

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

615Q0255

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1112** - 2/25/2009

Introduced by: Representatives Hunhoff (Bernie), Engels, Faehn, Fargen, Gibson, Kirschman, Solberg, Steele, and Wink and Senators Peterson, Fryslie, Maher, Nelson, and Vehle

1 FOR AN ACT ENTITLED, An Act to establish certain restrictions and requirements related to
2 encumbrances on wind easements.

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

4 Section 1. That § 43-13-17 be amended to read as follows:

5 43-13-17. Any property owner may grant a wind easement in the same manner and with the
6 same effect as a conveyance of an interest in real property. The easement shall be created in
7 writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the
8 county in which the easement is granted. Any such easement runs with the land or lands
9 benefited and burdened and terminates upon the conditions stated in the easement, except that
10 the term of any such easement may not exceed fifty years. Any such easement is void if no
11 development of the potential to produce energy from wind power associated with the easement
12 has occurred within five years after the easement began. Any payments associated with the
13 granting or continuance of any such easement shall be made on an annual basis to the owner of
14 record of the real property at the time the payment is made. If the easement holder mortgages



1 or otherwise encumbers to any party any part of the easement holder's rights and interests under
2 the easement, any such mortgage or encumbrance on the easement is the responsibility of the
3 easement holder and attaches only to the easement holder's rights and does not otherwise attach
4 to the land or obligate the property owner. Each wind easement agreement shall include a
5 statement disclosing that the easement holder may mortgage or encumber any part of the
6 easement holder's rights and interests under the agreement unless otherwise specified in the
7 agreement.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0077

SENATE STATE AFFAIRS ENGROSSED NO. **SB 21** - 2/11/2009

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to impose a fuel excise tax on ethyl alcohol and methyl
2 alcohol used in motor vehicles on the public roads and highways, to repeal the fuel excise
3 tax on ethanol blends and E85 and M85, and to revise certain provisions regarding the fuel
4 excise tax.

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

6 Section 1. That subdivision (2) of § 10-47B-3 be amended to read as follows:

7 (2) "Blender," a person engaged in the activity of making blends ~~or purchasing ethyl~~
8 alcohol for resale to other blenders. A licensed blender may purchase denatured ethyl
9 alcohol ~~untaxed if the alcohol has not previously been blended with gasoline. A~~
10 person need not be a blender to import or export an ethanol blend or purchase a fuel
11 invoiced as a ten percent ethanol blend, M85 or E85 from a licensed supplier if the
12 ethyl alcohol and the gasoline are both loaded over a terminal rack, or purchased as
13 a blended product from a licensed blender. A person need not be a blender to mix
14 two or more substances which have previously been subject to the fuel excise tax



1 imposed by this chapter; ~~or. A person need not be a blender to mix~~ two or more
2 substances which have not been subject to the fuel excise tax imposed by this
3 chapter, if the mixed product does not result in producing a motor fuel or special fuel;

4 Section 2. That subdivision (10) of § 10-47B-3 be amended to read as follows:

5 (10) "Ethanol blend," a blended motor fuel; ~~commonly referred to as gasohol;~~ containing
6 ~~a minimum of ten percent by volume of ethyl alcohol of at least ninety-nine percent~~
7 ~~purity typically derived from cereal grain agricultural products~~ which is blended
8 exclusively with a product commonly or commercially known or sold as gasoline.
9 The blending of casinghead or natural gasoline is not permitted in an ethanol blend
10 fuel product in quantities larger than required to denature the ethyl alcohol;

11 Section 3. That subdivision (11) of § 10-47B-3 be repealed:

12 (11) ~~"E85," a petroleum product that is a blend of agriculturally derived denatured ethanol~~
13 ~~and gasoline or natural gasoline that typically contains eighty-five percent ethanol by~~
14 ~~volume, but at a minimum must contain seventy-five percent ethanol by volume. For~~
15 ~~the purposes of this chapter, the energy content of E85 is considered to be eighty-two~~
16 ~~thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with~~
17 ~~ASTM specification D-5798-99;~~

18 Section 4. That subdivision (12) of § 10-47B-3 be amended to read as follows:

19 (12) "Ethanol producer," any person who ~~for the purpose of making ethanol blend~~ engages
20 in the business of producing ethyl alcohol for sale, use, or distribution;

21 Section 5. That subdivision (12A) of § 10-47B-3 be amended to read as follows:

22 (12A) "Ethyl alcohol," a motor fuel typically derived from agricultural products that has
23 been denatured as prescribed in § 10-47B-166. This definition does not apply to § 10-
24 47B-162 or 10-47B-166;

1 Section 6. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read
2 as follows:

3 "Methyl alcohol," a motor fuel typically derived from wood products;

4 Section 7. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read
5 as follows:

6 "Methanol producer," any person who engages in the business of producing methyl alcohol
7 for sale, use, or distribution;

8 Section 8. That subdivision (26) of § 10-47B-3 be repealed:

9 (26) ~~"M85," motor fuel containing eighty-five percent or more by volume of methyl
10 alcohol;~~

11 Section 9. That subdivision (34A) of § 10-47B-3 be amended to read as follows:

12 (34A) "Racing fuel," a motor or special fuel that is specifically produced for use in race
13 cars. ~~The term does not include E85 or M85;~~

14 Section 10. That subdivision (40) of § 10-47B-3 be amended to read as follows:

15 (40) "Supplier or shipper," a person that imports or acquires upon import into this state
16 motor fuel or special fuel by pipeline or marine vessel from another state, territory,
17 or possession of the United States into a terminal within this state, or that imports
18 motor fuel or special fuel into this state from a foreign country or that produces,
19 manufactures, or refines motor fuel or special fuel, ~~except ethyl alcohol,~~ within this
20 state, or that owns motor fuel or special fuel in the pipeline and terminal distribution
21 system in this state and makes sales or authorizes removal of motor fuel or special
22 fuel from a terminal in this state at the rack or is the receiving exchange partner in a
23 two party exchange or the final transferee in a book transfer, and is subject to the
24 general taxing or police jurisdiction of this state, or is required to be registered under

1 Section 4101 of the Internal Revenue Code for transactions in taxable fuels in the
 2 bulk distribution system. The person need not be required to be registered under
 3 Section 4101 of the Internal Revenue Code if operating as a railroad company or
 4 utility company. A terminal operator may not be considered a supplier merely
 5 because the terminal operator handles motor fuel or special fuel consigned to it
 6 within a terminal. The name of the supplier or shipper shall be identified and
 7 prominently displayed on the bill of lading;

8 Section 11. That § 10-47B-4 be amended to read as follows:

9 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 10 (1) Motor fuel (except ~~ethanol blends, E85 and M85 blends~~ ethyl alcohol, methyl
 11 alcohol, and aviation gasoline)--\$.22 per gallon;
- 12 (2) Special fuel (except jet fuel)--\$.22 per gallon;
- 13 (3) ~~Ethanol blends--\$.20 per gallon;~~
- 14 ~~—(4)—Aviation gasoline--\$.06 per gallon;~~
- 15 ~~(5)(4) Jet fuel--\$.04 per gallon;~~
- 16 ~~—(6)—E85 and M85--\$.10 per gallon;~~
- 17 ~~—(7)—E85 and M85 used in aircraft--\$.04 per gallon;~~
- 18 ~~(8)(5) Liquid petroleum gas--\$.20 per gallon;~~
- 19 ~~(9)(6) Compressed natural gas--\$.10 per gallon;~~
- 20 (7) Ethyl alcohol and methyl alcohol--\$.08 per gallon.

21 Section 12. That section 3 of chapter 54 of the 2008 Session Laws be amended to read as
 22 follows:

23 Section 3. That § 10-47B-4 be amended to read as follows:

24 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 1 (1) Motor fuel (except ~~ethanol blends~~, biodiesel, biodiesel blends, ~~E85 and M85 blends~~
2 ethyl alcohol, methyl alcohol, and aviation gasoline)--\$.22 per gallon;
- 3 (2) Special fuel (except jet fuel)--\$.22 per gallon;
- 4 (3) ~~Ethanol blends--\$.20 per gallon;~~
- 5 ~~—(4)—Aviation gasoline--\$.06 per gallon;~~
- 6 ~~(5)~~(4) Jet fuel--\$.04 per gallon;
- 7 ~~—(6)—E85 and M85--\$.10 per gallon;~~
- 8 ~~—(7)—E85 and M85 used in aircraft--\$.04 per gallon;~~
- 9 ~~(8)~~(5) Liquid petroleum gas--\$.20 per gallon;
- 10 ~~(9)~~(6) Compressed natural gas--\$.10 per gallon;
- 11 (7) Ethyl alcohol and methyl alcohol--\$.08 per gallon;
- 12 ~~(10)~~(8) Biodiesel and biodiesel blends--\$.20 per gallon.

13 Section 13. That § 10-47B-5 be amended to read as follows:

14 10-47B-5. A fuel excise tax is imposed on all motor fuel and special fuel that is removed
15 from a terminal in this state at the rack or used at the terminal. This tax is not imposed if the fuel
16 is withdrawn from a terminal for export by the consignee, if the consignee is specifically
17 licensed to export fuel from this state, into the state which is indicated as the destination state
18 on the bill of lading which was issued by the terminal operator for the fuel. This tax is not
19 imposed if the fuel removed is ~~ethyl alcohol or~~ biodiesel which has been removed by a licensed
20 blender or supplier, for resale over a terminal rack, ~~is invoiced separately from gasoline,~~ and is
21 not sold as ~~an ethanol blend or a~~ biodiesel blend. The tax imposed shall be at the rate ~~indicated~~
22 provided for in § 10-47B-4.

23 Section 14. That § 10-47B-6 be amended to read as follows:

24 10-47B-6. A fuel excise tax is imposed on all motor fuel or special fuel, except unblended

1 ~~ethyl alcohol or biodiesel~~, imported into this state in the bulk cargo area of any motor vehicle,
2 vessel rail car, or trailer by any means other than through a terminal located in this state, upon
3 its entry into this state. The tax imposed shall be at the rate ~~indicated~~ provided for in § 10-47B-
4 4.

5 If the motor fuel imported into this state contains ethyl alcohol or methyl alcohol, the
6 importer shall provide documentation as required by the secretary of the number of gallons that
7 are ethyl alcohol, the number of gallons that are methyl alcohol, the number of gallons that are
8 gasoline, or the number of gallons of any other motor fuel that are contained therein.

9 Section 15. That § 10-47B-8 be amended to read as follows:

10 10-47B-8. A fuel excise tax is imposed on all ~~ethyl alcohol and other~~ substances blended
11 with motor fuel or undyed special fuel unless the ~~ethyl alcohol or other~~ substance has previously
12 been taxed by the provisions of this chapter. The tax imposed shall be at the rate ~~indicated~~
13 provided for in § 10-47B-4 of the dominant motor fuel or undyed special fuel with which the
14 substance is blended ~~unless the substance is ethyl or methyl alcohol blended by a licensed~~
15 ~~blender to create an ethanol, E85, or M85 blend in which case it shall be at the ethanol, E85, or~~
16 ~~M85 blend rate as indicated in § 10-47B-4.~~

17 Section 16. That § 10-47B-9 be amended to read as follows:

18 10-47B-9. A fuel excise tax is imposed on unblended ~~ethyl alcohol or biodiesel~~ sold by a
19 licensed producer, supplier, importer, or blender unless the sale is made to a licensed supplier
20 for resale, to a licensed blender, or to a licensed exporter for export to another state who is
21 specifically licensed to export to that state. The tax imposed shall be at the rate ~~set for motor~~
22 fuel provided for in § 10-47B-4.

23 Section 17. That chapter 10-47B be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A fuel excise tax is imposed on ethyl alcohol or methyl alcohol sold by an ethanol producer,
2 methanol producer, supplier, importer, or blender, unless the sale is made to a licensed supplier
3 for resale or to a licensed exporter for export to another state who is specifically licensed to
4 export to that state. The tax imposed shall be at the rate provided for in § 10-47B-4.

