present and future water needs in the counties of Butte, Meade, Lawrence, Pennington, Custer, and Fall River.

**Source:** SL 1992, ch 254, § 18.

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46A-1-13.9. Repealed by SL 2013, ch 166, § 115.

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46A-1-13.10. Lewis and Clark Rural Water System authorized. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of the South Dakota project features of a two hundred seventy-two million eight hundred thousand dollar Lewis and Clark Rural Water System as generally described in the report "Feasibility Level Evaluation of a Missouri River Regional Water Supply for South Dakota, Iowa and Minnesota" dated September 1993, is hereby authorized for the purposes of providing safe and adequate municipal, rural and industrial water supplies as well as mitigation of wetlands and water conservation in the counties of Union, Clay, Lincoln, Turner, Minnehaha, McCook, and Lake.

There is hereby authorized state grants in the amount of nineteen million six hundred eighty-five thousand dollars (\$19,685,000), or so much thereof as may be necessary, to provide the State of South Dakota's portion of the nonfederal matching requirement for the Lewis and Clark Rural Water System. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature. Grant terms and conditions shall be set by the Board of Water and Natural Resources.

The grant authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after September 1993, as indicated by engineering costs indices applicable for the type of construction involved.

For purposes of § 1.103-1 of the federal income tax regulations, Lewis and Clark Rural Water System, Inc. is hereby recognized as a corporation authorized to act on behalf of its members, including its South Dakota member governmental units, to provide drinking water to their communities, and to issue debt obligations in its own name on behalf of some or all of its members. However, no South Dakota member governmental unit is liable for the payment of principal of or interest on such obligations.

**Source:** SL 1993, ch 48, § 41; SL 2001, ch 242, § 6; SL 2003, ch 233, § 2; SL 2007, ch 256, § 2, eff. Feb. 28, 2007; SL 2008, ch 235, § 2, eff. Feb. 27, 2008.

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46A-1-13.11. Southern Black Hills Water System authorized. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a seventy-seven million eight hundred thousand dollar Southern Black Hills Water System as generally described in the report "Southern Black Hills Water System Preliminary Engineering Report", dated February, 2005, is hereby authorized for the purposes of providing safe and adequate municipal, rural, and industrial water supplies in the counties of Custer, Fall River, and Pennington.

There is hereby authorized from the South Dakota water and environment fund established pursuant to § 46A-1-60, a grant in the amount of twelve million dollars, or so much thereof as may be necessary, to provide the State of South Dakota's portion of the nonfederal matching requirement for the Southern Black Hills Water System. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61. Funds appropriated for the Southern Black Hills Water System since January 1, 2006, shall be considered as part of the State of South Dakota's portion of the match requirement. Grant terms and conditions shall be set by the Board of Water and Natural Resources.

**Source:** SL 2010, ch 217, § 3, eff. Mar. 23, 2010.

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46A-1-13.12. Belle Fourche irrigation upgrade project authorized. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a five million dollar Belle Fourche irrigation upgrade project to include replacement of the Indian Creek siphon, the Horse Creek siphon, the north canal control house, and the south canal control house, repair of the Belle Fourche River siphon, and removal of sediment from the south canal intake is hereby authorized for the purpose of stabilizing crop and forage production in central western South Dakota to offset the effects of drought conditions which naturally devastate South Dakota's economic viability.

The Board of Water and Natural Resources may provide loans under the state water resources management system revolving loan program in amounts not to exceed a total of two million five hundred thousand dollars to the Belle Fourche irrigation upgrade project. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61. Notwithstanding the provisions of § 46A-1-66, no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment is due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources. Notwithstanding the provisions of §§ 46A-6-31 to 46A-6-38, inclusive, no court approval or confirmation of the loans is required.

The Board of Water and Natural Resources may provide grants in amounts not to exceed two million five hundred thousand dollars, or so much thereof as may be necessary, to the Belle Fourche irrigation upgrade project. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

The loan and grant authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 2012, as indicated by engineering costs indices applicable for the type of construction involved.

**Source:** SL 2012, ch 221, § 4, eff. Mar. 2, 2012.

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46A-1-14. Annual report of activities of board--Contents. January first of every year, the Board of Water and Natural Resources shall make an annual report to the Governor and the Legislature setting forth all activities that it has engaged in during the preceding year. The board shall include within the annual report detailed accounts of all expenditures from the South Dakota water and environment fund created in § 46A-1-60, setting forth descriptions of the purposes of all such expenditures. These reports shall be filed on or before the first legislative day of each session and shall show schedules of expenditures and all other purposes and uses which have been realized and accomplished through the development of the system. The annual report shall also include recommendations on the levels and allocation of funding necessary to implement the state water plan.

**Source:** SL 1972, ch 241, § 20; SDCL Supp, § 46-17A-19; SL 1986, ch 291, § 2; SL 1992, ch. 254, § 8.

46A-1-15. Consideration of wild, scenic, and recreational rivers. The Board of Water and Natural Resources shall along with its review of the state water plan consider, in cooperation with the Game, Fish and Parks Commission, the designation of certain rivers or sections of rivers as "wild, scenic, and recreational rivers" upon which no development may occur that is detrimental to the natural and scenic beauty of the designated river.

**Source:** SL 1972, ch 241, § 21; SDCL Supp, § 46-17A-20; SL 2011, ch 165, § 288.

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46A-1-16. Repealed by SL 2015, ch 192, § 4.

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46A-1-17. Borrowing on interim notes--Expenses paid and loans made from proceeds--Issuance of notes. The district may borrow money and issue interim notes in evidence thereof to perform any of the duties authorized under this chapter, including the payment of expenses to be incurred for planning, architectural, engineering, legal, and financial services, the acquisition of a site or sites, construction of projects, and the purchase of fixtures and equipment the making of loans authorized by § 46A-1-18, the funding of debt service reserves and capitalized interest and the payment of the costs of issuance. The district may from time to time, and pursuant to appropriate resolution, issue interim notes to evidence such borrowings including interest on such borrowings and all necessary and incidental expenses in connection with any of the purposes provided for by this chapter until the date of the permanent financing.

**Source:** SL 1972, ch 241, § 25; SL 1979, ch 301, § 4; SDCL Supp, § 46-17A-23.

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46A-1-18. Loan of interim note proceeds to public entity or person for project that state or federal agency is committed to finance--Notes issued prior to financing arrangement. In addition to its other powers, the district may enter into financing arrangements with any public entity or person to loan the proceeds of the district's interim notes to any public entity or person for a project anywhere within this state. The district may adopt the necessary resolution for the loan without specific authorization of the Legislature and without regard to the limitations, provisions, or requirements of any other law except this chapter and chapter 46A-2, and in addition to the aggregate indebtedness otherwise authorized by the Legislature if an agency of the State of South Dakota or an agency or instrumentality of the United States government has committed itself to make a grant or loan to the public entity or person. Under this section, the district may only provide interim financing less than or equal to the combined federal and state grant or loan commitments on each project and may not apply the proceeds of the interim notes and financing to any purpose other than expenses allowed by § 46A-1-17 and the project for which the financing arrangement is made. The person or public entity receiving this interim financing may apply the proceeds of the district's interim notes to the project without specific authorization of the project by the Legislature.

Notes to make loans pursuant to this section may be issued before the district has entered into any financing arrangement if the principal amount of notes does not exceed the amount which the district estimates to be required to enter into financing arrangements and if a grant or loan commitment is received before the district lends note proceeds pursuant to any financing arrangement.

**Source:** SL 1979, ch 301, § 5; SL 1980, ch 309, § 1; SL 1980, ch 310, § 16; SDCL Supp, § 46-17A-23.1; SL 1983, ch 315, § 14; SL 2011, ch 165, § 289.

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46A-1-19. Interim financing--Proper authority required. Before entering into any financing arrangement under § 46A-1-18, the Board of Water and Natural Resources shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the person or public entity receiving such interim financing has the authority and power to construct that project, borrow these funds, and enter into the financing arrangement. The board shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been properly performed.

**Source:** SL 1979, ch 301, § 12; SDCL Supp, § 46-17A-23.2.

46A-1-20. Interim financing--Independent review of feasibility of project. Before issuing any interim notes pursuant to § 46A-1-18, the Board of Water and Natural Resources shall conduct an independent review of the feasibility of the project to ensure that projected water consumption, operation costs, construction costs, revenues and other statistics are reliable and that the project will be able to pay its expenses. The board shall state the findings of its independent review in a motion entered in the minutes of its proceedings.

**Source:** SL 1979, ch 301, § 14; SDCL Supp, § 46-17A-23.3.

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46A-1-21. Interim financing--Proceeds pledged as security--Assignment to district of rights to proceeds. Any interim financing arrangement under § 46A-1-18 shall provide that the person or public entity receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States as security for the interim notes issued pursuant to the financing arrangement. In addition, the execution of any interim financing arrangement under § 46A-1-18 shall constitute an assignment to the district of the right to receive the proceeds of the federal loan or grant so far as is necessary to secure the interim notes issued pursuant to the arrangement and in preference to any other obligation whatsoever of the person or public entity receiving the interim financing.

