

26.482.22

101st Legislative Session

1273



## 2026 South Dakota Legislature

**House Bill 1273***Introduced by: Representative Uhre-Balk***1 An Act to revise certain mining statutes.****2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:****3 Section 1. That § 45-6B-3 be AMENDED:****4 45-6B-3. Terms used in this chapter mean:****5 (1) "Abandoned mined lands," lands that were mined for noncoal minerals and**  
**6 materials and for which there is no continuing reclamation responsibility or**  
**7 responsibility for other remedial action under state or federal laws;****8 (2) "Affected land," land from:****9 (a) From which overburden is to be or has been removed and land upon;****10 (b) Upon which overburden, waste rock, mine spoil, or mill tailings is to be or**  
**11 has been deposited; land which;****12 (c) Which is disturbed by the building of access roads, railroad loops,**  
**13 warehouses, storage areas, or other support facilities for the purpose of**  
**14 mining or milling; and land affected and****15 (d) Which is affected by surface subsidence, unstable slopes, and other surface**  
**16 effects caused by underground mine workings;****17 (3)(2) "Aquifer," a water-bearing bed or stratum of permeable rock, sand, or gravel**  
**18 capable of yielding usable quantities of water to wells or springs;****19 (4)(3) "Black Hills," Lawrence County south of Interstate Highway 90, Meade County west**  
**20 and south of Interstate Highway 90, and Pennington and Custer Counties west of**  
**21 South Dakota Highway 79, and Fall River County north of United States Highway**  
**22 18 from the Wyoming border to Edgemont, then north of the Cheyenne River from**  
**23 Edgemont to state Highway 79;****24 (5)(4) "Board," the Board of Minerals and Environment;****25 (6)(5) "Department," the Department of Environment Agriculture and Natural Resources;**Underscores indicate new language.  
Overstrikes indicate deleted language.

1       ~~(7)(6)~~ "Development," the work performed in relation to a deposit, following the  
2       exploration required to prove minerals are in existence in commercial quantities  
3       but before production activities, aimed at preparing the site for mining, defining  
4       further the ore deposit by drilling or other means, conducting pilot plant operations,  
5       and constructing roads or ancillary facilities;

6       ~~(8) "Life of the mine permit," a permit to conduct a mining operation which is in effect~~  
7       ~~if:~~  
8       ~~(a) An operator continues to engage in the extraction of minerals and~~  
9       ~~complies with the provisions of this chapter;~~  
10       ~~(b) Mineral reserves are shown by the operator to remain in the mining~~  
11       ~~operation and the operator plans to, or does, temporarily cease production~~  
12       ~~for one hundred eighty days or more if the operator files a notice thereof~~  
13       ~~with the board stating the reasons for nonproduction, a plan for ceasing~~  
14       ~~production for one hundred eighty days or more if the operator files a notice~~  
15       ~~thereof with the board stating the reasons for nonproduction, a plan for the~~  
16       ~~resumption of production, and the measures taken to comply with~~  
17       ~~reclamation and other necessary activities as established by the board to~~  
18       ~~maintain the mine in a nonproducing state. The requirement of a notice of~~  
19       ~~temporary cessation does not apply to operators who resume operating~~  
20       ~~within one year and have included, in their permit applications, a statement~~  
21       ~~following the exploration required to prove minerals are in existence in that~~  
22       ~~the affected lands are to be used for less than one hundred eighty days per~~  
23       ~~year;~~  
24       ~~(c) Production is resumed within five years of the date production ended, or~~  
25       ~~the operator files a report requesting an extension of the period of~~  
26       ~~temporary cessation of production with the board stating the reasons for~~  
27       ~~the continuation of nonproduction and those factors necessary to, and the~~  
28       ~~operator's plans for, resumption of production. A temporary cessation of~~  
29       ~~production may not be continued for more than ten years without~~  
30       ~~terminating the operation and fully complying with the reclamation~~  
31       ~~requirements of this chapter.~~  
32       ~~A life of the mine permit includes that period of time after cessation of production~~  
33       ~~necessary to complete reclamation of affected lands, until the board~~  
34       ~~releases, in writing, the operator from further reclamation obligations~~  
35       ~~regarding the affected land, declares the mining operation terminated, and~~  
36       ~~releases the surety thereon~~