5 Section 18. That § 10-47B-10 be amended to read as follows:

6 10-47B-10. A fuel excise tax is imposed on all motor fuel or special fuel which has been
7 removed from a terminal in this state at the rack by a licensed exporter for which the bill of
8 lading issued for the fuel by the terminal operator indicates a destination state other than South
9 Dakota, and the fuel is later diverted by the exporter to a destination within this state for
10 off-loading or is transferred or sold to another person within this state prior to off-loading in any
11 destination state. This tax is not imposed if the fuel is ~~ethyl alcohol or biodiesel~~; and the
12 exporter is also licensed as a blender or supplier, ~~and the product is purchased and invoiced~~
13 ~~separately from gasoline and not as an ethanol blend~~. The tax imposed shall be at the rate ~~set~~
14 ~~for motor fuel or special fuel~~ provided for in § 10-47B-4.

15 Section 19. That § 10-47B-11 be amended to read as follows:

16 10-47B-11. A fuel excise tax is imposed on liquid petroleum gas and compressed natural
17 gas sold or used by licensed vendors in this state for use in motor vehicles unless liquid
18 petroleum gas is sold to a licensed liquid petroleum gas user. The tax imposed shall be at the
19 ~~rate set forth~~ provided for in § 10-47B-4.

20 Section 20. That § 10-47B-12 be amended to read as follows:

21 10-47B-12. A fuel excise tax is imposed on liquid petroleum gas used in the engine fuel
22 supply tank of a motor vehicle owned or operated by a liquid petroleum user which is used on
23 the public highways or roads of this state. The tax imposed shall be at the rate ~~set forth~~ provided
24 for in § 10-47B-4.

1 Section 21. That § 10-47B-13 be amended to read as follows:

2 10-47B-13. A fuel excise tax is imposed on all motor fuel, special fuel, and liquid petroleum
3 gas used in the engine fuel supply tank of self-propelled machinery, equipment, or vehicles used
4 in highway construction or repair work done in this state within the right-of-way, unless the
5 self-propelled machinery, equipment, and vehicles are owned by this state or a county or
6 municipality of this state. The tax imposed shall be at the rate ~~indicated for motor fuel, special~~
7 ~~fuel, or liquid petroleum gas~~ provided for in § 10-47B-4.

8 Section 22. That § 10-47B-25 be amended to read as follows:

9 10-47B-25. The tax imposed on ~~unblended~~ ethyl alcohol in ~~§ 10-47B-9~~ and methyl alcohol
10 by section 17 of this Act and not exempted by § 10-47B-19 shall be remitted by the selling
11 ethanol producer, methanol producer, supplier, importer, or blender.

12 Section 23. That § 10-47B-53 be amended to read as follows:

13 10-47B-53. The bill of lading issued by a terminal operator, bulk plant operator, or
14 transporter as dictated by this chapter shall contain the following information:

- 15 (1) The terminal or bulk plant name and address;
- 16 (2) The date the fuel was withdrawn from the terminal;
- 17 (3) The name and address of the supplier, shipper, or owner of fuel within a bulk plant
18 if withdrawn from a bulk plant;
- 19 (4) The name of the transporter or carrier;
- 20 (5) The destination state. A petroex or similar number does not fulfill this requirement;
- 21 (6) The bill-of-lading number;
- 22 (7) The number of gross gallons of each type of fuel;
- 23 (8) The type of fuel product transported;
- 24 (9) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl

1 alcohol, the number of gallons of methyl alcohol, the number of gallons of gasoline,
2 or the number of gallons of any other motor fuel that are contained therein;

3 (10) The name and address of the consignee; and

4 ~~(10)~~(11) Any other information which the secretary deems necessary for the
5 administration and enforcement of this chapter.

6 Section 24. That § 10-47B-54 be amended to read as follows:

7 10-47B-54. The diversion ticket issued by a transporter shall contain the following
8 information:

9 (1) The transporter's or carrier's name and address;

10 (2) The date and time the fuel was withdrawn from the terminal;

11 (3) The diversion ticket number;

12 (4) The name and address of the supplier or shipper indicated on the original bill of
13 lading or the owner of fuel within a bulk plant if withdrawn from a bulk plant;

14 (5) The destination state;

15 (6) The original bill-of-lading number;

16 (7) The terminal or bulk plant from which the product was withdrawn;

17 (8) The number of gross gallons of each fuel type being diverted;

18 (9) The type of fuel being diverted; ~~and~~

19 (10) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl
20 alcohol, the number of gallons of methyl alcohol, the number of gallons of gasoline,
21 or the number of gallons of any other motor fuel that are contained therein; and

22 (11) Any other information which the secretary deems necessary for the administration
23 and enforcement of this chapter.

24 Section 25. That § 10-47B-55 be amended to read as follows:

1 10-47B-55. The drop load ticket issued by a transporter shall contain the following
2 information:

- 3 (1) The transporter's or carrier's name and address;
- 4 (2) The date of delivery of the fuel;
- 5 (3) The drop load ticket number;
- 6 (4) The destination state on the original bill-of-lading, or diversion ticket, if issued;
- 7 (5) The original bill of lading, and if available the diversion ticket number;
- 8 (6) The destination state of each location at which the fuel was off-loaded;
- 9 (7) The number of gross gallons off-loaded at each location;
- 10 (8) The type of fuel off-loaded at each location; ~~and~~
- 11 (9) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl
12 alcohol, the number of gallons of methyl alcohol, the number of gallons of gasoline,
13 or the number of gallons of any other motor fuel that are contained therein; and
- 14 (10) Any other information which the secretary deems necessary for the administration
15 and enforcement of this chapter.

16 Section 26. That chapter 10-47B be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Any person acting in this state as a methanol producer shall be licensed as a methanol
19 producer.

20 Section 27. That § 10-47B-113 be amended to read as follows:

21 10-47B-113. The blender report required pursuant to § 10-47B-111 shall contain the
22 following information, if deemed necessary by the secretary:

- 23 (1) ~~The number of gallons of gasoline blended with ethyl alcohol to produce ethanol~~
24 ~~blend or E85;~~

1 ~~—(2)—~~ The number of gallons of ethyl alcohol blended with gasoline to produce ethanol
2 blend or E85;

3 ~~—(3)—~~ The number of gallons of unblended denatured ethyl alcohol sold, including the tax
4 exempt sales made to licensed blenders, licensed suppliers for removal from a
5 terminal in this state at the rack as a ten percent ethanol blend, and to a licensed
6 exporter for export to a state for which the exporter is specifically licensed to export;

7 ~~—(4)—~~ The number of gallons of gasoline blended with methyl alcohol to produce M85;

8 ~~—(5)—~~ The number of gallons of methyl alcohol blended with gasoline to produce M85;

9 ~~—(6)—~~ The number of gallons of any other substances blended with motor fuel or special
10 fuel; and

11 ~~(7)~~(2) A schedule of the names and addresses of all sales of blends in quantities of
12 twenty-five gallons or more, ~~except for sales of ten percent ethanol blends;~~

13 (3) The number of gallons of biodiesel, the number of gallons of biodiesel blend, and the
14 number of gallons of special fuel used to make a biodiesel blend; and

15 (4) The number of gallons of unblended biodiesel sold, including the tax exempt sales
16 made to licensed blenders, licensed suppliers for resale, and to licensed exports for
17 export to a state for which the exporter is specifically licensed to export.

18 Section 28. That § 10-47B-136 be repealed.

19 ~~—10-47B-136. A tax report credit for gasoline blended with ethyl or methyl alcohol to create~~
20 ~~an ethanol blend, E85 or M85 shall be allowed to the licensed blender who performs the~~
21 ~~blending activity. The tax report credit shall be granted on a per gallon basis in the amount that~~
22 ~~the rate for motor fuel exceeds the rate for ethanol blend E85 or M85. The credit shall be used~~
23 ~~to off-set any tax liability resulting from the blending of previously untaxed ethyl or methyl~~
24 ~~alcohol.~~

1 ~~This credit is extended only for gasoline which is blended with ethyl or methyl alcohol and~~
2 ~~no other fuel product. The further blending of additional fuel products with a motor fuel, special~~
3 ~~fuel, or ethanol blend as defined under this chapter shall cause this credit to be cancelled and~~
4 ~~the blended product shall be taxed at the rate of tax for motor fuel and special fuel.~~

5 Section 29. That chapter 10-47B be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A tax report credit for special fuel blended with biodiesel to create biodiesel blend shall be
8 allowed to the licensed blender who performs the blending activity. The tax report credit shall
9 be granted on a per gallon basis in the amount that the rate for special fuel exceeds the rate for
10 biodiesel blend. The credit shall be used to off-set any tax liability resulting from the blending
11 of previously untaxed biodiesel.

12 This credit is extended only for special fuel which is blended with biodiesel and for no other
13 fuel product. The further blending of additional fuel products with a motor fuel, special fuel, or
14 biodiesel blend as defined under this chapter shall cause this credit to be cancelled and the
15 blended product shall be taxed at the rate of tax for motor fuel and special fuel provided for in
16 § 10-47B-4.

17 Section 30. That § 10-47B-184 be repealed.

18 ~~10-47B-184. A person who operates or maintains a motor vehicle which contains a product~~
19 ~~for use in the engine fuel supply tank of the vehicle for general highway use that does not meet~~
20 ~~ASTM standards as published in the annual book of standards and its supplements is subject to~~
21 ~~a civil penalty of one thousand dollars if the violation occurs in a motor vehicle which is not a~~
22 ~~qualified vehicle. If the violation occurs in a qualified vehicle, the person is subject to a civil~~
23 ~~penalty of two thousand dollars. The person is subject to a two thousand dollar civil penalty on~~
24 ~~all subsequent violations which occur in motor vehicles other than qualified vehicles and subject~~

1 to a civil penalty of four thousand dollars on all subsequent violations which occur in qualified
2 vehicles.

3 Section 31. That subdivision (14) of § 10-47B-187 be repealed:

4 (14) ~~Operates or maintains a motor vehicle which contains a product for use in the engine
5 fuel supply tank of the vehicle for general highway use that does not meet ASTM
6 standards as published in the annual book of standards and its supplements is guilty
7 of a Class 1 misdemeanor. Any subsequent violation is a Class 6 felony;~~

8 Section 32. That subdivision (18) of § 10-47B-187 be repealed:

9 (18) ~~Sells a product for use in the engine fuel supply tank of a motor vehicle for general
10 highway use that does not meet ASTM standards as published in the annual book of
11 standards and its supplements is guilty of a Class 6 felony. The department requires
12 the possessor to dispose of any product in violation of this subdivision in the manner
13 provided by federal and state law.~~

14 Section 33. That § 34A-13-20 be amended to read as follows:

15 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any
16 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,
17 inclusive, section 17 of this Act, and 10-47B-13. None of the exemptions from fuel excise tax
18 allowed in § 10-47B-19 shall apply to this fee. The parties required to pay the fuel excise tax
19 under the provisions of §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31
20 are liable for payment of the petroleum release and tank inspection fee. In cases where the fuel
21 is exempt from the fuel excise tax under the provisions of subdivisions 10-47B-19(1), (3), and
22 (5), the supplier shall pay the fee. Responsibility for payment of the fee ceases if the petroleum
23 product is sold and delivered by a licensed exporter outside of the state. The amount of the fee
24 imposed is twenty dollars per one thousand gallons of petroleum. Beginning January 1, 2003,

1 fifty percent of the revenue collected pursuant to this section shall be deposited monthly in the
2 ethanol fuel fund and fifty percent of the revenue collected pursuant to this section shall be
3 distributed monthly in the following manner:

4 (1) Beginning in fiscal year 2000 to December 31, 2002, inclusive, fifty percent shall be
5 deposited in the state capital construction fund created in § 5-27-1. Beginning on
6 January 1, 2003, seventy-eight and seven-tenths percent shall be deposited in the state
7 capital construction fund; and

8 (2) Beginning April 1, 2002, to December 31, 2002, inclusive, twenty-nine and one-tenth
9 percent shall be deposited in the petroleum release compensation fund and twenty
10 and nine-tenths percent shall be deposited in the state highway fund. Beginning on
11 January 1, 2003, twenty-one and three-tenths percent shall be deposited in the
12 petroleum release compensation fund.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

870Q0143

SENATE ENGROSSED NO. **SB 77** - 2/17/2009

Introduced by: Senators Gant, Abdallah, Adelstein, Dempster, Gray, Haverly, Heidepriem, Knudson, Maher, Merchant, Miles, Nelson, and Nesselhuf and Representatives Dreyer, Brunner, Curd, Cutler, Elliott, Fargen, Gosch, Greenfield, Jensen, Kirkeby, Kirschman, Krebs, Lederman, Lust, Moser, Novstrup (David), Nygaard, Peters, Rausch, Rave, Rounds, Solberg, Solum, Turbiville, and Verchio

1 FOR AN ACT ENTITLED, An Act to repeal the maximum number of off-sale alcoholic
2 beverage licenses that may be issued to any person, corporation, or business entity and to
3 establish requirements for physical barriers for certain off-sale alcoholic beverage
4 establishments.

