

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

948Q0442

HOUSE ENGROSSED NO. **HB 1183** - 2/24/2009

Introduced by: Representatives Lust, Boomgarden, Cronin, Curd, Dreyer, Feinstein, Gosch, Jensen, Kopp, McLaughlin, Olson (Ryan), Romkema, Rounds, Sly, Thompson, Turbiville, Verchio, and Wink and Senators Haverly, Abdallah, Adelstein, Dempster, Knudson, Nelson, Rhoden, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents and the South Dakota
2 Building Authority to contract for construction of the Higher Education Center-West River,
3 to fund certain postsecondary education grant programs, and to make an appropriation
4 therefor.

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

6 Section 1. The Board of Regents may enter into an agreement to acquire a site for the Higher
7 Education Center-West River in Rapid City, Pennington County, South Dakota, through a
8 partial donation and partial sale on the terms herein provided. The real property being described
9 as follows: that part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that
10 part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North,
11 Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South
12 Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway
13 Company in Deed Book 145, Page 192 and as shown on the plat filed in Highway Plat Book 4,
14 Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10,



1 Page 4; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in Block 1 of Heartland Retail
2 Center located in the SW1/4SW1/4 of Section 27, as shown on the plat filed in Plat Book 31,
3 Page 111; -AND- the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of Section
4 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the city of Rapid City,
5 Pennington County, South Dakota; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in
6 Block 1 located in the NW1/4NW1/4 of said Section 34, and all of Lots 1 and 2 in Block 2 of
7 Heartland Retail Center and Cheyenne Boulevard, all as shown on the plat filed in Plat Book
8 31, Page 111; and EXCEPTING therefrom the East 200 feet of the NW1/4NW1/4 of said
9 Section 34 and EXCEPTING therefrom Lot H3 of the N1/2 of said Section 34, as shown on the
10 plat filed in Highway Plat Book 11, Page 162.

11 The real property has an appraised value of three million six hundred forty-five thousand
12 dollars, and it encompasses the twelve-acre tract whose donation was the subject of chapter 94
13 of the 2008 Session Laws. The Board of Regents may purchase the entire tract for two million
14 two hundred thirty-three thousand seven hundred fifty-five dollars, which sum represents the
15 value of buildable property adjoining the twelve-acre tract that will be donated. The difference
16 between the appraised value and the sale price, one million four hundred eleven thousand two
17 hundred forty-five dollars, may be recognized as a donation by the seller.

18 Section 2. There is hereby appropriated the sum of two million two hundred thirty-three
19 thousand seven hundred fifty-five dollars (\$2,233,755), or so much thereof as may be necessary,
20 of other fund expenditure authority, payable from funds donated for the purposes of sections 1
21 to 12, inclusive, of this Act, to the Board of Regents for the purchase of the land described in
22 section 1 of this Act.

23 Section 3. The South Dakota Building Authority may contract for the construction,
24 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,

1 plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and
2 engineering services, and such other services or actions as may be required to construct, the
3 Higher Education Center-West River in Rapid City, Pennington County, at the estimated cost
4 of thirteen million, four hundred twenty-five thousand dollars and not to exceed fifty-four
5 thousand two hundred forty-one square feet.

6 Section 4. The South Dakota Building Authority may finance up to thirteen million, four
7 hundred twenty-five thousand dollars of the construction costs through the issuance of revenue
8 bonds, in accordance with this Act and chapter 5-12.

9 Section 5. There is hereby appropriated the sum of two million five hundred seventy-five
10 thousand dollars (\$2,575,000), or so much thereof as may be necessary, of other fund
11 expenditure authority, payable from funds donated for the purposes of sections 1 to 12,
12 inclusive, of this Act, to the Board of Regents for the construction authorized by sections 1 to
13 12, inclusive, of this Act.

14 Section 6. No indebtedness, bond, or obligation incurred or created under the authority of
15 this Act may be or may become a lien, charge, or liability against the State of South Dakota, nor
16 against the property or funds of the State of South Dakota within the meaning of the
17 Constitution or statutes of the state.

18 Section 7. The Board of Regents may make and enter into a lease agreement with the South
19 Dakota Building Authority and make rental payments under the terms thereof, pursuant to
20 chapter 5-12, from the higher education facilities fund for the purposes of sections 1 to 12,
21 inclusive, of this Act.

22 Section 8. The design and construction of the Higher Education Center-West River shall be
23 under the general supervision of the Bureau of Administration as provided in chapter 5-14. The
24 executive director of the Board of Regents and the executive secretary of the South Dakota

1 Building Authority, shall approve vouchers and the state auditor shall draw warrants to pay
2 expenditures authorized by sections 1 to 12, inclusive, of this Act.