**Source:** SL 1979, ch 301, § 13; SDCL Supp, § 46-17A-23.4.

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46A-1-22. Terms of interim notes. Any resolution authorizing the issuance of such notes shall specify the principal amount, rate of interest and maturity date, but not to exceed five years from date of issue, and such other terms as may be specified in such resolution.

**Source:** SL 1972, ch 241, § 26; SDCL Supp, § 46-17A-24; SL 1986, ch 367.

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46A-1-23. Security for interim notes. All such notes and the interest on the notes may be secured by a pledge of, and payable from, any income and revenue (subject to the prior payment of the operation and maintenance expenses of any project) derived from the project to be undertaken with the proceeds of the notes; the proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under this chapter; the project itself; any funds, property, or obligation of any public entity or person with whom the district has entered into a financing arrangement under § 46A-1-18 in connection with the project; the proceeds of the notes; or any grant or loan to be made by an agency or instrumentality of the United States government in connection with the project.

**Source:** SL 1972, ch 241, § 27; SL 1979, ch 301, § 7; SDCL Supp, § 46-17A-25; SL 2011, ch 165, § 290.

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46A-1-24. Additional covenants and conditions to secure interim notes. The district, in order further to secure the payment of the interim notes, may make any other or additional covenants, terms, and conditions not inconsistent with the provisions of this chapter, and do anything that may be necessary or convenient or desirable in order to secure payment of its interim notes, or in the discretion of the district, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts, or things may not be enumerated in this chapter.

**Source:** SL 1972, ch 241, § 28; SDCL Supp, § 46-17A-26; SL 2011, ch 165, § 291.

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46A-1-25. Registration of interim notes--Interest payment--Redemption prior to maturity. The district may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the district may determine by the resolution authorizing their issue. Interest on the notes may be made payable semiannually, annually, or at maturity. The notes may be made redeemable, prior to maturity, at the option of the district, in the manner and upon the terms fixed by the resolution authorizing their issuance.

**Source:** SL 1972, ch 241, § 29; SDCL Supp, § 46-17A-27.

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46A-1-26. Execution and attestation of interim notes--Sale. The notes may be executed by the chairman of the board and shall be attested by the secretary of the Department of Environment and Natural Resources. The district may by resolution provide that any signatures, other than the authentication signature of the trustee, on the notes may be printed, lithographed, engraved, or otherwise reproduced on the notes. The notes shall be sold in a manner and at a price determined by the district by resolution.

**Source:** SL 1972, ch 241, § 30; SL 1979, ch 301, § 8; SDCL Supp, § 46-17A-28; SL 1985, ch 352; SL 2011, ch 165, § 292.

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46A-1-27. Bond provisions applicable to interim financing. The provisions of §§ 46A-1-38 to 46A-1-44, inclusive, § 46A-1-46, § 46A-1-49, § 46A-1-54, §§ 46A-1-56 to 46A-1-59, inclusive, and § 46A-1-70, relating to bonds shall also apply to notes issued pursuant to § 46A-1-17.

**Source:** SL 1979, ch 301, § 9; SDCL Supp, § 46-17A-28.1.

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46A-1-28. Payment of interim notes on issue of revenue bonds. Contemporaneously with the issue of revenue bonds as provided by this chapter, all interim notes, even though they may not then have matured, shall be paid, both principal and interest to date of payment, from the funds derived from the sale of revenue bonds for the permanent financing and such interim notes shall be surrendered and canceled.

**Source:** SL 1972, ch 241, § 31; SDCL Supp, § 46-17A-29.

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46A-1-29. Plan for project financing to be submitted to Legislature--Authorization for bond issuance--Amount of bonds. Upon presentation of a request to authorize the construction of a water facility of the state water resources management system by the Board of Water and Natural Resources in accordance with § 46A-1-11, the board shall provide a plan for financing the construction of the project to the Legislature, including, in the case of a project to be financed under § 46A-1-49, a general description of the anticipated financing agreement with the participating persons or public entities. If the board deems it necessary to request authorization for the issuance of bonds by the district, the Legislature shall determine whether such authorization shall be given in the same act as it authorizes the inclusion of construction of the project as part of the state water resources management system. If the Legislature authorizes the issuance of bonds for the construction of the facilities, it shall specify the amount of bonds that may be issued by the district for construction of the project, including any amount of bonds issued to fund a debt service reserve for the bonds or for capitalized interest during construction of the project. Pursuant to authorization by the Legislature, the district may issue bonds to acquire or construct or arrange for construction of, or to enter into a financing agreement with persons or public entities for, any one project, or more than one, or to refund bonds heretofore or hereafter issued for each project or facility or to fund a debt service reserve for the bonds or for capitalized interest during construction of the project and to provide for the security and payment of the bonds and for the rights of the holders of the bonds. The board may issue bonds in the amount of up to thirty percent greater than the specific amount authorized by the Legislature for financing any specific project if increases in construction costs, changes in engineering designs, or minor changes in the area or number of persons served by a project require such an increase to complete the project, and if the amount of funds obtained from the district through its bonding power does not exceed the authorization of the Legislature by more than thirty percent for any specific project.

**Source:** SL 1972, ch 241, § 24; SL 1977, ch 377, § 1; SL 1980, ch 310, § 6; SDCL Supp, § 46-17A-30; SL 2011, ch 165, § 293.

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46A-1-30. Purposes for bond issuance. The district may issue bonds authorized by the Legislature pursuant to § 46A-1-29 or by § 46A-1-31 for the following purposes, which are hereby determined to be in the public

interest and to constitute lawful and public purposes:

- (1) To acquire, construct, plan, or arrange for acquisition and construction of any one project, or more than one;
- (2) To issue bonds to effectuate § 46A-2-16;
- (3) To refund bonds heretofore and hereafter issued, including the refunding of bonds in advance of their call or maturity date. The refunding bonds may be partially or wholly secured by and payable from obligations of the United States government or the income from such obligations;
- (4) To fund a debt service reserve for the bonds;
- (5) To provide for capitalized interest during the estimated construction period of the projects and for a period of one year thereafter;
- (6) For any of the preceding purposes;
- (7) To enter into financing agreements to make loans pursuant to § 46A-1-49;
- (8) To provide for the payment of the costs of issuance of the bonds. At no time may district indebtedness exceed the aggregate indebtedness authorized by the Legislature pursuant to § 46A-1-29, plus any additional amount authorized by that section, less the cumulative regular amortization payments made on each bond issue, except as specifically provided by § 46A-1-31. The bonds shall be authorized by resolution of the Board of Water and Natural Resources. The resolution may provide that any signatures, other than the authentication signature of the trustee, on the bonds may be printed, lithographed, engraved, or otherwise reproduced on the bond;
- (9) To purchase or otherwise finance or provide for the purchase or payment of loans made by the United States Department of Agriculture, as provided in § 46A-1-31;
- (10) To purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations of any public entity or person in connection with the water pollution control revolving fund program and the drinking water revolving fund program, as provided in § 46A-1-31.

**Source:** SL 1972, ch 241, § 32; SL 1976, ch 282, § 1; SL 1977, ch 369, § 2; SL 1977, ch 377, § 2; SL 1980, ch 310, § 7; SL 1981 (2d SS), ch 1, § 18; SDCL Supp, § 46-17A-31; SL 1988, ch 363, § 1; SL 1989, ch 385, § 20; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1994, ch 347, § 1; SL 2011, ch 165, § 294.

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46A-1-31. Bond issuance to finance or refinance statewide water plan projects--Bond issuance to purchase or finance loans by United States Department of Agriculture or to fund revolving fund programs under Clean Water Act or Safe Drinking Water Act. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in an amount not to exceed in aggregate eight million dollars at any time for the purpose of financing or refinancing projects as defined in subdivision 46A-2-4(5) that are components of the statewide water plan subject to the provisions of §§ 46A-1-49 to 46A-1-52, inclusive. In addition to the aggregate indebtedness authorized by the Legislature and Board of Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may issue bonds in any amount at any time for the purpose of purchasing or otherwise financing or providing for the purchase or payment of loans made by the United States Department of Agriculture to any person or public entity, whether or not the person or public entity or the project financed with the loan are located in South Dakota or formed under or recognized by South Dakota law, as community facilities loans or water and waste disposal loans. The purchasing, financing, or payment activities are hereby determined to be components of the state water plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with the persons or public entities to secure and provide for the payment of the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may make payments or deposits for the purchase or payment of the loans from funds obtained from the persons or public entities, whether or not bonds have been issued. The purchase or payment of loans for persons or public entities or projects located outside of the State of South Dakota is hereby authorized and declared to be a public purpose if, at the discretion and in the determination of the district, the purchase or payment is expected to result in economies of scale, fees, interest savings, financing, or other benefits to the district, South Dakota persons, or public entities or the State of South Dakota. The district, in the proceedings for the issuance of the bonds, shall establish the manner in which the trustee shall manage and disperse any savings for the benefit of the persons and public entities whose community facilities loans and water and waste disposal loans have been purchased or prepaid by the district. In addition to the aggregate indebtedness authorized by the Legislature and the Board of