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

6 Section 1. That § 35-4-4 be amended to read as follows:

7 35-4-4. No person, corporation, or business entity may hold or have an interest in more than
8 three retail licenses issued under subdivision 35-4-2(3), (4), (6), or (13). However, a person,
9 corporation, or business entity may hold or have an interest in three additional retail licenses
10 issued under subdivision 35-4-2(4) if the licensee derives more than fifty percent of the
11 licensee's annual gross receipts from the sale of food at the location where the license is held.
12 ~~Any person, corporation, or business entity may hold or have an interest in additional retail~~
13 ~~licenses issued under subdivision 35-4-2(3) in municipalities of the first class if the licensee~~



1 ~~derives more than fifty percent of the licensee's annual gross receipts from the sale of food,~~
2 ~~prepared food, and food ingredients at the location where the license is held. Any such new~~
3 ~~licensee under subdivision 35-4-2(3) shall sell its alcoholic beverages, other than malt~~
4 ~~beverages, in an area which is separated by a physical barrier from the rest of the establishment.~~
5 ~~For the purposes of this section, a physical barrier includes a wall or fence erected for the sole~~
6 ~~purpose of separating the area in which the alcoholic beverages are sold from the rest of the~~
7 ~~establishment. For purposes of this section, location means one contiguous piece of real estate~~
8 ~~on which sales are generated by the licensee.~~

9 Section 2. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any person, corporation, or business entity that is issued a new retail license under
12 subdivision 35-4-2(3) in a municipality of the first class after June 30, 2008, and derives more
13 than fifty percent of the licensee's annual gross receipts from the sale of food, prepared food, and
14 food ingredients at the location where the license is held, shall sell its alcoholic beverages, other
15 than malt beverages, in an area which is separated by a physical barrier from the rest of the
16 establishment. For the purposes of this section, a physical barrier includes a wall or fence
17 erected for the sole purpose of separating the area in which the alcoholic beverages are sold
18 from the rest of the establishment.

19 Section 3. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any person, corporation, or business entity that is issued a new retail license under
22 subdivision 35-4-2(3) after June 30, 2009, and derives less than fifty percent of the licensee's
23 annual gross receipts from the sale of alcoholic beverages at the location where the license is
24 held shall sell its alcoholic beverages, other than malt beverages, in an area which is separated

1 by a physical barrier from the rest of the establishment. For the purposes of this section, a
2 physical barrier includes a wall or fence erected for the sole purpose of separating the area in
3 which the alcoholic beverages are sold from the rest of the establishment.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

285Q0288

HOUSE TAXATION ENGROSSED NO. **SB 80** - 3/3/2009

Introduced by: Senators Knudson and Heidepriem and Representatives Faehn and Hunhoff
(Bernie)

1 FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund of a
2 school district.

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

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2009~~ 2010 and each year thereafter, the levy for the general
6 fund of a school district shall be as follows:

7 (1) The maximum tax levy shall be eight dollars and ~~seventy-eight~~ seventy-six cents per
8 thousand dollars of taxable valuation subject to the limitations on agricultural
9 property as provided in subdivision (2) of this section, owner-occupied property as
10 provided for in subdivision (3) of this section, and nonagricultural acreage property
11 as provided for in subdivision (4) of this section;

12 (2) The maximum tax levy on agricultural property for such school district shall be two
13 dollars and ~~sixty-one~~ fifty-nine cents per thousand dollars of taxable valuation. If the
14 district's levies are less than the maximum levies as stated in this section, the levies



1 shall maintain the same proportion to each other as represented in the mathematical
2 relationship at the maximum levies;

3 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in
4 § 10-13-40, for such school district may not exceed four dollars and ~~ten~~ eight cents
5 per thousand dollars of taxable valuation. If the district's levies are less than the
6 maximum levies as stated in this section, the levies shall maintain the same
7 proportion to each other as represented in the mathematical relationship at the
8 maximum levies; and

9 (4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-
10 33.14, for such school district shall be three dollars and ~~sixty-one~~ fifty-nine cents per
11 thousand dollars of taxable valuation. If the district's levies are less than the
12 maximum levies as stated in this section, the levies shall maintain the same
13 proportion to each other as represented in the mathematical relationship at the
14 maximum levies.

15 All levies in this section shall be imposed on valuations where the median level of
16 assessment represents eighty-five percent of market value as determined by the Department of
17 Revenue and Regulation. These valuations shall be used for all school funding purposes. If the
18 district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same
19 proportion to each other as represented in the mathematical relationship at the maximum levies
20 in this section. The school district may elect to tax at less than the maximum amounts set forth
21 in this section.

22 Section 2. That section 21 of chapter 44 of the 2008 Session Laws be repealed.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

447Q0384

SENATE JUDICIARY ENGROSSED NO. **SB 96** 2/3/2009

Introduced by: Senators Gillespie, Ahlers, Bartling, Dempster, Hanson (Gary), Maher, and Turbak Berry and Representatives Cutler, Boomgarden, Burg, Engels, Hunt, Juhnke, Nygaard, Peters, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the indemnification
2 of employees, officers, and agents of rural electric cooperatives.

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

4 Section 1. That § 47-21-21.2 be amended to read as follows:

5 47-21-21.2. Except as otherwise provided in § 47-21-21.3, a ~~rural electric~~ cooperative may
6 indemnify a director, officer, agent, or employee who is a party to a proceeding by reason of
7 being a director, officer, agent, or employee against liability incurred in the proceeding if the
8 director, officer, agent, or employee:

9 (1) Acted in good faith; and

10 (2) Reasonably believed:

11 (a) In the case of conduct in an official capacity, that the conduct was in the best
12 interests of the cooperative; and

13 (b) In all other cases, that the conduct was at least not opposed to the best interests
14 of the cooperative; and



1 (3) In the case of any criminal proceeding, had no reasonable cause to believe the
2 conduct was unlawful.

3 A ~~rural electric~~ cooperative may also, except as provided in § 47-21-21.3, indemnify a
4 director, officer, agent, or employee who is a party to a proceeding against liability incurred in
5 the proceeding if the director, officer, agent, or employee engaged in conduct for which broader
6 indemnification has been made permissible or obligatory under a provision of the articles of
7 incorporation.

8 ~~A director's~~ The conduct of a director, officer, agent, or employee with respect to an
9 employee benefit plan for a purpose the director, officer, agent, or employee reasonably believed
10 to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that
11 satisfies the requirement of subsection (2)(b) of this section.

12 The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
13 plea of nolo contendere or its equivalent, is not, of itself, determinative that the director, officer,
14 agent, or employee did not meet the relevant standard of conduct described in this section.

15 Section 2. That § 47-21-21.3 be amended to read as follows:

16 47-21-21.3. Unless otherwise ordered by a court, a ~~rural electric~~ cooperative may not
17 indemnify a director, officer, agent, or employee:

18 (1) In connection with a proceeding by or in the right of the cooperative, except for
19 reasonable expenses incurred in connection with the proceeding if it is determined
20 that the director, officer, agent, or employee has met the relevant standard of conduct
21 pursuant to § 47-21-21.2; or

22 (2) In connection with any proceeding with respect to conduct for which the director,
23 officer, agent, or employee was adjudged liable on the basis that the director, officer,
24 agent, or employee received a financial benefit to which the director, officer, agent,

1 or employee was not entitled, whether or not involving action in the ~~director's~~ official
2 capacity of the director, officer, agent, or employee.

3 Section 3. That § 47-21-21.4 be amended to read as follows:

4 47-21-21.4. A ~~rural electric~~ cooperative shall indemnify a director, officer, agent, or
5 employee who was wholly successful, on the merits or otherwise, in the defense of any
6 proceeding to which the director, officer, agent, or employee was a party by reason of being a
7 director, officer, agent, or employee of the cooperative, against reasonable expenses incurred
8 in connection with the proceeding.

9 Section 4. That § 47-17-21 be amended to read as follows:

10 47-17-21. Except as otherwise provided in § 47-17-22, a cooperative may indemnify a
11 director, officer, agent, or employee who is a party to a proceeding by reason of being a director,
12 officer, agent, or employee, against liability incurred in the proceeding if the director, officer,
13 agent, or employee:

14 (1) Acted in good faith; and

15 (2) Reasonably believed:

16 (a) In the case of conduct in an official capacity, that the conduct was in the best
17 interests of the cooperative; and

18 (b) In all other cases, that the conduct was at least not opposed to the best interests
19 of the cooperative; and

20 (3) In the case of any criminal proceeding, had no reasonable cause to believe the
21 conduct was unlawful.

22 A cooperative may also, except as provided in § 47-17-22, indemnify a director, officer,
23 agent, or employee who is a party to a proceeding against liability incurred in the proceeding
24 if the director, officer, agent, or employee engaged in conduct for which broader indemnification

1 has been made permissible or obligatory under a provision of the articles of incorporation.

2 ~~A director's~~ The conduct of a director, officer, agent, or employee with respect to an
3 employee benefit plan for a purpose the director, officer, agent, or employee reasonably believed
4 to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that
5 satisfies the requirement of subsection (2)(b).

6 The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
7 plea of nolo contendere or its equivalent, is not, of itself, determinative that the director, officer,
8 agent, or employee did not meet the relevant standard of conduct described in this section.

9 Section 5. That § 47-17-22 be amended to read as follows:

10 47-17-22. Unless otherwise ordered by a court, a cooperative may not indemnify a director,
11 officer, agent, or employee:

12 (1) In connection with a proceeding by or in the right of the cooperative, except for
13 reasonable expenses incurred in connection with the proceeding if it is determined
14 that the director, officer, agent, or employee has met the relevant standard of conduct
15 pursuant to § 47-17-21; or

16 (2) In connection with any proceeding with respect to conduct for which the director,
17 officer, agent, or employee was adjudged liable on the basis that the director, officer,
18 agent, or employee received a financial benefit to which the director, officer, agent,
19 or employee was not entitled, whether or not involving action in the ~~director's~~ official
20 capacity of the director, officer, agent, or employee.