- 1       (7) "Large-scale mine," a mine permitted under this chapter that is:
- 2           (a) An in situ mining operation;
- 3           (b) A mining operation that employs a cyanide leaching or other chemical or  
4           biological leaching process to extract minerals from ore;
- 5           (c) An operation that affects more than ten acres, excluding access roads; or
- 6           (d) An operation that extracts more than twenty-five thousand tons of ore or  
7           overburden per calendar year;
- 8       (8) "Life of the mine," a period of time:
- 9           (a) In which the operator extracts minerals;
- 10           (b) Which includes any temporary cessation of production, as described in  
11           sections 6 and 7 of this Act; and
- 12           (c) Which includes reclamation after production ceases;
- 13       (9) "Milling," the beneficiation of a mined material from its natural occurrence in ore;
- 14       (10) "Mineral," a substance with economic value, whether organic or inorganic, that  
15           which can be extracted from the earth, other than the following: water, oil, or gas,  
16           sand, gravel, or rock to be crushed and used in construction, pegmatite minerals,  
17           or limestone, sand, gypsum, shale, or iron ore used in the process of making  
18           cement;
- 19       (11) "Mining operation," the development or extraction of a mineral from its natural  
20           occurrence on affected land. The term includes surface mining and surface  
21           operation, in situ mining, the reprocessing of tailings piles, the disposal of refuse  
22           from underground mining, milling and processing located on the land described in  
23           the application for a mining permit, and stand-alone milling and processing facilities  
24           utilizing chemical or biological leaching agents. The term does not include  
25           extraction of sand, gravel, or rock to be crushed and used in construction,  
26           exploration activities, bulk sampling, the exploration and extraction of natural  
27           petroleum in a liquid or gaseous state by means of wells or pipe, borrow excavation  
28           for embankments, or the extraction of geothermal resources;
- 29       (12) "Operator," any person, firm, partnership, limited liability company, association, or  
30           corporation or any department, division, or agency of federal, state, county, or  
31           municipal government engaged in or controlling a mining operation;
- 32       (13) "Overburden," all of the earth and other materials which that are disturbed or  
33           removed, in the original state, or as it exists after removal from its natural state  
34           in the process of surface mining;

- 1        (14) "Reclamation," the employment during and after a mining operation of procedures  
2        reasonably designed to minimize as much as practicable the disruption from the  
3        mining operation and to provide for the rehabilitation of affected land through the  
4        rehabilitation of plant cover, soil stability, water resources, or other measures  
5        appropriate to the subsequent beneficial use of ~~such the~~ mined and reclaimed  
6        lands;
- 7        (15) "Surface mining," the mining of minerals by removing the overburden lying above  
8        ~~such the mineral~~ deposits and mining directly from the deposits thereby exposed.  
9        The term includes mining directly from ~~such the~~ deposits where there is no  
10      overburden and ~~such practices as practices including~~ open cut mining, open pit  
11      mining, strip mining, placer mining, quarrying, and dredging;
- 12      (16) "Surface mining disturbed" land, ~~land from ground~~:
  - 13        (a) ~~From which overburden has been removed, land upon~~
  - 14        (b) ~~Upon which overburden, waste rock, mine spoil, or mill tailings have has~~  
15        been deposited, ~~land mined which~~
  - 16        (c) ~~That is mined and has no overburden, heap leach pads, and~~
  - 17        (d) ~~On which a heap lead pad is located process ponds; and~~
  - 18        (e) ~~On which a process pond is located; and~~
- 19      (17) "Tailings," the discharged valueless product of a beneficiation process.