Water and Natural Resources pursuant to §§ 46A-1-29 and 46A-1-30, the district may also issue bonds in any amount at any time for the purpose of funding all or part of the revolving funds required for either the state water pollution control revolving fund program or the state drinking water revolving fund program or both under either the federal Clean Water Act, as amended to January 1, 2011, or federal Safe Drinking Water Act, as amended to January 1, 2011, or both. The bonds issued for these revolving fund programs shall be used to purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations, including the refinancing of obligations previously issued or for projects previously completed. The purchasing, financing, or payment activities are hereby determined to be components of the state water facilities plan and are authorized without regard to § 46A-2-20. The district may enter into financing agreements with the persons or public entities to secure and provide for the payment of the bonds, without regard to § 46A-2-20 or §§ 46A-1-63.1 to 46A-1-69, inclusive. The district may pledge or assign to or hold in trust for the benefit of the holder or holders of the bonds those moneys appropriated by the Legislature for the purpose of funding state contributions to the state water pollution control revolving fund program and the state drinking water revolving fund program. The moneys may be held and invested pursuant to a trust agreement for the payment of the principal of, premium, if any, and interest on, the bonds.

**Source:** SL 1977, ch 377, § 3; SDCL Supp, § 46-17A-31.1; SL 1984, ch 288, § 16; SL 1988, ch 363, § 2; SL 1989, ch 385, § 21; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1994, ch 347, § 2; SL 2011, ch 165, § 295; SL 2012, ch 216, § 1.

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46A-1-32. Terms of bonds. The bonds may be issued and sold in one or more series, may be in such amounts and at such prices, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times not exceeding fifty years from the respective dates thereof, may mature in such amount or amounts, may bear interest at such times and at such fixed or variable rate or rates as shall be determined by the district and without regard to any interest rate limitation appearing in any other law, may be in such form, either coupon or registered as to principal only or as to both principal and interest, may carry such registration privileges (including the conversion of a fully registered bond to a coupon bond or bonds and the conversion of a coupon bond to a fully registered bond), may be executed in such manner, may be made payable in such medium of payment, at such place or places within or without the state, may be callable or subject to purchase and retirement or tender and remarketing as determined by the district in any indenture, resolution, or other instrument. The district may take any action it deems appropriate for the purpose of implementing this section, including establishing parameters referencing current market conditions or published indices in connection with establishing interest rates, imposing maximum interest rate limitations, or establishing other parameters it deems appropriate, and may delegate the administration of specific functions within the established parameters. The district may enter into arrangements to provide additional security and liquidity for bonds, and to limit, reduce, or manage interest rate exposure with respect to bonds issued or to be issued.

**Source:** SL 1972, ch 241, § 33; SDCL Supp, § 46-17A-32; SL 2008, ch 231, § 1.

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46A-1-33. Pledge of revenues to secure payment of bonds. In connection with the issuance of any bonds under this chapter, and in order to secure the payment of any such bonds and the interest thereon, the district shall have the power to provide that bonds issued under this chapter, subject only to the prior payment of the operation and maintenance expenses of any project, shall be payable from and secured by a pledge of and lien on all or any part of the income and revenues derived from, and to pledge and assign to, or in trust for the benefit of, the holder or holders of bonds issued under this chapter all or any part of the income and revenues derived from:

- (1) Fees, rentals, and other charges as may be established by the district from persons using or being served by, or having the right to use or the right to be served by, or to operate, any project; and
- (2) Rentals from any facility or building leased to the United States of America;
- (3) Payments or obligations of any public entity or person pursuant to a financing agreement authorized by § 46A-1-49.

**Source:** SL 1972, ch 241, § 34; SL 1980, ch 310, § 8; SDCL Supp, § 46-17A-33.

46A-1-33.1. District may contract to manage payment or interest rate risk for bonds. The district may enter into any contract that the district determines necessary or appropriate to manage payment or interest rate risk for bonds issued pursuant to this chapter, the investment of proceeds, or other funds of the district. The contracts may include: interest rate exchange agreements; contracts providing for payment or receipt of funds based on levels of or changes in interest rates; contracts to exchange cash flows or series of payments; or contracts incorporating interest rate caps, collars, floors, or locks.

**Source:** SL 2003, ch 10, § 6.

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46A-1-34, 46A-1-35. Repealed by SL 2006, ch 2, §§ 33, 34.

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46A-1-35. Repealed by SL 2006, ch 2, § 34.

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46A-1-36. Covenant to collect revenues sufficient for retirement of bonds. The district may covenant with or for the benefit of the holder of any bonds issued under this chapter that if any such bonds remain outstanding and unpaid, the district will fix, maintain, and collect in such installments as may be agreed upon, all revenues authorized to be pledged under § 46A-1-33 until the bonds and accruing interest have been paid in accordance with their terms. The aggregate revenues shall be sufficient at all times to pay all necessary expenses of the operation and maintenance of any project, to pay the bonds at maturity and accruing interest on the bonds in accordance with their terms, and to create and maintain all reserves for the bonds as provided by the resolution authorizing the bonds.

**Source:** SL 1972, ch 241, § 35; SDCL Supp, § 46-17A-34; SL 2011, ch 165, § 296.

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46A-1-37. Covenant against alienation or encumbrance of projects while bonds outstanding. The district may covenant that if any of the bonds issued under this chapter remain outstanding and unpaid, the district will not, except upon such terms and conditions as may be determined, voluntarily create or cause to be created any debt, lien, mortgage, pledge, assignment, encumbrance, or other charge having priority to the lien of the bonds issued under this chapter upon any of the income and revenues derived from all revenues pledged pursuant to § 46A-1-33, or convey or otherwise alienate any project or the real estate upon which the project is located, except at a price sufficient to pay all the bonds issued for the project then outstanding and interest accrued on the bonds, and then only in accordance with any agreements with the holder of the bonds.

**Source:** SL 1972, ch 241, § 36; SDCL Supp, § 46-17A-35; SL 2011, ch 165, § 297.

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46A-1-38. Covenants as to management of project and accounting for funds. The district may covenant with or for the benefit of the holder of any bonds issued under this chapter as to all matters deemed advisable by the district including:

- (1) The purposes, terms, and conditions for the issuance of additional parity or junior lien bonds that may thereafter be issued, and for the payment of the principal, redemption premiums, and interest on the bonds;
- (2) The kind and amount of all insurance to be carried, the cost of which shall be charged as an operation and maintenance expense of any project;
- (3) The operation, maintenance, and management of any project to assure the maximum use and occupancy of the project; the accounting for, and the auditing of, all income revenue from, and all expenses of, any project; the employment of engineers and consultants; and the keeping of records, reports, and audits of any project;
- (4) The obligation of the district to maintain any project in good condition and to operate the project at all times in an economical and efficient manner;
- (5) The terms and conditions for creating and maintaining debt service funds, reserve funds, and such other special funds as may be created in the resolution authorizing the bonds, separate and apart from all other funds and accounts of the district and the institution;

(6) The procedure by which the terms of any contract with the holders of the bonds may be amended, the amount of bonds the holders of which must consent to the amendment, and the manner in which consent may be given;

(7) Providing the procedure for refunding the bonds;

(8) Such other covenants as may be deemed necessary or desirable to assure a successful operation of any project and the prompt payment of the principal of and interest upon the bonds so authorized.

**Source:** SL 1972, ch 241, § 37; SDCL Supp, § 46-17A-36; SL 2011, ch 165, § 298.

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46A-1-39. Trust agreements. The district may vest in a trustee the right to receive any part of the proceeds of the bonds and any part of the income and revenue pledged and assigned to, or for the benefit of, the holder of bonds issued under this chapter; the right to hold, apply, and dispose of the bonds; and the right to enforce any covenant made to secure or pay or in relation to the bonds. The district may execute and deliver a trust agreement setting forth the powers and duties of and the remedies available to the trustee, limiting the liabilities of the trustee, describing what occurrences constitute events of default, and prescribing the terms and conditions upon which the trustee or the holder of any specified amount or percentage of the bonds may exercise such right and enforce any such covenants and resort to remedies as may be appropriate.

**Source:** SL 1972, ch 241, § 38; SL 1980, ch 310, § 10; SDCL Supp, § 46-17A-37; SL 2011, ch 165, § 299.

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46A-1-40. Additional covenants to secure bonds or make them more marketable. The district may covenant to perform any act and to do anything as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the district tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated in this section or this chapter. It is the intention of this chapter to empower the district issuing bonds pursuant to this chapter to make all covenants, to perform all acts, and to do all things not inconsistent with the Constitution of the State of South Dakota.