21 Section 6. That § 47-17-23 be amended to read as follows:

22 47-17-23. A cooperative shall indemnify a director, officer, agent, or employee who was
23 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the
24 director, officer, agent, or employee was a party by reason of being a director, officer, agent, or

- 1 employee of the cooperative, against reasonable expenses incurred in connection with the
- 2 proceeding.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

956Q0127

HOUSE EDUCATION ENGROSSED NO. **SB 106** 3/2/2009

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Knudson, Abdallah, Adelstein, Bartling, Dempster, Garnos, Gillespie, Gray, Hansen (Tom), Hanson (Gary), Heidepriem, Jerstad, Maher, Merchant, Miles, Olson (Russell), Peterson, Tieszen, and Vehle and Representatives Cutler, Curd, Dreyer, Frerichs, Hunhoff (Bernie), Lucas, Peters, Rave, Schlekeway, Street, Thompson, and Turbiville

- 1 FOR AN ACT ENTITLED, An Act to enhance education in South Dakota.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. Education in South Dakota is hereby enhanced.



State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

543Q0412

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **SB 115** - 3/3/2009

Introduced by: Senators Hanson (Gary), Abdallah, Bartling, Fryslie, Haverly, Heidepriem, Howie, Kloucek, Peterson, Rhoden, and Vehle and Representatives Noem, Burg, Dennert, Feinstein, Juhnke, Pitts, Rausch, Street, and Wink

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the initiation of
2 modifications to county comprehensive plans.

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

4 Section 1. That § 11-2-28 be amended to read as follows:

5 11-2-28. The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter
6 may be amended, supplemented, changed, modified, or repealed by action of the board. Any
7 such modification or repeal shall be proposed in a resolution or ordinance, as appropriate,
8 presented to the board for adoption in the same manner and upon the same notice as required
9 for the adoption of the original resolution or ordinance. The amendment, supplement, change,
10 modification, or repeal may be requested through a petition by thirty percent of the landowners
11 registered to vote in the zoning district or districts requesting change. For purposes of this
12 section, the term, landowner, means any ~~person who~~ natural person, partnership corporation,
13 limited liability company, or limited liability partnership that owns land in the county as
14 evidenced by records in the offices of the register of deeds and clerk of courts. If the land is



1 owned by a corporation, limited liability company, or limited liability partnership, the
2 corporation, limited liability company, or limited liability partnership may designate one person
3 who has a ten percent or more interest in the corporation, limited liability company, or limited
4 liability partnership and who is registered to vote in the zoning district to be treated as a
5 landowner. For the purposes of this section, the corporation, limited liability company, or
6 limited liability partnership may provide documentation to the register of deeds designating the
7 person who may act on its behalf. If land is sold under a contract for deed that is of record in the
8 office of the register of deeds in the county, both the landowner and the individual purchaser of
9 the land, as named in the contract, are treated as landowners.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

733Q0531

HOUSE EDUCATION ENGROSSED NO. **SB 126** 3/2/2009

Introduced by: Senators Knudson, Adelstein, Bradford, Brown, Fryslie, Gant, Gray, Hansen (Tom), Haverly, Howie, Hunhoff (Jean), Jerstad, Merchant, Schmidt, Tieszen, Turbak Berry, and Vehle and Representatives Sly, Hamiel, Killer, Lange, Lucas, McLaughlin, Romkema, Sorenson, Steele, Vanderlinde, and Verchio

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding school attendance.

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

3 Section 1. That § 13-27-1 be amended to read as follows:

4 13-27-1. ~~Every~~ Any person having control of a child, who is six years old by the first day
5 of September and who has not exceeded the age of eighteen, shall cause the child to regularly
6 and annually attend some public or nonpublic school for the entire term during which the public
7 school in the district in which the person resides, or the school to which the child is assigned
8 to attend, is in session, until the child reaches the age of eighteen years, unless the child has
9 graduated or is excused as provided in this chapter. However, the requirements of this section
10 are met if a child who is at least sixteen years of age enrolls in a general education development
11 test preparation program that is school-based or for which a school contracts and the child
12 successfully completes the test or reaches the age of eighteen years.

13 A child is eligible to enroll in a school-based or school-contracted general education



1 development test preparation program or take the general education development test if the child
2 is sixteen or seventeen years of age, and the child presents written permission from the child's
3 parent or guardian and one of the following:

4 (1) Verification from a school administrator that the child will not graduate with the
5 child's cohort class because of credit deficiency;

6 (2) Authorization from a court services officer;

7 (3) A court order requiring the child to enter the program;

8 (4) Verification that the child is under the direction of the Department of Corrections;
9 or

10 (5) Verification that the child is enrolled in Job Corps as authorized by Title I-C of the
11 Workforce Investment Act of 1998, as amended to January 1, 2009.

12 Any child who is sixteen or seventeen years of age and who completes the general education
13 development test preparation program may take the general education development test
14 immediately following release from the school program or when ordered to take the test by a
15 court. Any such child who fails to successfully complete the test shall re-enroll in the school
16 district and may continue the general education development preparation program or other
17 suitable program as determined by the school district.

18 Any child under age six enrolled in any elementary school or kindergarten program is
19 subject to the compulsory attendance statutes of this state. A waiver of the compulsory
20 attendance requirement for children under the age of seven years of age shall be granted by the
21 school district upon the request of the parents.

22 Section 2. That section 1 of chapter 80 of the 2006 Session Laws be repealed.

23 Section 3. That § 13-27-1 be amended to read as follows:

24 13-27-1. ~~Every~~ Any person having control of a child, who is not younger than five or older

1 than six years old by the first day of September and who has not exceeded the age of eighteen,
2 shall cause the child to regularly ~~and annually~~ attend some public or nonpublic school for the
3 entire term during which the public school in the district in which the person resides, or the
4 school to which the child is assigned to attend, is in session, until the child reaches the age of
5 eighteen years, unless the child has graduated or is excused as provided in this chapter.
6 However, the requirements of this section are met if a child who is at least sixteen years of age
7 enrolls in a general education development test preparation program that is school-based or for
8 which a school contracts and the child successfully completes the test or reaches the age of
9 eighteen years.

10 A child is eligible to enroll in a school-based or school-contracted general education
11 development test preparation program or take the general education development test if the child
12 is sixteen or seventeen years of age, and the child presents written permission from the child's
13 parent or guardian and one of the following:

- 14 (1) Verification from a school administrator that the child will not graduate with the
15 child's cohort class because of credit deficiency;
- 16 (2) Authorization from a court services officer;
- 17 (3) A court order requiring the child to enter the program;
- 18 (4) Verification that the child is under the direction of the Department of Corrections;
19 or
- 20 (5) Verification that the child is enrolled in Job Corps as authorized by Title I-C of the
21 Workforce Investment Act of 1998, as amended to January 1, 2009.

22 Any child who is sixteen or seventeen years of age and who completes the general education
23 development test preparation program may take the general education development test
24 immediately following release from the school program or when ordered to take the test by a

1 court. Any such child who fails to successfully complete the test shall re-enroll in the school
2 district and may continue the general education development preparation program or other
3 suitable program as determined by the school district.

4 ~~Any child under age six enrolled in any elementary school or kindergarten program is~~
5 ~~subject to the compulsory attendance statutes of this state. A waiver of the compulsory~~
6 ~~attendance requirement for children under the age of seven years of age shall be granted by the~~
7 ~~school district upon the request of the parents. All children shall attend kindergarten prior to age~~
8 ~~seven. Any child who transfers from another state may proceed in a continuous educational~~
9 ~~program without interruption if the child has not previously attended kindergarten.~~

10 Section 4. The provisions of section 3 of this Act are effective July 1, 2010.

11 Section 5. The Department of Education may promulgate rules pursuant to chapter 1-26 to
12 establish general education development testing procedures for children who take the test
13 pursuant to § 13-27-1.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

481Q0169

SENATE ENGROSSED NO. **SB 127** - 2/9/2009

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to trust administration.

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

3 Section 1. That § 51A-6A-13 be amended to read as follows:

4 51A-6A-13. The business of any trust company shall be managed and controlled by its
5 governing board and includes the authority to provide for bonus payments, in addition to
6 ordinary compensation, for any of its officers and employees. The governing board shall consist
7 of not less than three nor more than twelve members, all of whom shall be elected by the owners
8 of the trust company at any regular annual meeting ~~that is held during the first one hundred~~
9 ~~twenty days of each calendar year.~~ If the number of board members elected is less than twelve,
10 the number of board members may be increased so long as the total number does not exceed
11 twelve. If the number is increased, the first additional board members may be elected at a special
12 meeting of the owners. The board members shall be elected and any vacancies filled in the
13 manner as provided in the provisions regarding general corporations or limited liability
14 companies, as applicable. At all times one of the directors shall be a resident of this state and
15 at least two-thirds of the directors shall be citizens of the United States. Any board member of



1 any trust company who becomes indebted to the trust company on any judgment shall forfeit
2 forfeits the position of board member, and the vacancy shall be filled as provided by law.

3 Section 2. That § 55-1-24 be amended to read as follows:

4 55-1-24. Terms used in §§ 55-1-24 to 55-1-43, inclusive, mean:

5 (1) "Beneficial interest," is limited to mean a distribution interest or a remainder interest.

6 A beneficial interest specifically excludes a power of appointment or a power
7 reserved by the settlor;

8 (2) "Beneficiary," a person that has a present or future beneficial interest in a trust,
9 vested or contingent. The holder of a power of appointment is not a beneficiary;

10 (3) "Distribution beneficiary," a beneficiary who is an eligible distributee or permissible
11 distributee of trust income or principal;

12 (4) "Distribution interest," a distribution interest held by a distribution beneficiary. A
13 distribution interest may be a current distribution interest or a future distribution
14 interest. A distribution interest may be classified as a mandatory interest, a support
15 interest, or a discretionary interest;

16 (5) "Power of appointment," an inter-vivos or testamentary power to direct the
17 disposition of trust property, other than a distribution decision by a trustee to a
18 beneficiary. Powers of appointment are held by a person to whom a power has been
19 given, not the settlor;

20 (6) "Reach," with respect to a distribution interest or power, to subject the distribution
21 interest or power to a judgment, decree, garnishment, attachment, execution, levy,
22 creditor's bill or other legal, equitable, or administrative process, relief, or control of
23 any court, tribunal, agency, or other entity as provided by law;

24 (7) "Remainder interest," an interest where a trust beneficiary will receive the property

1 outright at some time during the future;

2 ~~(7)~~(8) "Reserved power," a power held by the settlor.

3 Section 3. That § 55-1-26 be amended to read as follows:

4 55-1-26. Regardless of whether or not a trust contains a spendthrift provision:

5 (1) No beneficial interest, power of appointment, or reserved power in a trust may be
6 judicially foreclosed;

7 (2) No creditor may ~~attach~~ reach a power of appointment, ~~discretionary interest~~ or a
8 remainder interest; at the trust level. The creditor ~~must~~ shall wait until the funds are
9 distributed before the creditor may ~~attach~~ reach the funds; and

10 (3) No power of appointment is a property interest.

11 Section 4. That § 55-1-28 be amended to read as follows:

12 55-1-28. No creditor may ~~attach, exercise, or otherwise~~ reach an interest of a beneficiary or
13 any other person who holds an unconditional or conditional removal or replacement power over
14 a trustee. This power is personal to the beneficiary and may not be exercised by the beneficiary's
15 creditors. No court can direct a beneficiary to exercise the power.

16 No creditor may reach an interest of a beneficiary who is also a trustee or a co-trustee, or
17 otherwise compel a distribution because the beneficiary is then serving as a trustee or co-trustee.
18 No court may foreclose against such an interest.

19 Section 5. That § 55-1-31 be amended to read as follows:

20 55-1-31. Unless otherwise provided in the trust, if the settlor's spouse is named as
21 beneficiary, the settlor's spouse is still living, and the trust is classified as a support trust, then
22 the trustee shall consider the beneficiary's resources, including the settlor's obligation of support,
23 prior to making a distribution. In all other cases, unless otherwise provide in the trust, the trustee
24 need not consider the beneficiary's resources in determining whether a distribution should be

1 made.