20 **Section 2. That § 45-6B-14 be AMENDED:**

21        **45-6B-14.** ~~The~~ An application fee of one thousand dollars ~~shall~~ must accompany  
22        the application. ~~However, the application fee shall be fifty thousand dollars for a new large~~  
23        ~~scale precious metal, coal, or uranium mine permit. If the application is for a new large-~~  
24        ~~scale mine permit, the fee is fifty thousand dollars.~~ The application fee for an amendment  
25        to an existing ~~large scale precious metal, coal, or uranium~~ large-scale mine permit ~~shall~~  
26        ~~be~~ is five thousand dollars.

27 **Section 3. That § 45-6B-18 be AMENDED:**

28        **45-6B-18.** At the request of the operator, the ~~Board of Minerals and Environment~~  
29        board may issue an amendment to the original permit covering additional contiguous land,  
30        not to exceed fifteen additional acres, or making minor modifications of the terms and  
31        conditions of the operating or reclamation plans. An application to amend a ~~large scale~~  
32        large-scale permit ~~shall~~ must include the application fee provided by § 45-6B-14. An

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1 application to amend a ~~small scale~~ small-scale permit ~~shall~~ must include the application  
2 fee provided by § 45-6B-55.

3 For purposes of this section, "contiguous land" means land under the same  
4 ownership that is directly adjoining or touching the permitted area.

5 **Section 4. That § 45-6B-53 be AMENDED:**

6 **45-6B-53.** Any mining operation, other than an in situ mining operation or a  
7 mining operation that employs a cyanide leaching or other chemical or biological leaching  
8 process to extract minerals from ore, which affects less than ten acres, excluding access  
9 roads, and extracts less than twenty-five thousand tons of ore or overburden per calendar  
10 year ~~shall be~~ is subject to the provisions of §§ 45-6B-54 to 45-6B-63, inclusive, and ~~are~~  
11 is not required to comply with the provisions of §§ 45-6B-5 to 45-6B-7, inclusive, 45-6B-  
12 10, ~~45-6B-14~~, or 45-6B-36.

13 **Section 5. That § 45-6B-56 be AMENDED:**

14 **45-6B-56.** Except as provided in ~~subsection 45-6B-3(6)(b)~~ sections 6 and 7 of this  
15 Act, the operator shall annually file on the anniversary date of the permit a notice of intent  
16 to continue mining operations. The notice of intent ~~shall~~ must contain an annual fee of  
17 fifty dollars and comply with the reporting requirements of § 45-6B-36.

18 **Section 6. That a NEW SECTION be added to chapter 45-6B:**

19 An operator of a mine permitted under this chapter may temporarily cease  
20 production for one hundred eighty days or more provided the operator:

21 (1) Files a request with the board pursuant to section 7 of this Act to cease production  
22 for one hundred eighty days or more, stating:

23 (a) The reasons for nonproduction; and

24 (b) Any proposed time to resume production;

25 (2) Takes measures to comply with reclamation and other necessary activities, as  
26 established by the board, to maintain the mine in a nonproducing state; and

27 (3) Resumes production within five years of the date production temporarily ceased.

28 An operator is not required to file a request for temporary cessation if the operator  
29 resumes mining within one year and has included, in the operator's permit application, a  
30 statement that the affected lands are to be used for less than one hundred eighty days  
31 per year.

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1       The operator may file with the board a request for an extension of the period of  
2       temporary cessation of production. The operator must state the reasons for the  
3       continuation of nonproduction, and any proposed plan for resuming production.

4       An operator may not continue a temporary cessation of production longer than ten  
5       years. If production ceases for longer than ten years, the operator must terminate the  
6       operation and comply with the reclamation requirements of this chapter.

7 **Section 7. That a NEW SECTION be added to chapter 45-6B:**

8       A request to cease mining temporarily must contain the following information:

- 9       (1) The operator's name and permit number;  
10      (2) The date of cessation of mining at each permitted site;  
11      (3) Reasons for the cessation of mining activities; and  
12      (4) A statement on the existing condition of the affected land, including a description  
13      of reclamation activities that have been completed for each permitted site.