**Source:** SL 1972, ch 241, § 39; SDCL Supp, § 46-17A-38; SL 2011, ch 165, § 300.

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46A-1-41. State general obligation not to be created. Nothing in this chapter shall be construed to authorize the district to contract a debt on behalf of, or in any way to obligate, the State of South Dakota, or to pledge, assign, or encumber in any way, or to permit the pledging, assigning, or encumbering in any way, of appropriations made by the Legislature of the State of South Dakota unless the Legislature specifically provides otherwise.

**Source:** SL 1972, ch 241, § 40; SDCL Supp, § 46-17A-39.

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46A-1-42. Bonds not a state obligation--Payment restricted to revenues. Any bonds issued pursuant to this chapter are obligations of the district payable only in accordance with the terms of the bonds and are not obligations general, special, or otherwise, of the State of South Dakota. Such bonds do not constitute a debt, legal or moral, of the State of South Dakota, and are not enforceable against the state. Payment of the bonds is not enforceable out of any funds of the district other than the income and revenues pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

**Source:** SL 1972, ch 241, § 41; SDCL Supp, § 46-17A-40; SL 2011, ch 165, § 301.

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46A-1-43. Recording not required for bond protection. Neither the resolution authorizing the bonds nor any financing statement or other instrument or document need be filed or recorded in any public records in order to perfect the lien on the pledge of the revenues to pay the bonds as against third parties.

**Source:** SL 1972, ch 241, § 42; SDCL Supp, § 46-17A-41.

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46A-1-44. Validity of bonds not dependent upon signing officers remaining in office or regularity of proceedings. The bonds bearing the signatures of officers of the district in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of and payment for the bonds any person whose signature appears on the bonds may have ceased to be an officer. The validity of the bonds is not dependent on nor affected by the validity or regularity of any proceedings to acquire any project financed by the bonds, or to refund outstanding bonds, or taken in connection with the bonds.

**Source:** SL 1972, ch 241, § 43; SDCL Supp, § 46-17A-42; SL 2011, ch 165, § 302.

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46A-1-45. Sale of bonds--Procedure and price. All bonds issued under this chapter shall be sold in a manner and for a price or prices as the district shall determine.

**Source:** SL 1972, ch 241, § 44; SL 1980, ch 310, § 11; SDCL Supp, § 46-17A-43; SL 1988, ch 363, § 3.

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46A-1-46. Negotiability of bonds. The coupon bonds shall be fully negotiable within the meaning of the Uniform Commercial Code, Title 57A of South Dakota Codified Laws.

**Source:** SL 1972, ch 241, § 45; SDCL Supp, § 46-17A-44.

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46A-1-47. Bonds as legal investments for fiduciaries and financial institutions. The state and all counties, municipal corporations, political subdivisions, and public bodies, and public officers of any thereof, all banks, subject to applicable investment limitations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all personal representatives, conservators, trustees, and other fiduciaries may legally invest any debt service funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this chapter, it being the purpose of this section to authorize the investment in such bonds of all debt service, insurance, retirement, compensation, pension, and trust funds, whether owned or controlled by private or public persons or officers. However, nothing in this section may be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities for purchase or investment.

**Source:** SL 1972, ch 241, § 46; SDCL Supp, § 46-17A-45; SL 1993, ch 213, § 242; SL 1995, ch 167, § 188.

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46A-1-48. Bond and note proceeds--Payment into state treasury not required. Notwithstanding the provisions of any other law, no moneys derived from the sale of bonds or notes issued under the provisions of this chapter, or pledged or assigned to or in trust for the benefit of the holder or holders of the bonds or notes, may be required to be paid into the state treasury.

**Source:** SL 1972, ch 241, § 47; SL 1976, ch 282, § 5; SL 1980, ch 310, § 12; SDCL Supp, § 46-17A-46; SL 2011, ch 165, § 303.

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46A-1-49. Financing agreements to lend bond proceeds--Board resolution. In addition to its other powers, the district may, by appropriate resolution of the Board of Water and Natural Resources, enter into financing agreements with any public entity or person to loan the proceeds of the district's bonds to any public entity or person for a project within or without a water development district, subject to the requirement of § 46A-2-20, without regard to the limitations, provisions, or requirements of any other law except chapter 46A-2 and this chapter. The persons or public entities receiving this financing may apply the borrowed funds to the project without further authorization of the project by the Legislature.

**Source:** SL 1980, ch 310, § 2; SDCL Supp, § 46-17A-46.1; SL 1984 (SS), ch 1, § 64; SL 2011, ch 165, § 304.

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46A-1-50. Financing agreements--Provisions to provide for and secure repayment of bonds and loan. Any financing agreement under § 46A-1-49 shall provide for repayment of the loan through payments sufficient to pay the principal of, premium if any, and interest on the bonds issued in connection with the agreement and, in order to provide for and secure the repayment of the bonds and the amounts owing under the financing agreement, may contain provisions requiring, among other things, any one or more parties to:

- (1) Incur a general obligation and to exercise its power to tax or levy special assessments;
- (2) Incur a limited obligation payable only from designated sources;
- (3) Pledge, assign, or mortgage any income and revenue (subject to the prior payment of the operation and maintenance expenses of the project) derived from the project; any fund, property or obligation related to such project; the loan proceeds themselves; any grant or loan received or to be received by a party; and the project, including real estate;
- (4) Create and maintain a reserve fund or funds through the levy of taxes or other suitable means within a party's power, for prevention of default;
- (5) Properly manage the project for the protection of the bondholders as provided in subdivisions 46A-1-38(2), (3), (4), and (8);
- (6) Refrain from creating or causing to be created any debt, lien, mortgage, pledge, assignment, encumbrance, or other charge upon any income, revenues or property;
- (7) Refrain from conveying or otherwise alienating project facilities or the real estate upon which the project is located or any property that is pledged or assigned;
- (8) Deposit with a trustee or trustees all or any part of the proceeds from the sale of the bonds or all or any part of the income and revenue pledged or assigned for the benefit of the bondholder; and
- (9) Perform any and all acts and do any and all things within the party's legal capacity as may be necessary, convenient, or desirable in order to provide for and secure the repayment of the bonds and the amounts owing under the financing agreement, notwithstanding that such terms are not enumerated herein.

**Source:** SL 1980, ch 310, § 3; SL 1981 (2d SS), ch 1, § 21; SDCL Supp, § 46-17A-46.2.

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46A-1-51. Financing agreements--Proper authority required. Before entering into any financing agreement under § 46A-1-49, the Board of Water and Natural Resources shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the person or public entity receiving such financing has the authority and power to construct the project, borrow these funds and enter into the financing agreement. The board shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority have been properly performed.

**Source:** SL 1980, ch 310, § 4; SDCL Supp, § 46-17A-46.3.

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46A-1-52. Financing agreements--Independent review of feasibility of project. Before entering into any financing agreement under § 46A-1-49, the Board of Water and Natural Resources shall conduct an independent review of the feasibility of the project to ensure that projected water consumption, operation costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its costs and expenses. The board shall state the findings of its independent review in a motion entered in the minutes of its proceedings.

**Source:** SL 1980, ch 310, § 5; SDCL Supp, § 46-17A-46.4.

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46A-1-53. Agreement as to custody and disposition of moneys. The provisions of § 46A-1-48 do not limit the power of the district to agree in connection with the issuance of any of its bonds as to the custody and the disposition of the moneys received from the sale of the bonds or from the income and revenues pledged or assigned to or in trust for the benefit of the holder of the bonds.

**Source:** SL 1972, ch 241, § 48; SDCL Supp, § 46-17A-47; SL 2011, ch 165, § 305.

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46A-1-54. Remedies of bondholders. The provisions of this chapter and of any resolution or other proceeding authorizing the issuance of bonds shall constitute a contract with the holders of such bonds and the

provisions thereof shall be enforceable either in law or in equity, by suit, action, mandamus, or other proceeding in any court of competent jurisdiction to enforce and compel the performance of all duties required by this chapter and by any resolution authorizing the issuance of bonds adopted responsive hereto.

**Source:** SL 1972, ch 241, § 49; SDCL Supp, § 46-17A-48.

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46A-1-55. Persons executing district notes or bonds not subject to personal liability. Neither the members of the Board of Water and Natural Resources nor any other person executing the notes or bonds issued by the district shall be subject to personal liability or accountability by reason of the issuance thereof or any review or finding of feasibility under § 46A-1-20 or 46A-1-52.

**Source:** SL 1981 (2d SS), ch 1, § 20; SDCL Supp, § 46-17A-48.1.

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46A-1-56. Refunding bonds authorized for matured obligations. The district may issue negotiable refunding bonds for the following purposes:

- (1) To refund unpaid matured bonds;
- (2) To refund unpaid matured coupons evidencing interest upon its unpaid matured bonds; and
- (3) To refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds.

**Source:** SL 1972, ch 241, § 50; SDCL Supp, § 46-17A-49; SL 2011, ch 165, § 306.

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46A-1-57. Sale of refunding bonds for matured obligations--Application of proceeds--Cancellation of instruments paid. Refunding bonds issued pursuant to § 46A-1-56 may be sold at such price as the district shall determine and the proceeds received at any such sale shall be used to pay the bonds, interest coupons, and interest not represented by coupons, if any. Bonds and interest coupons which have been paid shall be canceled and the obligation for interest, not represented by coupons, which has been discharged, shall be evidenced by a written acknowledgment of the exchange or payment thereof.