2 Section 6. That § 55-1-32 be amended to read as follows:

3 55-1-32. In the event that a party challenges a settlor or a beneficiary's influence over a trust,
4 none of the following factors, alone or in combination, may be considered dominion and control
5 over a trust:

- 6 (1) ~~A~~ The settlor or a beneficiary serving as a trustee or a co-trustee as described in § 55-
7 1-28;
- 8 (2) The settlor or a beneficiary holds an unrestricted power to remove or replace a
9 trustee;
- 10 (3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership,
11 a manager of a limited liability company, an officer of a corporation, or any other
12 managerial function of any other type of entity, and part or all of the trust property
13 consists of an interest in the entity;
- 14 (4) A person related by blood or adoption to ~~a~~ the settlor or a beneficiary is appointed as
15 trustee;
- 16 (5) ~~A~~ The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or
17 friend is appointed as trustee; ~~or~~
- 18 (6) A business associate is appointed as a trustee;
- 19 (7) A beneficiary holds any power of appointment over any or all of the trust property;
- 20 (8) The settlor holds a power to substitute property of equivalent value;
- 21 (9) The trustee may loan trust property to the settlor for less than a full and adequate rate
22 of interest or without adequate security;
- 23 (10) The distribution language provides any discretion; or
- 24 (11) The trust has only one beneficiary eligible for current distributions.

1 Section 7. That § 55-1-38 be amended to read as follows:

2 55-1-38. A distribution interest can be classified in three ways:

- 3 (1) As a mandatory interest, which is a distribution interest ~~where the trustee has no~~
4 ~~discretion in determining whether the distribution shall be made, or the amount or~~
5 ~~timing, in which the timing of any distribution must occur within one year from the~~
6 ~~date the right to the distribution arises, and the trustee has no discretion in~~
7 ~~determining whether a distribution shall be made or the amount~~ of such distribution;
8 (2) As a support interest, which is not a mandatory interest but still contains mandatory
9 language such as "shall make distributions" and is coupled with a standard capable
10 of judicial interpretation; or
11 (3) As a discretionary interest, which is any interest where a trustee has any discretion
12 to make or withhold a distribution.

13 A discretionary interest ~~includes~~ may be evidenced by permissive language such as "may
14 make distributions" or it may ~~include~~ be evidenced by mandatory distribution language that is
15 negated by the ~~uncontrolled~~ discretionary language of the ~~trustee trust~~, such as "the trustee shall
16 make distributions in the trustee's sole and absolute discretion." ~~A support~~ An interest that
17 includes mandatory distribution language such as "shall" but is subsequently qualified by
18 discretionary distribution language shall be classified as a discretionary interest and not as a
19 support or a mandatory interest. A discretionary interest is any interest that is not a mandatory
20 or a support interest.

21 Section 8. That chapter 55-1 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 If a trust instrument containing the distribution language specifically provides that the
24 trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then

1 notwithstanding any other provision of §§ 55-1-38 to 55-1-43, inclusive, the distribution interest
 2 shall be classified as a support interest. A beneficiary's right to a distribution as well as a
 3 creditor's right regarding a beneficiary's support interest is governed by § 55-1-42.

4 Section 9. That § 55-1-41 be amended to read as follows:

5 55-1-41. If the trust contains a spendthrift provision, no creditor may ~~attach~~ reach present
 6 or future mandatory distributions from the trust at the trust level. Moreover, no court may order
 7 a trustee to distribute past due mandatory distributions directly to a creditor.

8 Section 10. That § 55-1-42 be amended to read as follows:

9 55-1-42. ~~The following provisions apply only to support interests:~~

10 ~~—(1)—~~ A beneficiary of a mandatory or a support interest has an enforceable right to a
 11 distribution pursuant to a court's review. A trustee's distribution decision may be
 12 reviewed for unreasonableness, dishonesty, improper motivation, or failure, if under
 13 a duty to do so, to act. This does not, however, raise the beneficiary's support interest
 14 to the level of a property interest;

15 ~~—(2)—~~ .

16 If the trust contains a spendthrift provision, notwithstanding the beneficiary's right to force
 17 a distribution ~~of a~~ with regard to a mandatory or support interest, no creditor may force a
 18 distribution ~~of a~~ with regard to a mandatory or support interest. No creditor may ~~attach~~ reach
 19 present or future support distributions ~~of a~~ with regard to a mandatory or support interest ~~at the~~
 20 ~~trust level.~~

21 ~~With respect to a mandatory interest, if a trust contains a spendthrift provision,~~
 22 ~~notwithstanding the beneficiary's right to force a distribution of a mandatory interest, no creditor~~
 23 ~~may force a distribution of a mandatory interest. No creditor may attach present or future~~
 24 ~~mandatory distributions of a mandatory interest at the trust level.~~

1 Regardless of whether a beneficiary has any outstanding creditor, a trustee of a mandatory
2 or a support interest may directly pay any expense on behalf of such beneficiary. No trustee is
3 liable to any creditor for paying the expenses of a beneficiary ~~who holds~~ of a mandatory or
4 support interest.

5 Section 11. That § 55-1-43 be amended to read as follows:

6 55-1-43. The following provisions apply only to discretionary interests:

7 (1) A discretionary interest is neither a property interest nor an enforceable right. It is a
8 mere expectancy;

9 (2) No creditor may force a distribution with regard to a discretionary interest. No
10 creditor may require the trustee to exercise the trustee's discretion to make a
11 distribution, ~~or cause a court to foreclose~~ with regard to a discretionary interest;

12 (3) A court may review a trustee's distribution discretion only if the trustee:

13 (a) Acts dishonestly;

14 (b) Acts with an improper motive; or

15 (c) Fails, if under a duty to do so, to act.

16 ~~Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee~~
17 ~~acting reasonably. A reasonableness standard may not be applied to the exercise of discretion~~
18 by the trustee with regard to a discretionary interest. Other than for the three circumstances
19 listed in this subdivision, a court has no jurisdiction to review the trustee's discretion or to force
20 a distribution.

21 Absent express language to the contrary, in the event that the distribution language in a
22 discretionary interest permits unequal distributions between beneficiaries or distributions to the
23 exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or
24 undistributed income and principal to one beneficiary in the trustee's discretion.

1 Regardless of whether a beneficiary has any outstanding creditor, a trustee of a discretionary
2 interest may directly pay any expense on behalf of such beneficiary and may exhaust the income
3 and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor
4 for paying the expenses of a beneficiary ~~who holds~~ of a discretionary interest.

5 Section 12. That § 55-1A-9.1 be amended to read as follows:

6 55-1A-9.1. (a) As used in this section:

- 7 (1) "Investment" ~~shall mean~~ means any security as defined in § 2(a)(1) of the Securities
8 Act of 1933, any contract of sale of a commodity for future delivery within the
9 meaning of § 2(i) of the Commodity Exchange Act, or any other asset permitted for
10 trustee accounts pursuant to the terms of this title or by the terms of the governing
11 instrument, including by way of illustration and not limitation, individual portfolios
12 of investment holdings, shares or interests in a private investment fund (including a
13 private investment fund organized as a limited partnership, limited liability company,
14 trust or other form, a statutory or common law business trust, or a real estate
15 investment trust), joint venture or other general or limited partnership, or an open-end
16 or closed-end management type investment company or investment trust registered,
17 unregistered, or exempt from registration under the Investment Company Act of
18 1940;
- 19 (2) "Affiliate" means any corporation or other entity that directly or indirectly through
20 one or more intermediaries controls, is controlled by or is under common control
21 with the trustee;
- 22 (3) "Affiliated Investment" means an investment for which the trustee or an affiliate of
23 the trustee acts as investment adviser, sponsor, administrator, distributor, placement
24 agent, underwriter, broker, custodian, transfer agent, registrar or in any other capacity

1 for which it receives or has received a fee or commission from such investment or
2 an investment acquired or disposed of in a transaction for which the trustee or an
3 affiliate of the trustee receives or has received a fee or commission;

4 (4) "Fee or commission" means compensation paid to a trustee or an affiliate thereof on
5 account of its services to or on behalf of an investment, including by way of
6 illustration and not limitation, advisory fees, management fees, brokerage fees,
7 service fees, special performance fees, profit allocations, and expense
8 reimbursements.

9 (b) In the absence of an express prohibition in the trust instrument, a trustee may purchase,
10 sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment and, upon
11 satisfaction of the conditions stated in subsection (c) of this section, such trustee may receive
12 trustee compensation from such account at the same rate as the trustee would otherwise be
13 entitled to be compensated.

14 (c) A trustee seeking compensation pursuant to subsection (b) of this section shall disclose
15 to all qualified beneficiaries, as defined in § 55-2-13, all fees, commissions, compensation or
16 other benefits and profits paid or to be paid by the account, or received or to be received by an
17 affiliate arising from such affiliated investment. The disclosure required under this subsection
18 may be given either in a copy of the prospectus or any other disclosure document prepared for
19 the affiliated investment under federal or state securities laws or in a written summary that
20 includes all fees, commissions, compensation or other benefits and profits received or to be
21 received by the trustee or any affiliate of the trustee and an explanation of the manner in which
22 such fees, commissions, compensation or other benefits and profits are calculated (either as a
23 percentage of the assets invested or by some other method). Such disclosure shall be made at
24 least annually unless there has been no increase in the rate at which such fees or commissions

1 are calculated since the most recent disclosure.

2 (d) A trustee that has complied with subsection (c) of this section (whether by making the
3 applicable disclosure or by relying on the terms of a governing instrument or court order) shall
4 have full authority to administer an affiliated investment (including the authority to vote proxies
5 thereon) without regard to the affiliation between the trustee and the investment.

6 Section 13. That § 55-1B-2 be amended to read as follows:

7 55-1B-2. An excluded fiduciary is not liable, either individually or as a fiduciary, for ~~either~~
8 any of the following:

- 9 (1) Any loss that results from compliance with a direction of the trust advisor, custodial
10 account owner, or authorized designee of a custodial account owner;
- 11 (2) Any loss that results from a failure to take any action proposed by an excluded
12 fiduciary that requires a prior authorization of the trust advisor if that excluded
13 fiduciary timely sought but failed to obtain that authorization;
- 14 (3) Any loss that results from any action or inaction, except for gross negligence or
15 willful misconduct, when an excluded fiduciary is required, pursuant to the trust
16 agreement or any other reason, to assume the role of trust advisor, trust protector,
17 investment trust advisor, or distribution trust advisor.

18 Any excluded fiduciary is also relieved from any obligation to perform investment or
19 suitability reviews, inquiries, or investigations or to make recommendations or evaluations with
20 respect to any investments to the extent the trust advisor, custodial account owner, or authorized
21 designee of a custodial account owner had authority to direct the acquisition, disposition, or
22 retention of any such investment.

23 Nothing in subdivision (2) imposes an obligation or liability with respect to a custodian of
24 a custodial account.

1 Section 14. That § 55-1B-6 be amended to read as follows:

2 55-1B-6. The powers and discretions of a trust protector shall be as provided in the
3 governing instrument and may be exercised or not exercised, in the best interests of the trust,
4 in the sole and absolute discretion of the trust protector and ~~shall be~~ are binding on all other
5 persons. Such powers and discretion may include the following:

- 6 (1) Modify or amend the trust instrument to achieve favorable tax status or respond to
7 changes in the Internal Revenue Code, state law, or the rulings and regulations
8 thereunder;
- 9 (2) Increase or decrease the interests of any beneficiaries to the trust;
- 10 (3) Modify the terms of any power of appointment granted by the trust. However, a
11 modification or amendment may not grant a beneficial interest to any individual or
12 class of individuals not specifically provided for under the trust instrument;
- 13 (4) Remove and appoint a trustee, trust advisor, investment committee member, or
14 distribution committee member;
- 15 (5) Terminate the trust;
- 16 (6) Veto or direct trust distributions;
- 17 (7) Change situs or governing law of the trust, or both;
- 18 (8) Appoint a successor trust protector;
- 19 (9) Interpret terms of the trust instrument at the request of the trustee;
- 20 (10) Advise the trustee on matters concerning a beneficiary; ~~and~~
- 21 (11) Amend or modify the trust instrument to take advantage of laws governing restraints
22 on alienation, distribution of trust property, or the administration of the trust; and
- 23 (12) Provide direction regarding notification of qualified beneficiaries pursuant to § 55-2-
24 13.