3 Section 9. All courses offered at the Higher Education Center-West River shall be at self-
4 support tuition rates established by the Board of Regents, with the exception of nursing courses
5 through the University of South Dakota and South Dakota State University, which can be
6 offered at state-support rates if authorized by the board.

7 Section 10. Notwithstanding any other restriction in this Act to the contrary, the total project
8 cost authorized for the project identified in sections 4 and 5 of this Act may be increased by
9 donations and grants received by the Board of Regents for the purposes of sections 1 to 12,
10 inclusive, of this Act, and the Building Authority and the Board of Regents are hereby
11 authorized to expend such grants and donations for the construction, completion, furnishing,
12 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
13 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
14 roofing and structures, and such other services and improvements as may be required to erect.
15 However, no adjustments to any cost estimate may exceed one hundred twenty-five percent of
16 the authorized expenditure authority stated in sections 4 and 5 of this Act or one hundred ten
17 percent of the gross square footage authorized by sections 4 and 5 of this Act; provided that
18 increases in gross square footage estimates may be made only to accommodate design changes
19 needed to comply with building code requirements, to address unforeseeable structural, subsoil,
20 or environmental conditions, or to accommodate building program changes in the facility design
21 plan.

22 Section 11. For the purposes of this Act, the term, gross square footage, means the sum of
23 all areas on all floors of a building included within the outside faces of the building's exterior
24 walls, including floor penetration areas, however insignificant, for circulation and shaft areas

1 that connect one floor to another as computed by physically measuring or scaling measurements
2 from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, etc., which
3 extend beyond the wall faces. The term includes excavated basement area; mezzanines,
4 penthouses, and attics; garages; multiple floor parking structures; enclosed porches, inner or
5 outer balconies whether walled or not, if the balconies are utilized for operational functions; and
6 corridors whether walled or not, if the corridors are within the outside face lines of the building,
7 to the extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on
8 each floor through which the corridors pass. The term does not include open areas such as
9 unenclosed parking lots, playing fields, courts, and light wells, clear span areas not exceeding
10 three feet in height, or portions of upper floors eliminated by rooms or lobbies that rise above
11 single-floor height.

12 Section 12. The expenditures authorized by sections 1 to 12, inclusive, of this Act shall be
13 solely for the purposes of providing a site for the operation of instructional, research and service
14 programs delivered through institutions established by the Legislature and governed by the
15 Board of Regents. The Board of Regents may only use the property for the primary purpose of
16 education or research. It is the intent of the Board of Regents and the Eighty-fourth Legislature
17 that the Board of Regents may not without express legislative authorization:

- 18 (1) Organize the programs delivered at this site into a separate degree-granting
19 institution;
- 20 (2) Erect student residence facilities on the site;
- 21 (3) Construct facilities on the site for use as intercollegiate athletic practice or
22 competition;
- 23 (4) Establish intercollegiate athletic teams at the site;
- 24 (5) Sell any portion of the property acquired pursuant to sections 1 to 12, inclusive, of

1 this Act unless the property is appraised and advertised and offered for sale at public
2 auction. No portion of the property may be sold except at public sale and for an
3 amount less than the appraised value;

4 (6) Offer courses taught on the property at any rate other than the self-support tuition
5 rate;

6 (7) Lease for nonagricultural purposes more than ten percent of the surface area of the
7 property to third parties;

8 (8) Lease to third parties more than ten percent of the useable space within any building
9 constructed with state funds appropriated by the Legislature; or

10 (9) Permit any free-standing commercial facility to be constructed on the property or any
11 commercial facility to be located within any building constructed with state funds
12 unless the commercial facility is reasonably needed to meet the convenience and
13 needs of the students and instructors using the building.

14 Section 13. There is hereby appropriated from the general fund the sum of one hundred
15 thousand dollars (\$100,000), or so much thereof as may be necessary, to the Department of
16 Education to provide state student incentive grants pursuant to chapter 13-55A and tuition
17 equalization grants pursuant to chapter 13-55B. Grants shall be provided to qualified students
18 in regionally-accredited postsecondary schools and institutions. Funding under this section shall
19 be provided on a matching basis with federal funding under the Leveraging Educational
20 Assistance Partnership Program pursuant to the Higher Education Act of 1965, as amended to
21 January 1, 2009, and 34 C.F.R. 692, Subpart A, as amended to January 1, 2009.

22 Section 14. The secretary of education shall approve vouchers and the state auditor shall
23 draw warrants to pay expenditures authorized by section 13 of this Act.

24 Section 15. Any amounts appropriated in section 13 of this Act not lawfully expended or

1 obligated by June 30, 2010, shall revert in accordance with the procedures prescribed in chapter
2 4-8.