**Source:** SL 1972, ch 241, § 51; SDCL Supp, § 46-17A-50; SL 1988, ch 363, § 4; SL 1989, ch 385, § 22.

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46A-1-58. Refunding bonds authorized for unmatured obligations. The district may issue negotiable refunding bonds under the provisions of this chapter to refund bonds at or before their maturity or which by their terms are subject to redemption before maturity, or both, in an amount necessary to refund:

- (1) The principal amount of the bonds to be refunded;
- (2) The interest to accrue up to and including the maturity date or dates, or to the next succeeding redemption date of the bonds; and
- (3) The applicable redemption premiums, if any.

**Source:** SL 1972, ch 241, § 52; SDCL Supp, § 46-17A-51; SL 2011, ch 165, § 307.

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46A-1-59. Sale of refunding bonds for unmatured obligations--Use of proceeds. Refunding bonds issued pursuant to § 46A-1-58 may be sold at a price determined by the district. All proceeds received at the sale of the refunding bonds (excepting the accrued interest received) shall be used:

- (1) If the bonds to be refunded are then due, for the payment of the bonds;
- (2) If the bonds to be refunded are voluntarily surrendered with the consent of the holder or holders of the bonds, for the payment of the bonds;
- (3) If the bonds to be refunded are then subject to prior redemption by their terms, for the redemption of the bonds;
- (4) If the bonds to be refunded are not then subject to payment or redemption, to purchase direct obligations of the United States of America if the obligations will mature at such times, with interest on the obligations or the proceeds received from the obligations, to provide funds adequate to pay when due or called

for redemption before maturity the bonds to be refunded, together with the interest accrued on the bonds and any redemption premium due on the bonds. The proceeds or obligations of the United States of America shall, with all other funds legally available for such purpose, be deposited in escrow with a banking corporation, or national banking association, located in and doing business in the State of South Dakota, with power to accept and execute trusts, or any successor thereto, which is also a member of the federal deposit insurance corporation and of the federal reserve system, to be held in an irrevocable trust solely for and until the payment and redemption of the bonds so to be refunded. Any balance remaining in the escrow after the payment and retirement of the bonds to be refunded shall be returned to the district to be used and held for use as revenues pledged for the payment of the refunding bonds; or

(5) For any combination of the purposes specified in subdivisions (1) to (4), inclusive, of this section.

**Source:** SL 1972, ch 241, § 53; SDCL Supp, § 46-17A-52; SL 1988, ch 363, § 5; SL 1989, ch 385, § 23; SL 2011, ch 165, § 308.

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46A-1-60. Water and environment fund--Establishment--Moneys in fund. There is hereby established in the state treasury a special capital projects fund to be designated as the South Dakota water and environment fund. This fund shall consist of all moneys from all lawful public and private sources, including legislative appropriations, federal grants for capitalization of either a state water pollution control revolving fund or a state drinking water revolving fund or both, interest on investments, and principal and interest on loans made from the fund received by the district that are available for water facilities as provided by this chapter. The water and environment fund need not include any funds which are not required to be deposited therein as provided in § 46A-1-48.

**Source:** SL 1972, ch 241, § 54; SL 1982, ch 316, § 1; SDCL Supp, § 46-17A-53; SL 1988, ch 363, § 6; SL 1988, ch 364, § 3; SL 1992, ch 254, § 8; SL 1994, ch 347, § 3.

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46A-1-60.1. Water pollution control revolving fund program and state drinking water revolving fund program established--Program subfunds created--Deposits into subfunds and use thereof. The state water pollution control revolving fund program and the state drinking water revolving fund program are hereby established. Program subfunds shall be created within the water and environment fund established pursuant to § 46A-1-60. The required subfunds shall be maintained separately, and all federal, state, and other funds for use in the program shall be deposited into the respective subfund, including all federal grants for capitalization of either a state water pollution control revolving fund or a state drinking water revolving fund or both, all repayments of assistance awarded from the subfund, interest on investments made on money in the subfund, proceeds of discretionary bond issues allowed by § 46A-1-31, and principal and interest on loans made from the fund. Money in the subfund may be used only for purposes authorized under federal law. The subfund may be pledged or assigned by the district to or in trust for the holder or holders of the bonds of the district and may be transferred to and held by a trustee or trustees pursuant to § 46A-1-39.

The board shall promulgate rules pursuant to chapter 1-26, to implement the provisions of this section consistent with the requirements of federal law in order for an approved state water pollution control revolving fund or a state drinking water revolving fund to become eligible for grant funds from the United States Environmental Protection Agency.

**Source:** SL 1988, ch 364, § 1; SL 1989, ch 385, § 24; SL 1992, ch 254, § 8; SL 1994, ch 347, § 4; SL 1995, ch 251, § 29.

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46A-1-60.2. Disbursements from and administration of water pollution control revolving fund program and state drinking water revolving fund program--Sections 46A-1-61 to 46A-1-69 inapplicable. Funds from the state water pollution control revolving fund program and the state drinking water revolving fund program shall be disbursed and administered according to rules promulgated by the Board of Water and Natural Resources pursuant to chapter 1-26, § 46A-1-65 and the provisions of §§ 46A-1-60 to 46A-1-60.3, inclusive. Sections 46A-1-61 to 46A-1-69, inclusive, do not apply to the subfund of the water and environment fund or loans therefrom

pursuant to the state water pollution control revolving fund program and the drinking water revolving fund program described in §§ 46A-1-60 to 46A-1-60.3, inclusive.

The board shall promulgate rules pursuant to chapter 1-26, to implement the provisions of this section consistent with the requirements of federal law in order for an approved state water pollution control revolving fund or a state drinking water revolving fund to become eligible for grant funds from the United States Environmental Protection Agency.

**Source:** SL 1988, ch 364, § 2; SL 1989, ch 385, § 25; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1992, ch 254, § 8; SL 1993, ch 256, § 62; SL 1994, ch 347, § 5; SL 1995, ch 251, § 30.

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46A-1-60.3. Rules for selection of projects to receive funds from water pollution control revolving fund program and state drinking water revolving fund program and administration of same. The Board of Water and Natural Resources may, by rules promulgated pursuant to chapter 1-26, establish criteria and procedures for the selection of projects to receive funds from the state water pollution control revolving fund program and the state drinking water revolving fund program and for the administration of the programs.

**Source:** SL 1988, ch 364, § 4; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1994, ch 347, § 6.

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46A-1-60.4, 46A-1-60.5. Executed

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46A-1-61. Authorization required for disbursements from fund--Form of appropriation from fund--Limit on grants. All money disbursed from the water and environment fund shall be authorized by an act of the Legislature for projects approved as part of the state water resources management system or for ongoing programs that have been or shall be established by the Legislature for the purpose of managing the state's water resources. All appropriations from the fund shall be in the form of loans unless otherwise directed by the Legislature. A grant from the fund made after July 1, 1982, for any project may not exceed eighty percent of the nonfederal share of expenditures for that project.

**Source:** SL 1972, ch 241, § 55; SL 1981 (2d SS), ch 3, § 3; SL 1982, ch 316, § 2; SDCL Supp, § 46-17A-54; SL 1983, ch 315, § 15; SL 1986, ch 291, § 3; SL 1992, ch 254, §§ 8, 10; SL 1993, ch 334, § 4; SL 2006, ch 2, § 35.

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46A-1-62. Disbursements from capital projects fund. Disbursements from the South Dakota water and environment fund shall be on warrants drawn by the state auditor pursuant to vouchers approved by the secretary of the Department of Environment and Natural Resources.

**Source:** SL 1972, ch 241, § 54; SDCL Supp, § 46-17A-55; SL 1992, ch 254, §§ 8, 98.

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46A-1-63. Energy industry use funds deposit--Deposit of funds recovered through lawsuit or settlement. Funds accruing to the district under contract or instrument of conveyance for energy industry use under § 46A-2-19, received under § 46A-2-25 or any other source unless otherwise provided by law, shall be deposited in the South Dakota water and environment fund established by § 46A-1-60. Funds, including damages, interest, costs, and fees, recovered as a result of any lawsuit or settlement involving a contract or instrument of conveyance for energy industry use in which the conservancy district was party, shall be deposited in the water and environment program, except that any attorney fees and costs associated with the lawsuit or settlement shall be deposited in the fund created pursuant to § 1-11-6.1.

**Source:** SL 1981 (2d SS), ch 3, § 1; SL 1982, ch 28, § 15; SDCL Supp, § 46-17A-53.1; SL 1985, ch 354, § 2; SL 1989, ch 385, § 25A; SL 1992, ch 254, § 8.