1 The powers referenced in subdivisions (5), (6), and (11) may be granted notwithstanding the
2 provisions of §§ 55-3-24 to 55-3-28, inclusive.

3 Section 15. That § 55-1B-11 be amended to read as follows:

4 55-1B-11. The powers and discretions of a distribution trust advisor shall be provided in the
5 trust instrument and may be exercised or not exercised, in the best interests of the trust, in the
6 sole and absolute discretion of the distribution trust advisor and are binding on any other person
7 and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the
8 document provide otherwise, the distribution trust advisor shall direct the trustee with regard
9 to all discretionary distributions to beneficiaries. The distribution trust advisor may also provide
10 direction regarding notification of qualified beneficiaries pursuant to § 55-2-13.

11 Section 16. That § 55-2-13 be amended to read as follows:

12 55-2-13. For purposes of this section, the term, qualified beneficiary, means a beneficiary
13 who is twenty-one years of age and who, on the date the beneficiary's qualification is
14 determined:

- 15 (1) Is a distributee or permissible distributee of trust income or principal;
16 (2) Would be a distributee or permissible distributee of trust income or principal if the
17 interests of the distributees terminated on that date; or
18 (3) Would be a distributee or permissible distributee of trust income or principal if the
19 trust terminated on that date.

20 Except as otherwise provided by the terms of a revocable trust, a trustee has no duty to
21 notify the qualified beneficiaries of the trust's existence.

22 Except as otherwise provided by the terms of ~~the~~ an irrevocable trust or otherwise directed
23 by the settlor ~~at any time~~, distribution advisor, or trust protector, the trustee shall, within sixty
24 days after ~~the date the trustee of an irrevocable trust acquires knowledge of the creation of an~~

1 ~~irrevocable trust, or upon~~ has accepted trusteeship of the trust, or within sixty days after the date
2 the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether
3 ~~by death of the settlor or otherwise, the trustee shall notify the qualified beneficiaries~~ notify the
4 qualified beneficiaries of the trust's existence, ~~of the identity of the settlor or settlors,~~ and of the
5 right of the beneficiary to request a copy of the trust instrument pertaining to the beneficiary's
6 interest in the trust.

7 Subject to the previous provision, a trustee of an irrevocable trust:

8 (1) Upon request of a qualified beneficiary, shall promptly furnish to the qualified
9 beneficiary a copy of the trust instrument;

10 (2) If notification of the trust has not been accomplished pursuant to this section within
11 sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the
12 acceptance and of the trustee's name, address, and telephone number;

13 (3) Shall promptly respond to a qualified beneficiary's request for information related to
14 the administration of the trust, unless the request is unreasonable under the
15 circumstances.

16 A beneficiary may waive the right to the notice or information otherwise required to be
17 furnished under this section and, with respect to future reports and other information, may
18 withdraw a waiver previously given.

19 The change in the identity of a trustee, occurring as the result of a mere name change or a
20 merger, consolidation, combination, or reorganization of a trustee, does not require notice.

21 If a fiduciary is bound by a duty of confidentiality with respect to a trust or its assets, a
22 fiduciary may require that any beneficiary who is eligible to receive information pursuant to this
23 section be bound by the duty of confidentiality that binds the trustee before receiving such
24 information from the trustee.

1 A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall
2 keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

3 (1) The administration of the trust with respect to any specific duty or function being
4 performed by the trust advisor, trust protector, or other fiduciary to the extent that the
5 duty or function would normally be performed by the excluded fiduciary or to the
6 extent that providing such information to the excluded fiduciary is reasonably
7 necessary for the excluded fiduciary to perform its duties; and

8 (2) Any other material information that the excluded fiduciary would be required to
9 disclose to the qualified beneficiaries under this section regardless of whether the
10 terms of the trust relieve the excluded fiduciary from providing such information to
11 qualified beneficiaries. Neither the performance nor the failure to perform of a trust
12 advisor, trust protector, or other fiduciary designated by the terms of the trust as
13 provided in this subdivision shall affect the limitation on the liability of the excluded
14 fiduciary.

15 The provisions of this section are effective for trusts created after July 1, 2002, except as
16 otherwise directed by the settlor, trust protector, or distribution trust advisor.

17 Section 17. That § 55-2-15 be amended to read as follows:

18 55-2-15. Unless the terms of the instrument expressly provide otherwise, a trustee who has
19 discretionary authority, under the terms of a testamentary instrument or irrevocable inter vivos
20 trust agreement, to make a distribution of income or principal to, or for the benefit of, one or
21 more beneficiaries of a trust (the "first trust"), may instead exercise such authority by appointing
22 all or part of the income or principal subject to the power in favor of a trustee of a trust (the
23 "second trust") under an instrument other than that under which the power to distribute is
24 created or under the same instrument, in the event that the trustee of the first trust decides that

1 the appointment is necessary or desirable after taking into account the purposes of the first trust,
2 the terms and conditions of the second trust, and the consequences of the distribution. However,
3 the following apply:

4 (1) The second trust ~~has~~ may have as beneficiaries only one or more of those
5 beneficiaries of the first trust to or for whom a discretionary distribution may be
6 made from the first trust and who are proper objects of the exercise of the power, or
7 one or more of those other beneficiaries of the first trust to or for whom a distribution
8 of income or principal may have been made in the future from the first trust at a time
9 or upon the happening of an event specified under the first trust;

10 (2) No trustee of the first trust may:

11 (a) Exercise such authority to make a distribution from the first trust if the trustee
12 is a beneficiary of the first trust, or if any beneficiary may change the trustees
13 of the first trust, unless the exercise of such authority is for health, education,
14 maintenance, or support; or

15 (b) Exercise such authority to the extent that doing so would have the effect either
16 of (i) increasing the distributions that can be made in the future from the
17 second trust to the trustee of the first trust or to a beneficiary who may change
18 the trustees of the first trust, or (ii) removing restrictions on discretionary
19 distributions imposed by the agreement under which the first trust was created,
20 except that in either case participating in a change that is needed for the health,
21 education, maintenance, or support of any such beneficiary is permitted;

22 However, the provisions of subdivision (2) only apply to restrict the authority of a
23 trustee if either a trustee, or a beneficiary who may change the trustee, is a United
24 States citizen or domiciliary under the Internal Revenue Code, or the trust owns

1 property that would be subject to United States estate or gift taxes if owned directly
2 by such a person.

3 (3) In the case of any trust contributions which have been treated as gifts qualifying for
4 the exclusion from gift tax described in § 2503(b) of the Internal Revenue Code of
5 1986, by reason of the application of I.R.C. § 2503(c), the governing instrument for
6 the second trust shall provide that the beneficiary's remainder interest shall vest ~~and~~
7 ~~become distributable~~ no later than the date upon which such interest would have
8 vested ~~and become distributable~~ under the terms of the governing instrument for the
9 first trust;

10 (4) The exercise of such authority ~~does~~ may not reduce any income interest of any
11 income beneficiary of any of the following trusts:

12 (a) A trust for which a marital deduction has been taken for federal tax purposes
13 under I.R.C. § 2056 or § 2523 or for state tax purposes under any comparable
14 provision of applicable state law;

15 (b) A charitable remainder trust under I.R.C. § 664; or

16 (c) A grantor retained annuity trust under I.R.C. § 2702; ~~and~~

17 (5) The exercise of such authority does not apply to trust property subject to a presently
18 exercisable power of withdrawal held by a trust beneficiary to whom, or for the
19 benefit of whom, the trustee has authority to make distributions, unless after the
20 exercise of such authority, such beneficiary's power or withdrawal is unchanged with
21 respect to the trust property;

22 (6) The exercise of such authority is not prohibited by a spendthrift clause or by a
23 provision in the trust instrument that prohibits amendment or revocation of the trust.

24 This section applies to any trust governed by the laws of this state, including a trust whose

1 governing jurisdiction is transferred to this state.

2 Section 18. That § 55-2-17 be amended to read as follows:

3 55-2-17. For the purposes of § 55-2-15, a beneficiary shall be considered to have the power
4 to "change the trustees" if he or she can, alone or with others, name himself or herself as a
5 trustee or can remove a trustee and replace that trustee with a new trustee who is the beneficiary
6 or who is related or subordinate (as defined in § 672 of the I.R.C.) to the beneficiary.

7 Section 19. That § 55-2-18 be amended to read as follows:

8 55-2-18. The exercise of the power to distribute the income or principal of the trust under
9 § 55-2-15 shall be by an instrument in writing, signed and acknowledged by the trustee and filed
10 with the records of the trust. The trustee of the first trust shall notify all beneficiaries of the first
11 trust, in writing, at least twenty days prior to the effective date of the trustee's exercise of the
12 power under § 55-2-15 (applying the South Dakota Virtual Representation Statutes, §§ 55-3-31
13 to 55-3-38, inclusive). If all beneficiaries entitled to notice waive the notice requirement by a
14 signed writing delivered to the trustee, the trustee may exercise the power under § 55-2-15
15 immediately. A copy of the proposed exercise of this authority and the second trust agreement
16 shall satisfy this notice obligation. For the purposes of this section, the term, beneficiaries,
17 means those persons who would be entitled to notice and a copy of the first trust instrument
18 under § 55-2-13.

19 Section 20. That § 55-2-21 be amended to read as follows:

20 55-2-21. No provision of §§ 55-2-15 to 55-2-20 may be construed to abridge the right of any
21 trustee who has power to distribute income or principal in further trust which arises under
22 statute ~~or~~, common law, or the terms of the first trust.

23 Section 21. That chapter 55-2 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Notwithstanding the terms of a trust instrument, if a settlor has a power to substitute
2 property of equivalent value, a trustee has a fiduciary duty to determine that the substituted
3 property is of equivalent value, prior to allowing the substitution.

4 Section 22. That chapter 55-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No beneficiary of a trust may assert the defense of laches in any proceeding to modify,
7 reform, or terminate a trust pursuant to §§ 55-3-23 to 55-3-29, inclusive.

8 Section 23. That chapter 55-3 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 In addition to other remedies available by law and procedures or powers set out in a trust
11 instrument, the settlor, or the settlor's agent, a cotrustee, or a qualified beneficiary as defined in
12 § 55-2-13, may request the court to remove a trustee, or a trustee may be removed by the court
13 on the court's own initiative.

14 In addition to the powers otherwise granted the court, the court may remove a trustee if:

- 15 (1) The trustee has committed a serious breach of trust;
- 16 (2) Lack of cooperation among cotrustees substantially impairs the administration of the
17 trust;
- 18 (3) Because of unfitness, unwillingness, persistent failure of the trustee to administer the
19 trust effectively, the court determines that removal of the trustee best serves the
20 interests of the beneficiaries;
- 21 (4) There has been a substantial change of circumstances or removal is requested by all
22 of the qualified beneficiaries, the court finds that removal of the trustee best serves
23 the interests of all of the beneficiaries and is not inconsistent with a material purpose
24 of the trust, and a suitable cotrustee or successor trustee is available; or

1 (5) If the trustee merges with another institution or the location or place of
2 administration of the trust changes, and the court finds that removal of the trustee
3 best serves the interests of all of the beneficiaries, and a suitable cotrustee or
4 successor trustee is available.

5 Pending a final decision on a request to remove a trustee, the court may order such
6 appropriate relief as may be necessary to protect the trust property or the interests of the
7 beneficiaries.