14 **Section 8. That § 45-6B-60 be AMENDED:**

15       **45-6B-60.** Any operator conducting an operation under a permit issued under  
16       § 45-6B-59, who has held the permit for two consecutive years or more, and who  
17       subsequently desires to expand it to a size in excess of the limitation set forth in § 45-6B-  
18       53, may request the conversion of ~~his~~ the permit by filing an application for a permit  
19       pursuant to §§ 45-6B-5 to 45-6B-10, inclusive. ~~However the~~ The applicant need not supply  
20       information, materials, and other data and undertakings previously supplied, including  
21       any additional applicable materials provided ~~to the Board of Minerals and Environment~~  
22       board during the course of ~~his~~ the current operation, or resulting from the board's  
23       inspections ~~thereof~~. An application for conversion under this section must also comply with  
24       the notice requirements of §§ 45-6B-16, 45-6B-17, and 45-6B-34, and must comply with  
25       the surety and hearing requirements and the special, exception, critical, or unique land  
26       provisions of §§ 45-6B-20 to 45-6B-33.8, inclusive.

27 **Section 9. That § 45-6B-81 be AMENDED:**

28       **45-6B-81.** The board may promulgate rules, pursuant to chapter 1-26, to:  
29       (1) Establish the procedure for filing and departmental review of mining permit  
30       applications;  
31       (2) Establish the procedure for amending mining permits;

- 1       (3) Establish the procedure for transfer of permits;
- 2       (4) Provide for the reclamation of mills proposed to be operated in conjunction with a
- 3               mining operation;
- 4       (5) Establish the prehearing procedure for determining the type of reclamation to be
- 5               performed on affected land;
- 6       (6) Establish the minimum requirements for each type of reclamation;
- 7       (7) Establish the reclamation activities required to be performed concurrent with
- 8               mining activity;
- 9       (8) Establish the procedure to address reclamation before or during a temporary
- 10               cessation of mining activity, pursuant to ~~subdivision 45-6B-3(6) sections 6 and 7~~
- 11               of this Act;
- 12       (9) Establish the procedure for determining special, exceptional, critical, or unique
- 13               land, in accordance with § 45-6B-33;
- 14       (10) Establish the requirements for construction, operation, monitoring, and closure of
- 15               uranium and other mineral mines using in situ leach processes; and
- 16       (11) Establish the procedure for posting and monitoring financial assurance.

17       **Section 10. That § 45-6B-87 be AMENDED:**

18       **45-6B-87.** Nothing in this chapter relieves the holder of any large-scale ~~gold or~~ ~~silver~~ surface mining permit from any of the requirements of the Clean Air Act of 1955, as  
19               amended to January 1, 2011, the Clean Water Act of 1977, as amended to January 1,  
20               2011, the South Dakota Air Quality Act (chapter 34A-1), the Federal Water Pollution  
21               Control Act of 1972, as amended to January 1, 2011, the Safe Drinking Water Act (P.L.  
22               93-523), as amended to January 1, 2011, the Mine Safety and Health Administration  
23               regulations (30 C.F.R. Part 3830), as amended to January 1, 2011, United States Forest  
24               Service surface mining and exploration reclamation requirements (43 C.F.R., page 228),  
25               as amended to January 1, 2011, Bureau of Land Management mining and exploration  
26               requirements (43 C.F.R. Part 3800), as amended to January 1, 2011, the Mined Land  
27               Reclamation Act (this chapter), the regulated substance discharges statutes in chapter  
28               34A-12, the Resource Conservation and Recovery Act of 1976, as amended to January 1,  
29               2011, the Comprehensive Environmental Response, Compensation and Liability Act of  
30               1980 (P.L. 95-510), as amended to January 1, 2011, the Toxic Substance Control Act of  
31               1976 (P.L. 94-469), as amended to January 1, 2011, Lawrence County extractive  
32               industries ordinances, as amended to January 1, 2011, and all rules and regulations  
33               promulgated to implement existing statutes, including rules dealing with air pollution,  
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1 control of visible emissions, open burning, control of particulate emissions, control of sulfur  
2 compound emissions, new source performance standards, standards of performance for  
3 storage vessels of petroleum liquids, air standards, spill control plans, buried tanks, water  
4 pollution, public water systems, and dredge and fill permit requirements.