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46A-1-63.1. Consolidated water facilities construction program--Disbursements. The state consolidated water facilities construction program is hereby established. Under this program the Board of Water and Natural Resources may grant or loan funds from the water and environment fund or from the proceeds of its

discretionary bond issues allowed by § 46A-1-31 for construction of projects included in the state water facilities plan. Disbursements made through the consolidated water facilities construction program shall conform to the provisions of §§ 46A-1-61 and 46A-2-3.

**Source:** SL 1986, ch 291, § 4; SL 1987, ch 29, § 98; SL 1989, ch 385, § 13; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1992, ch 254, § 8; SL 1993, ch 34, § 8.

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46A-1-63.2, 46A-1-63.3. Expired

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46A-1-64. Limit on loans or grants to projects in water facilities plan--Security for loans. In administering the consolidated water facilities construction program, the Board of Water and Natural Resources may loan or grant a sum equal to the construction cost as estimated by the board but not to exceed two million dollars to any project in the state water facilities plan without specific authorization of the Legislature. Loans shall be secured by the best security position available. A pledge of assets owned by the entity receiving a loan and project revenues shall constitute sufficient minimum security for loans under this section.

**Source:** SL 1976, ch 282, § 3; SL 1977, ch 378; SDCL Supp, § 46-17A-54.1; SL 1983, ch 315, § 16; SL 1986, ch 291, § 5; SL 1989, ch 385, § 14; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 2015, ch 224, § 8, eff. Mar. 12, 2015.

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46A-1-65. Criteria for selection of projects to receive loans or grants--Regulation of loans or grants. The Board of Water and Natural Resources may establish by rules enacted pursuant to the provisions of chapter 1-26 criteria for the selection of water resources projects to receive loans or grants pursuant to § 46A-1-64 or to receive other loans or grants from the water and environment fund and for the regulation of the terms, conditions, and administration of such loans or grants.

**Source:** SL 1982, ch 316, § 3; SDCL Supp, § 46-17A-54.2; SL 1983, ch 315, § 10; SL 1986, ch 291, § 6; SL 1987, ch 328, § 4; SL 1992, ch 254, § 8.

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46A-1-66. Interest on loans. Loans made from the South Dakota Water and Environment Program by the South Dakota Conservancy District shall bear no interest until the Water Management Board has issued its final decision to grant a permit to appropriate water under chapter 46-5 or chapter 46-6 for the project for which the loan is made. Except as provided in § 46A-1-69, beginning with the date of the final decision of the Water Management Board, a loan from the water and environment fund shall bear interest at an annual rate not to exceed ten percent as determined by the Board of Water and Natural Resources. In establishing the interest rate, however, the Board of Water and Natural Resources shall give due regard to the maximum rate of interest which the project may economically afford.

**Source:** SL 1982, ch 316, § 6A; SDCL Supp, § 46-17A-54.3; SL 1983, ch 315, § 12; SL 1992, ch 254, § 8.

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46A-1-67. Term of loans--Capitalization and refinancing of loans for purposes other than construction. Loans from the South Dakota water and environment fund shall be for a term of years established by the board but may not exceed forty years for construction loans except as provided in § 46A-1-69, the useful life of the equipment for equipment loans, or seven years for loans for other purposes. Loans made for purposes other than construction may, however, be capitalized and refinanced as construction loans when the project proceeds to construction.

**Source:** SL 1982, ch 316, § 6B; SDCL Supp, § 46-17A-54.4; SL 1983, ch 315, § 13; SL 1992, ch 254, §§ 8, 11; SL 2016, ch 218, § 6, eff. Feb. 18, 2016.

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46A-1-67.1. Repayment of loan may be deferred until execution of contract for project construction. The provisions of § 46A-1-67 notwithstanding, repayment of any water project study loan that has been made or will

be made pursuant to chapter 46A-1 by agreement between the South Dakota Conservancy District and any public or private entity may be deferred until the entity has executed a contract with the United States for the purpose of constructing the water project that was the subject of the study loan agreement.

**Source:** SL 1987, chapter 330, § 2.

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46A-1-68. Loan terms set by Legislature. Sections 46A-1-66 and 46A-1-67 notwithstanding, the terms and conditions for loans for the actual construction of water resources projects contained in the state water resources management system shall be set by an act of the Legislature. This section shall not apply to loans made pursuant to § 46A-1-64.

**Source:** SL 1982, ch 316, § 6C; SDCL Supp, § 46-17A-54.5.

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46A-1-68.1. Deposit of money received from fund. Any person who receives money from the state water and environment fund may deposit such money and any associated matching funds in the state treasury.

**Source:** SL 1985, ch 354, § 1; SL 1992, ch. 254, § 8.

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46A-1-69. Suspension of annual installment due on loan for irrigation project. Upon application to the Board of Water and Natural Resources by a party to the loan agreement, the board may suspend payment of any annual installment due on a loan made for the purpose of constructing an irrigation project when the board finds that because the prices of the crops being irrigated in that year have been lower than the costs of producing those crops, the borrower will suffer undue financial hardship. In making such determination, the board shall consider the annual installment due and a reasonable return to the farmer as costs of production and shall further consider the effect previous years' prices should have had on the borrower's current financial condition. Interest shall not accrue on the loan over the period for which repayment is suspended, and the term of the loan shall be extended for the number of years annual payments are suspended.

**Source:** SL 1983, ch 315, § 11; SDCL Supp, § 46-17A-54.6.

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46A-1-70. Financial reporting of projects--Auditing. It is hereby required, for the purpose of financial reporting, each project to be owned and operated by the district will have its financial affairs, expenditures, and revenues, set out clearly in the financial statement and that the South Dakota auditor general will audit each project on a separate basis and attest to the aforementioned financial condition of each separate project as presented in the financial report. The Board of Water and Natural Resources may accept a financial audit performed by a qualified independent auditor in lieu of an audit by the auditor general. A financing arrangement or financing agreement entered into by the district may contain provisions requiring the person or public entity receiving the financing to submit financial reports and audits.

**Source:** SL 1972, ch 241, § 56; SL 1979, ch 301, § 11; SL 1981 (2d SS), ch 1, § 19; SDCL Supp, § 46-17A-56.

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46A-1-71. Legislative findings regarding need for program of statewide water development and financing. The Legislature finds that the proposed use of Madison formation water for widespread energy development in Wyoming presents an immediate threat to ground and surface water supplies and agricultural, domestic, environmental, and other beneficial water uses in western South Dakota; that prolonged and existing drought conditions in western South Dakota require the immediate provision of adequate and potable water supplies to municipalities and individual farms and ranches for human and animal consumption, and the failure to provide such water supplies endangers the economic viability of the agricultural industry in western South Dakota and the economy of the state as a whole; that the general lack of any water supply at all and the continued existence of water supplies containing radium, sulfates, iron, manganese, chlorides, fluorides, and nitrates constitutes an immediate and chronic hazard to the health, safety, and welfare of municipal and rural residents in the western portion of the state and requires the provision of adequate quantities of quality water to these residents; and that

the economy of the state as a whole has been ravaged by the effects of drought to the extent that a general program of statewide water development and financing is immediately necessary to prevent widespread economic disaster.

**Source:** SL 1981 (2d SS), ch 1, § 1; SL 1981 (2d SS), ch 2, § 1; SDCL Supp, § 46-17A-3.4.

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46A-1-72. Pipeline or aqueduct construction authorized--Use of water. Construction of a pipeline or aqueduct from a mainstream Missouri reservoir, the Missouri River itself, or adjacent aquifers to one or more communities in South Dakota is hereby authorized for a main delivery pipeline capable of delivering water sufficient to supply or supplement the needs of the communities and other private or commercial users purchasing water from the communities.

**Source:** SL 1981 (2d SS), ch 2, § 2; SDCL Supp, § 46-17A-3.5; SL 2004, ch 274, § 1.

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46A-1-73. Financing of pipelines or aqueducts--Bonds--Loans. The South Dakota Conservancy District is hereby authorized to issue bonds for pipelines or aqueducts pursuant to § 46A-1-72 in an amount not to exceed five hundred million dollars. However, no single pipeline or aqueduct project may exceed an amount of seventy-five million dollars. The district may enter into a financing agreement to loan the proceeds of the bonds as authorized by law. The financing agreement shall provide for repayment of the loan through payments sufficient to pay the principal of, premium, if any, and interest on the bonds. The loan shall be secured by contracts for the delivery and sale of water and such additional security as is necessary for repayment and to market the bonds. The bonds do not constitute an indebtedness of the state and do not constitute nor give rise to a pecuniary or moral liability of the state or a charge against its general credit or taxing powers. No tax revenues of the state, its people, or any of its political subdivisions may be in any manner obligated to pay for any portion of the construction or financing of the pipeline or aqueduct.

**Source:** SL 1981 (2d SS), ch 2, § 3; SDCL Supp, § 46-17A-3.6; SL 2004, ch 274, § 2.

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46A-1-74. Repealed by SL 2004, ch 274, § 3

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46A-1-75 to 46A-1-77. Repealed by SL 1986, ch 291, §§ 34 to 36

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46A-1-78. Moratorium on Oahe project construction as public policy of state--Study of alternate projects--Negotiation of settlement for land losses. It is hereby declared to be the public policy and in the best interests of the State of South Dakota and its people that a moratorium be placed upon further construction of the Oahe Irrigation Project and the congressional authorization be retained until studies and negotiations for acceptable alternate water development projects or a negotiated monetary settlement to compensate for land loss in South Dakota as a result of Missouri mainstem impoundments are completed.