8 Section 24. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the
11 trustee may furnish to the person a certificate of trust containing the following information:

- 12 (1) That the trust exists and the date the trust instrument was executed;
- 13 (2) The identity of the settlor;
- 14 (3) The identity and address of the currently acting trustee;
- 15 (4) The powers of the trustee;
- 16 (5) The revocability or irrevocability of the trust and the identity of any person holding
17 a power to revoke the trust;
- 18 (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less
19 than all are required in order to exercise powers of the trustee;
- 20 (7) The manner of taking title to trust property.

21 A certificate of trust may be signed or otherwise authenticated by any trustee.

22 A certificate of trust must state that the trust has not been revoked, modified, or amended
23 in any manner that would cause the representations contained in the certificate of trust to be
24 incorrect.

1 A certificate of trust need not contain the dispositive terms of a trust.

2 Section 25. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts
5 from the original trust instrument and later amendments that designate the trustee and confer on
6 the trustee the power to act in the pending transaction.

7 Section 26. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any person who acts in reliance on a certificate of trust without knowledge that the
10 representations contained in the certification are incorrect is not liable to any person for so
11 acting and may assume without inquiry the existence of the facts contained in the certification.
12 Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all
13 or part of the trust instrument is held by the person relying on the certification.

14 Section 27. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Any person who in good faith enters into a transaction in reliance on a certificate of trust
17 may enforce the transaction against the trust property as if the representations contained in the
18 certification were correct.

19 Section 28. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any person making a demand for the trust instrument in addition to a certificate of trust or
22 excerpts is liable for damages if the court determines that the person did not act in good faith
23 in demanding the trust instrument.

24 Section 29. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The provisions of sections 24 to 29, inclusive, of this Act do not limit the right of a person
3 to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

4 Section 30. That § 55-5-7 be amended to read as follows:

5 55-5-7. No specific investment or course of action is, taken alone, prudent or imprudent. The
6 trustee may invest in every kind of property and type of investment, subject to this chapter. ~~The~~
7 ~~trustee's investment decisions and actions shall be judged in terms of the trustee's reasonable~~
8 ~~business judgment regarding the anticipated effect on the trust portfolio as a whole under the~~
9 ~~facts and circumstances prevailing at the time of the decision or action.~~ The prudent investor
10 rule is a test of conduct and not of resulting performance. The prudent investor rule may be
11 expanded, restricted, eliminated, or otherwise altered by the terms of the trust instrument or
12 court order. No trustee is liable to a beneficiary to the extent that the trustee acted in reliance on
13 the provisions of the trust instrument or court order.

14 Section 31. That § 55-5-8 be amended to read as follows:

15 55-5-8. The trustee shall diversify the investments of the trust unless, under the
16 circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and
17 furthers the purposes of the trust not to diversify. Regardless of concentration or lack of
18 diversification, the trustee need not diversify if the trust instrument or court order allows or
19 directs retention of assets forming part of the trust corpus. If a trust instrument or court order
20 requires a fiduciary to invest in a specific investment, type of investment, or investment
21 concentration, no trustee is liable to a beneficiary to the extent that the trustee acted in reliance
22 on the provisions of the trust instrument or court order.

23 Section 32. That § 55-5-9 be amended to read as follows:

24 55-5-9. The trustee shall, within a reasonable time after the acceptance of the trusteeship,

1 review trust assets and make and implement decisions concerning the retention and disposition
2 of original pre-existing investments in order to conform to the provisions of this section. The
3 trustee's decision to retain or dispose of an asset may properly be influenced by the asset's
4 special relationship or value to the purposes of the trust or to some or all of the beneficiaries,
5 consistent with the trustee's duty of impartiality.

6 If a trust owns an interest in a closely held entity, and the trust agreement provides that the
7 trustee has no duty to inquire or review the activities of the closely held entity, no trustee is
8 liable to a beneficiary to the extent that the trustee acted in reliance on the provisions of the trust
9 or court order.

10 For purposes of this section, the term, closely held entity, means any entity in which the
11 following persons in aggregate own at least twenty percent of the entity:

- 12 (1) The settlor;
- 13 (2) The settlor's grandparents or their descendants;
- 14 (3) The settlor's spouse; or
- 15 (4) Any trust created by anyone of the aforementioned persons.

16 Section 33. That § 55-13A-104 be amended to read as follows:

17 55-13A-104. (a) A trustee may adjust between principal and income to the extent the trustee
18 considers necessary if the trustee invests and manages trust assets as a prudent investor, the
19 terms of the trust describe the amount that may or must be distributed to a beneficiary by
20 referring to the trust's income, and the trustee determines, after applying the rules in § 55-13A-
21 103(a), that the trustee is unable to comply with § 55-13A-103(b).

22 (b) In deciding whether and to what extent to exercise the power conferred by subsection
23 (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the
24 following factors to the extent they are relevant:

- 1 (1) The nature, purpose, and expected duration of the trust;
- 2 (2) The intent of the settlor;
- 3 (3) The identity and circumstances of the beneficiaries;
- 4 (4) The needs for liquidity, regularity of income, and preservation and appreciation of
5 capital;
- 6 (5) The assets held in the trust; the extent to which they consist of financial assets,
7 interests in closely held enterprises, tangible and intangible personal property, or real
8 property; the extent to which an asset is used by a beneficiary; and whether an asset
9 was purchased by the trustee or received from the settlor;
- 10 (6) The net amount allocated to income under the other sections of this chapter and the
11 increase or decrease in the value of the principal assets, which the trustee may
12 estimate as to assets for which market values are not readily available;
- 13 (7) Whether and to what extent the terms of the trust give the trustee the power to invade
14 principal or accumulate income or prohibit the trustee from invading principal or
15 accumulating income, and the extent to which the trustee has exercised a power from
16 time to time to invade principal or accumulate income;
- 17 (8) The actual and anticipated effect of economic conditions on principal and income and
18 effects of inflation and deflation; and
- 19 (9) The anticipated tax consequences of an adjustment.
- 20 (c) A trustee may not make an adjustment:
 - 21 (1) That diminishes the income interest in a trust that requires all of the income to be
22 paid at least annually to a spouse and for which an estate tax or gift tax marital
23 deduction would be allowed, in whole or in part, if the trustee did not have the power
24 to make the adjustment;

- 1 (2) That reduces the actuarial value of the income interest in a trust to which a person
- 2 transfers property with the intent to qualify for a gift tax exclusion;
- 3 (3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed
- 4 fraction of the value of the trust assets;
- 5 (4) From any amount that is permanently set aside for charitable purposes under a will
- 6 or the terms of a trust unless both income and principal are so set aside;
- 7 (5) If possessing or exercising the power to make an adjustment causes an individual to
- 8 be treated as the owner of all or part of the trust for income tax purposes, and the
- 9 individual would not be treated as the owner if the trustee did not possess the power
- 10 to make an adjustment;
- 11 (6) If possessing or exercising the power to make an adjustment causes all or part of the
- 12 trust assets to be included for estate tax purposes in the estate of an individual who
- 13 has the power to remove a trustee or appoint a trustee, or both, and the assets would
- 14 not be included in the estate of the individual if the trustee did not possess the power
- 15 to make an adjustment;
- 16 (7) If the trustee is a beneficiary of the trust; or
- 17 (8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly
- 18 or indirectly.

19 (d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee,

20 a cotrustee to whom the provision does not apply may make the adjustment unless the exercise

21 of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

22 (e) A trustee may release the entire power conferred by subsection (a) or may release only

23 the power to adjust from income to principal or the power to adjust from principal to income

24 if the trustee is uncertain about whether possessing or exercising the power will cause a result

1 described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing
2 or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not
3 described in subsection (c). The release may be permanent or for a specified period, including
4 a period measured by the life of an individual.

5 (f) Terms of a trust that limit the power of a trustee to make an adjustment between principal
6 and income do not affect the application of this section unless it is clear from the terms of the
7 trust that the terms are intended to deny the trustee the power of adjustment conferred by
8 subsection (a).

9 (g) Unless prohibited by the governing instrument, the trustee of a trust has the power to
10 consider gains from the sale of capital assets in the trust to be part of a distribution of principal
11 to a beneficiary, or part of an adjustment from principal to income, and if such power is
12 exercised, such gains shall be treated consistently by the trustee on the trust's books, records,
13 and tax returns as part of a distribution to a beneficiary.

14 Section 34. That § 55-13A-202 be amended to read as follows:

15 55-13A-202. (a) ~~Unless otherwise provided in the trust instrument, an increase in the value~~
16 ~~of the following investments owned by any trust~~ Notwithstanding any contrary provision of this
17 chapter, if the trust instrument adopts the provisions of this section by reference, an increase in
18 the value of the following investments owned by a charitable remainder unitrust, of the type
19 authorized in § 664(d)(3) of the Internal Revenue Code (26 U.S.C. § 664), as of January 1, 2009,
20 is distributable as income when it becomes available for distribution:

- 21 (1) A zero coupon bond;
- 22 (2) An annuity contract before annuitization;
- 23 (3) A life insurance contract before the death of the insured;
- 24 (4) An interest in a common trust fund (as defined under § 584 of the Internal Revenue

1 Code) (26 U.S.C. § 584);

2 (5) An interest in a partnership, as defined in § 7701 of the Internal Revenue Code (26
3 U.S.C. § 7701); or

4 (6) Any other obligation for the payment of money that is payable at a future time in
5 accordance with a fixed, variable, or discretionary schedule of appreciation in excess
6 of the price at which it was issued.

7 (b) For purposes of this section, the increase in value of an investment described in
8 subsection (a) is available for distribution only if the trustee receives cash on account of the
9 investment.

10 (c) The increase in value of the obligations described in subsection (a) is distributable to the
11 beneficiary who was the income beneficiary at the time of the increase from the first principal
12 cash available or, if none is available, when realized by sale, redemption, or other disposition.
13 If unrealized increase is distributed as income but out of principal, the principal shall be
14 reimbursed from the increase when realized.

15 Section 35. That § 55-13A-409 be amended to read as follows:

16 55-13A-409. (a) In this section, ~~the term, payment,;~~

17 (1) "Payment" means a payment that a trustee may receive over a fixed number of years
18 or during the life of one or more individuals because of services rendered or property
19 transferred to the payer in exchange for future payments. The term includes a
20 payment made in money or property from the payer's general assets or from a
21 separate fund created by the payer, including. For purposes of subsections (d), (e), (f),
22 and (g), the term also includes any payment from any separate fund, regardless of the
23 reason for the payment.

24 (2) "Separate fund" includes a private or commercial annuity, an individual retirement

1 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

2 (b) To the extent that a payment is characterized as interest ~~or~~, a dividend, or a payment
3 made in lieu of interest or a dividend, a trustee shall allocate it the payment to income. The
4 trustee shall allocate to principal the balance of the payment and any other payment received in
5 the same accounting period that is not characterized as interest, a dividend, or an equivalent
6 payment.

7 (c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment,
8 and all or part of the payment is required to be made, a trustee shall allocate to income ten
9 percent of the part that is required to be made during the accounting period and the balance to
10 principal. If no part of a payment is required to be made or the payment received is the entire
11 amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal.
12 For purposes of this subsection, a payment is not required to be made to the extent that it is
13 made because the trustee exercises a right of withdrawal.

14 ~~(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a~~
15 ~~payment to income than provided for by this section, the trustee shall allocate to income the~~
16 ~~additional amount necessary to obtain the marital deduction.~~

17 ~~—(e) Except as otherwise provided in subsection (e), subsections (f) and (g) apply, and~~
18 ~~subsections (b) and (c) do not apply, in determining the allocation of a payment made from a~~
19 ~~separate fund to:~~

20 (1) A trust to which an election to qualify for a marital deduction under Section
21 2056(b)(7) of the Internal Revenue Code of 1986, has been made; or

22 (2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the
23 Internal Revenue Code of 1986.

