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State “Mini”-NEPA Statutes: *South Dakota*



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SD Codified Laws §§ 34A-9-1 to 13

Current through the 2025 Regular Session of the 100th South Dakota Legislative Assembly.

SD Codified Laws §34A-9-1. Definition of terms.

Terms as used in this chapter, unless the context otherwise requires, mean:

- (1) "Agency," the executive and administrative departments, offices, boards, commissions, and other units of the state government;
- (2) "Board," the Board of Minerals and Environment;
- (3) "Draft environmental impact statement," a preliminary statement prepared pursuant to §34A-9-5;
- (4) "Environment," the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character;
- (5) "Environmental impact statement," a detailed statement setting forth the matters specified in §34A-9-7. It includes any comments on a draft environmental statement which are received pursuant to §34A-9-8, and the agency's response to such comments, to the extent that they raise issues not adequately resolved in the draft environmental statement;
- (6) "Secretary," the secretary of the Department of Agriculture and Natural Resources.

SD Codified Laws §34A-9-2. Actions subject to chapter.

As used in this chapter, the term, actions, includes:

- (1) New and continuing projects or activities directly undertaken by any public agency, or supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more public agencies;



- (2) Policy, regulations, and procedure-making; or
- (3) The issuance by one or more public agencies of a lease, permit, license, certificate, or other public entitlement to an applicant.

S.D. Codified L. §34A-9-3. Actions not subject to chapter.

As used in this chapter, the term, actions, does not include:

- (1) Enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;
- (2) Actions of a ministerial nature, involving no exercise of discretion;
- (3) Emergency actions responding to an immediate threat to public health or safety;
- (4) Proposals for legislation; or
- (5) Actions of an environmentally protective regulatory nature.

SD Codified Laws §34A-9-4. Environmental impact statement authorized – Fee – Purpose.

All agencies may prepare, or have prepared by contract, an environmental impact statement on any major action they propose or approve which may have a significant effect on the environment. Any agency which prepares, or has prepared by contract, an environmental impact statement pursuant to subdivision 34A-9-2(3) shall assess a fee against the person seeking a lease, permit, license, certificate, or other public entitlement for the preparation of the statement. This fee shall be assessed in addition to and independently of any other fee or deposit required by any other provision of law. No lease, permit, license, certificate, or other public entitlement may be issued until the fee is paid. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of the action might be minimized, and to suggest alternatives to the action.

SD Codified Laws §34A-9-4.1. Selection of contractor to prepare statement.

Any agency, other than the Public Utilities Commission, which causes an environmental impact statement to be prepared by contract shall select a contractor proposal acceptable to both the agency and the person seeking a lease, permit, license, or other public entitlement.



SD Codified Laws §34A-9-4.2. Continuous appropriation of environmental impact statement file.

Any environmental impact statement fee paid pursuant to the provisions of §34A-9-4 is appropriated continuously to the agency assessing the fee to be expended for the purposes of §34A-9-4.

SD Codified Laws §34A-9-5. Draft impact statement – Contents.

As early as possible in the formulation of a proposal for action that is likely to require the preparation of an environmental impact statement, the responsible agency may prepare or may have prepared a draft environmental statement describing in detail the proposed action and reasonable alternatives to the action, and briefly discussing, on the basis of information then available to the agency, the remaining items set forth in §34A-9-7.

SD Codified Laws §34A-9-6. Purpose of draft impact statement –Scoping meetings—Form and contents.

The purpose of a draft environmental statement is to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in determining the environmental consequences of the proposed action. The agency requiring the preparation of the environmental impact statement shall conduct scoping meetings, prior to the preparation of the environmental impact statement, in the county in which the proposed action is to be located to solicit public input on what should be included in the environmental impact statement. The draft environmental statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to §34A-9-9; however, the length and detail of the draft environmental statement may necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

SD Codified Laws §34A-9-7. Contents of environmental impact statement.

An environmental impact statement shall be prepared in accordance with the procedural requirements relating to citizen participation of the National Environmental Policy Act of 1969 as amended to January 1, 2011, and implementing regulations adopted pursuant to that act, and shall include, at a minimum, a detailed statement setting forth the following:

- (1) A description of the proposed action and its environmental setting;



- (2) The environmental impact of the proposed action including short-term and long-term effects;
- (3) Any adverse environmental effects that cannot be avoided if the proposal is implemented;
- (4) Alternatives to the proposed action;
- (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;
- (6) Mitigation measures proposed to minimize the environmental impact; and
- (7) The growth-inducing aspects of the proposed action.

SD Codified Laws §34A-9-8. Circulation of draft statement for comment.

The draft statement shall be circulated for comment among other public agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved and shall be made available for comment by relevant federal agencies and interested members of the public.

SD Codified Laws §34A-9-9. Filing of impact statement and comments before taking action – Responses to comments.

The environmental impact statement, prepared pursuant to §34A-9-4, together with the comments of public and federal agencies and members of the public, shall be filed with the office of the secretary and made available to the public at least thirty days prior to taking agency action on the proposal which is the subject of the environmental impact statement. Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to §34A-9-8, and the agency response to such comments.

SD Codified Laws §34A-9-10. Findings required as to compliance and actions to minimize environmental problems.

When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this chapter have been met and that all feasible action will be taken to minimize or avoid environmental problems that are revealed in the environmental impact statement process.

SD Codified Laws §34A-9-11. Impact statement not required if federal statement required.



To avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2011, if the statement complies with the requirements of this chapter.

SD Codified Laws §34A-9-12. Prospective application of chapter.

The requirements of this chapter do not apply to actions undertaken or approved before March 2, 1974.

SD Codified Laws §34A-9-12.1. Establishment of environmental impact statement preparation fund – Source of fund – Administration – Appropriation and expenditures.

There is hereby established in the state treasury a special revolving fund to be designated as the environmental impact statement preparation fund. This fund shall consist of all moneys from all lawful public and private sources including legislative appropriations, federal grants, gifts, fees received pursuant to §34A-9-4, and interest on investments made on money in the fund. The fund shall be maintained separately for each environmental impact statement and be administered by the agency in order to retain consulting and professional services and to defray such other expenses as are reasonable and necessary in order to prepare the environmental impact statement. All fees assessed by the agency requiring the environmental impact statement under §34A-9-4 shall be payable to the agency for deposit in the environmental impact statement preparation fund established pursuant to this section. Moneys may be deposited in the fund on an ongoing basis and this fund shall be expended for the purposes of chapter 34A-9 and shall be appropriated by the Legislature through the normal budget process.

SD Codified Laws §34A-9-13. Citation of chapter.

This chapter may be cited as the South Dakota Environmental Policy Act.