5 **Section 11. That § 45-6B-93 be AMENDED:**

6 **45-6B-93.** Any operator of a large-scale~~gold or silver~~ surface mining operation  
7 shall submit an annual report by January first of each year~~including~~ and shall make an  
8 oral presentation to the~~Board of Minerals and Environment~~ board explaining the  
9 information in the written annual report. The annual report~~shall~~ must include the following  
10 information:

- 11 (1) The total and previous year's amount of affected land;
- 12 (2) The total and previous year's amount of surface mining disturbed land;
- 13 (3) The total and previous year's amount of land that has undergone interim  
reclamation;
- 14 (4) The total and previous year's amount of land that has undergone final reclamation  
and which meets the required post-mining land use;
- 15 (5) The total and previous year's amount of land that has undergone final reclamation  
but which does not meet the required post-mining land use;
- 16 (6) The~~total~~ amount of groundwater withdrawn during the previous year;
- 17 (7) The~~total~~ amount of surface water withdrawn during the previous year;
- 18 (8) The~~total~~ amount of ore mined during the previous year;
- 19 (9) The~~total~~ amount of ore processed during the previous year;
- 20 (10) The~~total~~ amount of waste rock mined during the previous year;
- 21 (11) The~~total~~ amount of~~gold and silver~~ minerals produced during the previous year;
- 22 (12) The~~total~~ amount of cyanide used during the previous year; and
- 23 (13) A brief discussion of the coming year's operational plans including any anticipated  
revisions that might require department or board approval.

28 **Section 12. That § 45-6B-94 be AMENDED:**

29 **45-6B-94.** The Legislature of South Dakota finds that protection of the  
30 environment requires regulation of the total amount of land that can be disturbed by  
31 surface mining by large-scale~~gold or silver~~ surface mining operations at any given time.

32 **Section 13. That § 45-6B-95 be AMENDED:**

1                   **45-6B-95.** The board may not issue a permit for a new large-scale~~gold or silver~~  
2 surface mining operation if the proposed surface mining disturbed lands under that permit  
3 ~~shall exceed~~ exceeds three hundred twenty acres. Nor may the board issue new permits  
4 or amendments to existing permits for new large-scale~~gold or silver~~ surface mining  
5 operations for expanded acres of surface mining disturbed lands until reclamation has  
6 been performed in accord with § 45-6B-97.

7                   **Section 14. That § 45-6B-97 be AMENDED:**

8                   **45-6B-97.** New permits or amendments to existing permits for expanded acres of  
9 surface mining disturbed land for operations referred to in ~~§§ 45-6B-95 and 45-6B-96~~  
10 § 45-6B-95 may be issued only if the applicant has performed reclamation on an equal  
11 number of acres of permitted affected land, or has agreed not to disturb an equal acreage  
12 of permitted affected land, or, with consent of the board, has performed or agrees to  
13 perform reclamation concurrently with disturbance of an equal number of acres of  
14 previously mined land inside or outside a permit area boundary. For ~~purpose~~ purposes of  
15 §§ 45-6B-94 to 45-6B-99, inclusive only, reclamation is performed when the operator  
16 completes required grading, topsoil replacement, erosion, and drainage control and any  
17 required planting and seeding that the department finds meets the requirements of the  
18 approved reclamation plan. To qualify for reclamation credit, reclamation activities~~shall~~  
19 must have been conducted after the operator was granted the original large-scale~~gold or~~  
20 ~~silver~~ surface mining permit and surety for the reclaimed acres of affected land~~shall~~ must  
21 not have been released prior to November 19, 1992. With consent of the board, a  
22 large-scale~~gold or silver~~ surface mining operator may assign reclamation credit acreage  
23 to another large-scale~~gold or silver~~ surface mining operator.