**Source:** SL 1977, ch 370, § 1; SL 1978, ch 333, § 3; SDCL Supp, § 46-17A-3.1.

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46A-1-79. Transferred to § 46A-1-63.1

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46A-1-80. Repealed by SL 2006, ch 2, § 36.

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46A-1-80.1. Ownership of dredges and money transferred to South Dakota Lakes and Streams Association--Reversion. All interest, title, and rights of ownership in the two eight-inch dredges and one ten-inch dredge and associated equipment and any money are hereby transferred to the South Dakota Lakes and Streams Association, for use in the restoration of lakes and streams, with priority given to lakes and streams in South Dakota. This transfer is effective only for so long as the dredges are owned by the association and are used for the above purpose. If the South Dakota Lakes and Streams Association ceases to exist or apply the dredges to the above

purpose, all right, title, and interest in the dredges revert to the State of South Dakota. In the event of such reversion, the Bureau of Administration shall sell the dredges to the highest bidder, notwithstanding any requirements of chapter 5-24A in regard to minimum bids.

**Source:** SL 1993, ch 48, § 46; SL 2002, ch 202, § 1; SL 2006, ch 2, § 37; SL 2011, ch 2, § 147.

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46A-1-81. Amount of funds required for dredge maintenance and repair and other expenses. The Board of Water and Natural Resources, in any contract with the local project sponsor of a dredging project, may establish the amount of funds required for dredge maintenance and repair and other expenses associated with the project, pursuant to section 1A of chapter 369 of the 1986 Session Laws.

**Source:** SL 1987, ch 331, § 2.

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46A-1-82. Environment and water resources trust fund established--Subfund. The South Dakota environment and water resources trust fund is hereby established. A separate trust subfund shall be created within the South Dakota water and environment fund established pursuant to § 46A-1-60. The purpose for which the trust is established is to provide a perpetual source of revenue to serve all of the purposes for which funds may be expended from the water and environment fund. The principal of the trust fund shall be conserved in perpetuity or until the Legislature shall otherwise provide and may not be expended. Interest earned on the fund shall accrue to the water and environment fund and be disbursed in conformance with § 46A-1-61.

**Source:** SL 1989, ch 306, § 63; SL 1992, ch 254, § 8.

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46A-1-82.1. Repealed by SL 1996, ch 47, § 8

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46A-1-83. State solid waste management program established. The state solid waste management program is hereby established. Under this program the Board of Water and Natural Resources may grant or loan such funds from the water and environment fund established pursuant to § 46A-1-60 for the purpose of solid waste planning and management. Disbursements made through the solid waste management program shall conform to the provisions of § 46A-1-61 and the rules promulgated pursuant to § 46A-1-84.

**Source:** SL 1989, ch 306, § 64; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1992, ch 254, § 8; SL 1996, ch 219, § 4.

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46A-1-83.1. Repealed by SL 1995, ch 251, § 19A

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46A-1-83.2. Expenditure of fees deposited in environment and water resources trust fund--Access to fund--Appropriation. The secretary may expend such sums as are deposited in the South Dakota environment and water resources trust fund pursuant to § 34A-6-1.17 by any large-scale solid waste disposal facility subject to the fee established in § 34A-6-1.17 as are necessary to conduct the inspections and other activities required under § 34A-6-57. The secretary's access to these funds does not require application or grant from the Board of Water and Natural Resources. Moneys expended by the secretary for these purposes shall be appropriated through the normal budget process.

**Source:** SL 1992, ch 254, § 50R; SDCL § 34A-6-90; SL 1993, ch 257, § 2.

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46A-1-83.3. Executed

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46A-1-84. Adoption of rules to award financial assistance to sponsors of solid waste management projects--Purpose and preference of awards. The Board of Water and Natural Resources shall promulgate rules pursuant to chapter 1-26 to award grants, loans, or other forms of financial assistance to sponsors of solid waste

management projects. The rules shall base the awarding of grants or loans on a project's reflection of the solid waste management policy and hierarchy established in § 34A-6-1.2, the proposed amount of local matching funds, technical merit, and need for funding assistance.

Grants or loans may be awarded for planning, construction, and operation of solid waste management and recycling facilities. Preference in awarding grants or loans shall be given for projects which reduce the cost and number of landfills through shared facilities or use of innovative or alternative techniques, which are high on the waste management policy hierarchy, which involve areas which are particularly subject to groundwater or surface water contamination, or which will reduce long-term operating, closure, or post-closure costs.

**Source:** SL 1989, ch 306, § 65; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1992, ch 60, § 2; SL 1992, ch 254, § 50W; SL 1993, ch 256, § 63; SL 1996, ch 219, § 5; SL 1997, ch 254, § 4.

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46A-1-85, 46A-1-85.1. Repealed by SL 2005, ch 237, §§ 14, 15.

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46A-1-86. Obsolete

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46A-1-87. Repealed by SL 1997, ch 208, § 2

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46A-1-88. Conversion of study loans to grants. The Board of Water and Natural Resources may convert in whole or in part study loans authorized pursuant to § 46A-1-61 to grants. The conversion of study loans to grants is limited to projects that have been determined to be nonfeasible for development or to have insufficient repayment capability. A study loan may be converted by the Board of Water and Natural Resources to a grant for use as part of the nonfederal matching requirement on federally authorized projects.

**Source:** SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1991, ch 289, § 6.

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46A-1-89. Repealed by SL 2005, ch 237, § 16.

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46A-1-90. Repealed by SL 2013, ch 166, § 116.

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46A-1-91. Financial assistance for recycling and processing facilities for waste tires. The board shall provide financial assistance to persons who establish recycling and processing facilities for waste tires, subject to the rules promulgated by the board for the establishment of such facilities and subject to the conditions prescribed in rule by the board for application for and awarding of such financial assistance. No financial assistance may be awarded for incineration facilities.

**Source:** SL 1992, ch 254, § 29; SL 1996, ch 219, § 2.

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46A-1-92. Legislative findings and authorization of certain water development projects. The Legislature finds that it is in the best interests of South Dakota to further the development of those water projects identified in the state water resources management system and consolidated water facilities plan, consistent with the goals established in § 46A-2-2. The Legislature further finds that pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, the Board of Water and Natural Resources has reviewed the feasibility studies, costs and benefits of certain water development projects and found it to be in the best interest of South Dakota that they receive legislative authorization. Among those projects recognized by the board are Mid-Dakota Rural Water System pursuant to resolution 91-41, Mni Wiconi Rural Water System pursuant to resolution 91-42, Lake Andes-Wagner/Marty II Irrigation Projects pursuant to resolution 91-43, Sioux Falls Flood Control Project pursuant to resolution 91-45, Black Hills Hydrology Study pursuant to resolution 91-46 and James River Improvement Project pursuant to 91-47. Therefore, the Legislature finds it is in the best interest of South Dakota to provide legislative authorization of these projects as provided in § 46A-1-11.

**Source:** SL 1992, ch 254, § 7.

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46A-1-93. Priority in administration of funds. In administering funds in the water and environment fund established pursuant to § 46A-1-60 and the capital construction fund created in § 5-27-1, the highest priority shall be given to domestic uses of water through the development of public water distribution systems.

**Source:** SL 1993, ch 48, § 43.

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46A-1-94. Perkins County rural water system. Pursuant to §§ 46A-1-11 to 46A-1-13, inclusive, construction of a twenty-seven million nine hundred ninety-nine thousand two hundred fifty dollar Perkins County rural water system as generally described in the report, Final Engineering Report, for Perkins County Rural Water System Inc., Bison, South Dakota, dated January 2003, is hereby authorized for the purpose of providing safe and adequate municipal, rural, and industrial water supplies in Perkins County.

The Legislature finds that it is in the best interest of the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, 2011, through the state water resources management system revolving loan program. The Board of Water and Natural Resources may provide loans under the state water resources management system revolving loan program in amounts not to exceed a total of four million five hundred thousand dollars to the Perkins County rural water system to provide a portion of the nonfederal matching requirements as enumerated in P.L. 106-136 as amended to January 1, 2011. No disbursements may be made under the loans authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

Notwithstanding the provisions of § 46A-1-66, no interest may accrue until the Board of Water and Natural Resources certifies the completion of the construction of the project as authorized. The initial loan repayment is due and payable one year following the certification of construction completion. Loan terms and conditions shall be set by the Board of Water and Natural Resources.

The Board of Water and Natural Resources may provide grants in amounts not to exceed two million five hundred thousand dollars, or so much thereof as may be necessary, to the Perkins County rural water system project to provide the State of South Dakota's portion of the nonfederal matching requirements for the project. No disbursements may be made under the grant authorized by this section unless funds are appropriated by the Legislature in conformance with § 46A-1-61.

