

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

832V0728

## SENATE BILL NO. 161

Introduced by: Senators Maher, Rampelberg, Rhoden, and Sutton and Representatives Rozum, Feickert, and Verchio

1 FOR AN ACT ENTITLED, An Act to provide for a process to ensure that surface use  
2 agreements are entered into by mineral developers and surface owners by negotiation or  
3 default.

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

5 Section 1. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 At the time of notice, pursuant to § 45-5A-5, a mineral developer shall provide to the surface  
8 owner a proposed surface use agreement that shall specify the rights and obligations of the  
9 parties with respect to the surface activities conducted by the mineral developer, and shall  
10 determine payment of damages pursuant to § 45-5A-4.

11 Section 2. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 If an agreement is not entered into with thirty days of the time of notice, pursuant to § 45-  
14 5A-5, the mineral developer may enter upon the surface estate and conduct mineral development  
15 only after the developer meets one of the following conditions:



1       (1) Deposits a surety bond, letter of credit from a banking institution, cash, or a  
2             certificate of deposit with a surety company or financial institution qualified to do  
3             business in this state, for the benefit of the surface owner in the amount of ten  
4             thousand dollars per well location. The surety bond, letter of credit, cash, or  
5             certificate of deposit may only be released by the surety company or financial  
6             institution if:

- 7             (a) The surface owner and the mineral developer execute a surface use agreement;
- 8             (b) The surface owner and the mineral developer mutually agree upon the release;
- 9             (c) There has been a final determination in any adjudicative action for damages  
10            and all awarded damages have been paid in entirety; or
- 11            (d) All wells or test holes are capped, sealed, plugged, and the mineral developer  
12            has not conducted mineral development on the surface estate for a period of  
13            six years; or

14       (2) Posts a blanket surety bond, letter of credit from a banking institution, cash, or a  
15             certificate of deposit with a surety company or financial institution qualified to do  
16             business in this state, in the sum of twenty-five thousand dollars subject to the  
17             following criteria:

- 18            (a) The surety company or financial institution shall hold the corporate surety  
19            bond, letter of credit, cash, or certificate of deposit for the benefit of the  
20            surface owner and shall ensure that such security is in a form readily payable  
21            to a surface owner awarded damages in an action brought pursuant to § 45-5A-  
22            4;
- 23            (b) The bond, letter of credit, cash, or certificate of deposit shall remain in full  
24            force and effect as long as the mineral developer continues mineral

1 development in South Dakota;

2 (c) The bond, letter of credit, cash, or certificate of deposit may not be released  
3 until six years after the mineral developer has deposited with the surety  
4 company or financial institution a certified statement from the Board of  
5 Minerals and Environment of the Department of Environment and Natural  
6 Resources, that according to the records of the department, the mineral  
7 developer is not the mineral developer of record of any well in South Dakota  
8 and does not hold any outstanding mineral development permits in South  
9 Dakota; and

10 (d) In the event that, pursuant to any adjudicative action, all or a portion of the  
11 bond, letter of credit, cash, or certificate of deposit is used to pay a surface  
12 owner, the operator shall immediately post additional security so that the total  
13 amount posted equals twenty-five thousand dollars.