24                   **Section 15. That § 45-6C-3 be AMENDED:**

25                   **45-6C-3.** Terms used in this chapter mean:

- 26                   (1) "Affected land," the surface area, surface water, and groundwater disturbed by  
27 reason of the building of access roads or trails, leveling drill sites, storage areas,  
28 containment ponds, or other support facilities for the purpose of exploration,  
29 including the land affected by surface subsidence;
- 30                   (2) "Aquifer," a water bearing bed or stratum of permeable rock, sand, or gravel  
31 capable of yielding usable quantities of water to wells or springs;
- 32                   (3) "Board," the Board of Minerals and Environment;

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- 1       (4) "Bulk samples," the removal of not more than five thousand tons of mineralized  
2       material by means of a shaft, adit, or test open pit to determine the economic  
3       feasibility of conducting a mining operation;
- 4       (5) "Department," the Department of Agriculture and Natural Resources;
- 5       (6) "Exploration operation," the act of searching for or investigating a mineral deposit,  
6       ~~including by sinking shafts, tunneling, drilling test holes, digging pits or cuts, or  
7       other works for the purpose of extracting samples, including bulk samples, prior to  
8       commencement of development or extraction operations, and test facilities and  
9       testing~~ to prove the commercial grade of a mineralized deposit. The term does not  
10      include those activities ~~which~~ that cause very little or no surface disturbance, such  
11      as ~~exploration by auger or drill of test holes of less than fifty feet in depth and less  
12      than seven inches in diameter for sand, limestone, gypsum, shale, or iron ore for  
13      use in the process of making cement or nonexplosive seismic energy sources,  
14      airborne surveys and photographs, augered bentonite or augered construction  
15      aggregate test holes of less than fifty feet in depth when accomplished in  
16      conformance with §§ 45-6C-28 and 45-6C-32, use of instruments or devices which  
17      are hand carried or otherwise transported over the surface to make magnetic,  
18      radioactive, or other tests and measurements, boundary or claim surveying,  
19      location work, annual assessment work required to maintain the validity of a  
20      mineral claim or any other work which causes no greater land disturbance than is  
21      caused by ordinary lawful use of the land by persons not exploring for mineral  
22      deposits;~~
- 23      (7) "Mineral," any substance with economic value, whether organic or inorganic, that  
24      can be extracted from the earth, ~~including oil and gas, but excluding uranium and  
25      water other than water, oil, or gas;~~
- 26      (8) "Operator," any person, firm, partnership, limited liability company, association or  
27      corporation, or any department, division, or agency of federal, state, county, or  
28      municipal government engaged in or controlling a mineral exploration operation;
- 29      (9) "Reclamation," the employment during and after an exploration operation of  
30      procedures reasonably designed to minimize the disruption from the exploration  
31      operation and to provide for the rehabilitation of plant cover, soil stability, water  
32      resources, or other measures appropriate to the subsequent beneficial use of ~~such~~  
33      ~~the explored land; and~~
- 34      (10) "Test hole," a well, core hole, core test, observation well, or other well drilled from  
35      the surface to determine the presence of mineral, mineral resource, ore, coal, or

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1                   rock unit, or to obtain geological or geophysical information or other subsurface  
2                   data, including holes drilled for purposes of seismic survey, but excluding drilling  
3                   in conjunction with mining or quarry operations and structural foundations and oil  
4                   and gas wells regulated pursuant to chapter 45-9.

5 **Section 16. That chapter 45-6 be REPEALED.**

6 **Section 17. That § 45-6B-96 be REPEALED.**

7                   The board may not issue new permits to or amendments to existing permits for  
8                   presently operating large scale gold or silver surface mining operations for expanded acres  
9                   of surface mining disturbed lands until reclamation has been performed in accord with  
10                   § 45-6B-97, except that presently operating large scale gold or silver surface mining  
11                   operations are not subject to this provision until the permitted acres of surface mining  
12                   disturbed lands total two hundred acres more per each individual permit than its permitted  
13                   surface mining disturbed land total acreage as of January 1, 1992.

Underscores indicate new language.  
Overstrikes indicate deleted language.