The loan and grant authorized by this section may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 2001, as indicated by engineering costs indices applicable for the type of construction involved.

**Source:** SL 1996, ch 265, § 11; SL 2004, ch 52, § 5, eff. Feb. 25, 2004; SL 2011, ch 165, § 310.

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46A-1-95. Clean lakes program, nonpoint source program, water quality monitoring program, and wetland grant program established. The state clean lakes program, the nonpoint source program, water quality monitoring program, and wetlands grant program are established. All federal pass-through grant funds, not to exceed six million dollars annually, received for use in the programs are hereby continuously appropriated to the secretary of the Department of Environment and Natural Resources. Money received for these programs may be used only for purposes authorized by the federal Clean Water Act as amended to January 1, 2009, and shall be provided according to the terms and conditions established by the secretary.

**Source:** SL 1996, ch 265, § 12; SL 2009, ch 229, § 12, eff. Mar. 4, 2009.

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46A-1-96. Special purpose water district loan program established--Funding. The special purpose water district loan program is hereby established to provide funds to any newly formed water development district, water project district, watershed district, irrigation district, or sanitary district for administrative and operating expenses during its first year of operation. Funds for the program, not to exceed fifty thousand dollars annually, are hereby continuously appropriated to the Board of Water and Natural Resources out of the money in the South Dakota water and environment fund established pursuant to § 46A-1-60. All money disbursed under this program shall be in the form of loans not to exceed a term of three years. The Board of Water and Natural

Resources shall execute a loan agreement with participating districts under such terms, conditions, and repayment schedules as the board may determine. Funds shall be disbursed on warrants drawn by the state auditor on vouchers approved by the secretary of the Department of Environment and Natural Resources.

**Source:** SL 1996, ch 265, § 21.

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46A-1-97. Board authorized to contract for financial services. In administering its programs as authorized in this chapter and chapter 46A-2, the board may enter into contracts or agreements with any department, agency, or instrumentality of the United States or this state, with regulated lenders as defined in § 54-3-14, or with trustees appointed pursuant to this chapter for the servicing and processing of loans or other forms of financial assistance or credit enhancement.

**Source:** SL 1997, ch 254, § 1.

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46A-1-98. Confidentiality of trade secrets or commercial or financial information received by board or department. Any documentary material or data made or received by the board or the Department of Environment and Natural Resources for the purpose of furnishing financial assistance to a business pursuant to the provisions of §§ 34A-6-81 to 34A-6-85.1, inclusive; 46A-1-83 to 46A-1-84, inclusive; and 46A-1-91, to the extent that the material or data consists of trade secrets or commercial or financial information regarding the operation of such business, is not a public record, and is exempt from disclosure. Any discussion or consideration of such trade secrets or commercial or financial information by the board may be done in executive session closed to the public.

**Source:** SL 1997, ch 254, § 2.

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46A-1-99. Additional financial assistance for solid waste management and recycling facilities. In addition to the grants and loans provided for in §§ 34A-6-85 and 46A-1-83, the board may provide other forms of financial assistance or credit enhancement to eligible applicants and projects for the planning, construction, and operation of solid waste management and recycling facilities. The board may enter into contracts or agreements with any department, agency, or instrumentality of the United States or this state, or with regulated lenders as defined in § 54-3-14 for that purpose.

**Source:** SL 1997, ch 254, § 3.

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46A-1-100. Definition of terms. Terms used in §§ 46A-1-100 to 46A-1-106, inclusive, mean:

- (1) "Brownfields revitalization and economic development program," a program to provide funding to assist in the assessment, cleanup, and redevelopment of brownfields sites;
- (2) "Brownfields site," real property, the expansion, redevelopment, economic development, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (3) "Petroleum," petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances, or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance;
- (4) "Petroleum contaminated site," a site contaminated by petroleum; and
- (5) "Real property," residential, commercial, or industrial properties.

**Source:** SL 2004, ch 275, § 1.

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46A-1-101. State brownfields revitalization and economic development program established--Subfunds created--Deposit and use of money. The state brownfields revitalization and economic development program is hereby established. A brownfields revolving loan subfund and a brownfields assessment and cleanup subfund are created within the water and environment fund established pursuant to § 46A-1-60. The subfunds shall be

maintained separately; and all money for use in the program shall be deposited into the subfunds, including the nonadministrative portion of all federal brownfields revitalization program grants, all repayments of assistance awarded from the subfunds, interest on investments made on money in the subfunds, proceeds of discretionary bond issues allowed by § 46A-1-31, and principal and interest on loans made from the subfunds. Money in the subfunds may be used only for purposes authorized under federal law. The subfunds may be pledged or assigned by the district to or in trust for the holders of the bonds of the district and may be transferred to and held by a trustee or trustees pursuant to § 46A-1-39.

**Source:** SL 2004, ch 275, § 2.

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46A-1-102. Disbursement and administration of money from subfunds--Rules--Application of provisions. Money from the brownfields revitalization and economic development program subfunds shall be disbursed and administered according to rules promulgated by the Board of Water and Natural Resources pursuant to chapter 1-26, § 46A-1-65, and the provisions of §§ 46A-1-100 to 46A-1-106, inclusive. The provisions of §§ 46A-1-61 to 46A-1-69, inclusive, do not apply to the brownfields revitalization and economic development program subfunds of the water and environment fund or grants and loans from the subfunds made under the brownfields revitalization and economic development program described in §§ 46A-1-101 to 46A-1-104, inclusive.

**Source:** SL 2004, ch 275, § 3.

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46A-1-103. Promulgation of rules by board--Content. The Board of Water and Natural Resources shall promulgate rules pursuant to chapter 1-26 to implement the provisions of §§ 46A-1-100 to 46A-1-106, inclusive, consistent with the requirements of federal law in order for an approved brownfields revitalization and economic development program to become eligible for grant funds from the United States Environmental Protection Agency. The rules shall include criteria and procedures for the selection of projects to receive funds from the brownfields revitalization and economic development program and for the administration of the program including the terms of settlement for program participants pursuant to § 34A-10-17.

**Source:** SL 2004, ch 275, § 4.

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46A-1-104. Continuous appropriation of brownfields revitalization and economic development program subfunds--Purpose. The brownfields revitalization and economic development program subfunds are hereby continuously appropriated to the South Dakota Board of Water and Natural Resources. Money received for these programs may be used only for purposes authorized by the federal Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) as amended to January 1, 2011.

**Source:** SL 2004, ch 275, § 5; SL 2011, ch 165, § 311.

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46A-1-105. Establishment of brownfields program by eligible entity. Any eligible entity may establish a brownfields program to prevent, assess, safely clean up, promote the economic development of, and sustainably reuse eligible brownfields sites as authorized in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended to January 1, 2011, and in the Small Business Liability Relief and Brownfields Revitalization Act, P.L. 107-118 as amended to January 1, 2011.

**Source:** SL 2004, ch 275, § 6; SL 2011, ch 165, § 312.

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46A-1-106. Powers of eligible entity establishing brownfields program. Any eligible entity establishing a brownfields program may exercise all powers necessary or appropriate to carry out the purposes of §§ 46A-1-100 to 46A-1-106, inclusive, including the following:

(1) To acquire by lease, purchase, gift, or other lawful means and hold in its corporate name or use and control as provided by law both real and personal property and easements and rights-of-way within or

without the corporate limits for all purposes authorized by §§ 46A-1-100 to 46A-1-106, inclusive, or necessary to the exercise of any power granted in §§ 46A-1-100 to 46A-1-106, inclusive;

(2) To convey, sell, give, dispose of, or lease both the personal and real property of the municipality or county as provided by §§ 46A-1-100 to 46A-1-106, inclusive;

(3) To borrow money and to issue certificates, warrants, general obligation bonds and non-ad valorem tax bonds for purposes of §§ 46A-1-100 to 46A-1-106, inclusive;

(4) To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public and private sources to carry out the purposes of §§ 46A-1-100 to 46A-1-106, inclusive;

(5) To contract or cooperate with any person, the state, or any political subdivision of the state, any federal agency, or any private or public entity to carry out the purposes of §§ 46A-1-100 to 46A-1-106, inclusive;

(6) To plan, develop, construct, acquire, operate, clean, maintain, repair, alter, renovate, salvage, demolish, secure, abandon, consolidate, reclaim, or gather data and information concerning any brownfields site, or any related development, structure, or facility necessary to carry out the purposes of §§ 46A-1-100 to 46A-1-106, inclusive;

(7) To apply for available grant funds and other governmental and nongovernmental financing options to promote the cleanup, reuse, revitalization, and economic development of the property consistent with the purposes of §§ 46A-1-100 to 46A-1-106, inclusive; and

(8) To do and perform all acts authorized in §§ 46A-1-100 to 46A-1-106, inclusive, and all other acts necessary and proper for carrying out and exercising the powers granted by §§ 46A-1-100 to 46A-1-106, inclusive.

**Source:** SL 2004, ch 275, § 7.

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