24 (e) Subsections (d), (f), and (g) do not apply if and to the extent that the series of payments

1 would, without the application of subsection (d), qualify for the marital deduction under Section
2 2056(b)(7)(C) of the Internal Revenue Code of 1986.

3 (f) A trustee shall determine the internal income of each separate fund for the accounting
4 period as if the separate fund were a trust subject to this chapter. Upon request of the surviving
5 spouse, the trustee shall demand that the person administering the separate fund distribute the
6 internal income to the trust. The trustee shall allocate a payment from the separate fund to
7 income to the extent of the internal income of the separate fund and distribute that amount to
8 the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon
9 request of the surviving spouse, the trustee shall allocate principal to income to the extent the
10 internal income of the separate fund exceeds payments made from the separate fund to the trust
11 during the accounting period.

12 (g) If a trustee cannot determine the internal income of a separate fund but can determine
13 the value of the separate fund, the internal income of the separate fund is deemed to equal four
14 percent of the fund's value, according to the most recent statement of value preceding the
15 beginning of the accounting period. If the trustee can determine neither the internal income of
16 the separate fund nor the fund's value, the internal income of the fund is deemed to equal the
17 product of the interest rate and the present value of the expected future payments, as determined
18 under Section 7520 of the Internal Revenue Code of 1986 (26 U.S.C. Section 7520), for the
19 month preceding the accounting period for which the computation is made.

20 (h) This section does not apply to payments a payment to which § 55-13A-410 applies.

21 Section 36. That § 55-13A-505 be amended to read as follows:

22 55-13A-505. (a) A tax required to be paid by a trustee based on receipts allocated to income
23 must be paid from income.

24 (b) A tax required to be paid by a trustee based on receipts allocated to principal must be

1 paid from principal, even if the tax is called an income tax by the taxing authority.

2 (c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income
3 must be paid ~~proportionately~~:

4 (1) From income to the extent that receipts from the entity are allocated only to income;
5 and

6 (2) From principal to the extent that:

7 ~~———— (A) Receipts receipts from the entity are allocated only to principal; and~~

8 ~~———— (B) The trust's share of the entity's taxable income exceeds the total receipts
9 described in paragraphs (1) and (2)(A)~~

10 (3) Proportionately from principal and income to the extent that receipts from the entity
11 are allocated to both income and principal; and

12 (4) From principal to the extent that the tax exceeds the total receipts from the entity.

13 (d) ~~For purposes of this section, receipts allocated to principal or income must be reduced~~
14 ~~by the amount distributed to a beneficiary from principal or income for which the trust receives~~
15 ~~a deduction in calculating the tax. After applying subsections (a) through (c), the trustee shall~~
16 ~~adjust income or principal receipts to the extent that the trust's taxes are reduced because the~~
17 ~~trust receives a deduction for payments made to a beneficiary.~~

18 Section 37. That § 55-13A-602 be amended to read as follows:

19 55-13A-602. This chapter applies to every trust or will created after July 1, 2007, except as
20 otherwise expressly provided in the will or the terms of the trust or in this chapter. No trust or
21 decedent's estate based upon a will executed after July 1, 2007, may utilize the provisions of
22 chapter 55-13. Every trust existing on June 30, 2007, or any decedent's estate existing on June
23 30, 2007, and based upon a will executed prior to July 1, 2007, may elect to apply the provisions
24 of either chapter 55-13 or this chapter. The election may be made by the trustee or personal

1 representative upon providing sixty days written notice of the election to the beneficiaries of the
2 trust or estate, as the case may be.

3 Any election made prior to July 1, 2008, is hereby ratified and remains in full force and
4 effect.

5 The provisions of section 35 of this Act apply to a trust described in § 55-13A-409(d) on and
6 after the following dates:

- 7 (1) If the trust is not funded as of July 1, 2009, the date of the decedent's death;
8 (2) If the trust is initially funded in the calendar year beginning January 1, 2010, the date
9 of the decedent's death;
10 (3) If the trust is not described in subdivision (1) or (2), January 1, 2010.

11 Section 38. That chapter 55-15 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 This chapter does not apply to a charitable remainder unitrust as defined by § 664(d) of the
14 Internal Revenue Code of 1986 (26 U.S.C. § 664), as of January 1, 2009.

15 Section 39. That § 55-15-6 be amended to read as follows:

16 55-15-6. The unitrust amount shall be determined as follows:

- 17 (1) For the first three accounting periods of the trust, the unitrust amount for a current
18 valuation year of the trust shall be three percent, or such higher percentage specified
19 by the terms of the governing instrument or by the election of the trustee, the
20 disinterested person, or the court, of the net fair market value of the assets held in the
21 trust on the ~~first business day~~ valuation date of the current valuation year;
22 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a
23 current valuation year of the trust shall be three percent, or such higher percentage
24 specified by the terms of the governing instrument or by the election of the trustee,

1 the disinterested person, or the court, of the average of the net fair market value of
2 the assets held in the trust on the ~~first business day~~ valuation date of the current
3 valuation year and the net fair market value of the assets held in the trust on the ~~first~~
4 ~~business day~~ valuation date of each prior valuation year, as defined in subdivision 55-
5 15-1(10);

6 (3) The percentage that may be elected by the trustee, the disinterested person, or the
7 court in determining the unitrust amount shall be a reasonable current return from the
8 trust, taking into account the intentions of the trustor of the trust as expressed in the
9 governing instrument, the needs of the beneficiaries, general economic conditions,
10 projected current earnings and appreciation for the trust, and projected inflation and
11 its impact on the trust. However, such election by the trustee, the disinterested
12 person, or the court in determining the unitrust amount shall be three percent or
13 greater;

14 (4) The unitrust amount for the current valuation year shall be proportionately reduced
15 for any distributions, in whole or in part, other than distributions of the unitrust
16 amount, and for any payments of expenses, including debts, disbursements and taxes,
17 from the trust within a current valuation year that the trustee determines to be
18 material and substantial, and shall be proportionately increased for the receipt, other
19 than a receipt that represents a return on investment, of any additional property into
20 the trust within a current valuation year;

21 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount
22 on a daily basis;

23 (6) If the net fair market value of an asset held in the trust has been incorrectly
24 determined either in a current valuation year or in a prior valuation year, the unitrust

1 amount shall be increased in the case of an undervaluation, or be decreased in the
2 case of an overvaluation, by an amount equal to the difference between the unitrust
3 amount determined based on the correct valuation of the asset and the unitrust
4 amount originally determined;

5 (7) In determining the net fair market value of the assets held in trust, the determination
6 may not include the value of any residential property or any tangible personal
7 property that, as of the first business day of the current valuation year, one or more
8 income beneficiaries of the trust have or had the right to occupy, or have or had the
9 right to possess or control, other than in a capacity as trustee, and instead the right of
10 occupancy or the right of possession or control shall be deemed to be the unitrust
11 amount with respect to the residential property or the tangible personal property; or
12 any asset specifically given to a beneficiary under the terms of the trust and the return
13 on investment on that asset, which return on investment shall be distributed to the
14 beneficiary.

15 Section 40. That § 55-15-7 be repealed.

16 ~~— 55-15-7. The unitrust amount may not be less than the net income of the trust, determined~~
17 ~~without regard to the provisions of § 55-15-8, for (i) a trust for which a marital deduction has~~
18 ~~been taken for federal tax purposes under I.R.C. section 2056 or 2523 (during the lifetime of the~~
19 ~~spouse for whom the trust was created), or (ii) a trust to which the generation-skipping transfer~~
20 ~~tax due under I.R.C. section 2601 does not apply by reason of any effective date or transition~~
21 ~~rule.~~

22 Section 41. That § 55-16-2 be amended to read as follows:

23 55-16-2. For the purposes of this chapter, a trust instrument, is an instrument appointing a
24 qualified trustee for the property that is the subject of a disposition, which instrument:

- 1 (1) Expressly incorporates the law of this state to govern the validity, construction, and
2 administration of the trust;
- 3 (2) Is irrevocable, but a trust instrument may not be deemed revocable on account of its
4 inclusion of one or more of the following:
- 5 (a) A transferor's power to veto a distribution from the trust;
- 6 (b) ~~Ⓐ~~ An inter vivos power of appointment, other than a an inter vivos power to
7 appoint to the transferor, the transferor's creditors, the transferor's estate, or the
8 creditors of the transferor's estate, exercisable by will or other written
9 instrument of the transferor effective only upon the transferor's death;
- 10 (c) A testamentary power of appointment;
- 11 ~~(e)~~(d) The transferor's potential or actual receipt of income, including rights to such
12 income retained in the trust instrument;
- 13 ~~(d)~~(e) The transferor's potential or actual receipt of income or principal from a
14 charitable remainder unitrust or charitable remainder annuity trust as such
15 terms are defined in § 664 of the Internal Revenue Code of 1986, 26 U.S.C.
16 § 664, as of January 1, ~~2005~~ 2009;
- 17 ~~(e)~~(f) The transferor's receipt each year of a percentage, ~~not to exceed five percent,~~
18 ~~specified in the trust instrument of the initial value of the trust or its value of~~
19 the value as determined from time to time pursuant to the trust instrument, but
20 not exceeding the amount that may be defined as income under § 643(b) of the
21 Internal Revenue Code of 1986, 26 U.S.C. § 643(b), as of January 1, 2009;
- 22 ~~(f)~~(g) The transferor's potential or actual receipt or use of principal if such potential
23 or actual receipt or use of principal would be the result of a qualified trustee
24 or qualified trustees, including a qualified trustee or qualified trustees acting

1 at the direction of a trust advisor described in this section, acting either in such
2 qualified trustee's or qualified trustees' sole discretion or pursuant to an
3 ascertainable standard contained in the trust instrument;

4 ~~(g)~~(h) The transferor's right to remove a trustee or trust advisor and to appoint a new
5 trustee or trust advisor, other than a person who is a related or subordinate
6 party with respect to the transferor within the meaning of § 672(c) of the
7 Internal Revenue Code of 1986, 26 U.S.C. § 672(c), as of January 1, ~~2005~~
8 2009;

9 ~~(h)~~(i) The transferor's potential or actual use of real property held under a qualified
10 personal residence trust within the meaning of such term as described in
11 § 2702(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 2702(c), as of
12 January 1, ~~2005~~ 2009;

13 ~~(i)~~(j) A pour back provision that pours back to the transferor's will or revocable trust
14 all or part of the trust assets;

15 (3) Provides that the interest of the transferor or other beneficiary in the trust property
16 or the income therefrom may not be transferred, assigned, pledged, or mortgaged,
17 whether voluntarily or involuntarily, before the qualified trustee or qualified trustees
18 actually distribute the property or income therefrom to the beneficiary, and such
19 provision of the trust instrument shall be deemed to be a restriction on the transfer
20 of the transferor's beneficial interest in the trust that is enforceable under applicable
21 nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code, 11
22 U.S.C. § 541(c)(2), as of January 1, ~~2005~~ 2009;

23 (4) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified
24 trustee may not be treated as other than a qualified disposition solely because the trust

1 instrument fails to meet the requirements of subdivision (1) of this section.

2 Section 42. That § 55-16-3 be amended to read as follows:

3 55-16-3. For the purposes of this chapter, a qualified ~~trustee~~, person is any person who ~~in~~
4 ~~the case of a natural person, is a resident of this state~~ qualifies as a qualified person under § 55-
5 3-41 and who meets all the requirements of § 55-3-39 other than the transferor ~~or, in all other~~
6 ~~cases, is authorized by the law of this state to act as a trustee and whose activities are subject~~
7 ~~to supervision by the Division of Banking, the Federal Deposit Insurance Corporation, the~~
8 ~~Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto, and~~
9 ~~maintains or arranges for custody in this state of some or all of the property that is the subject~~
10 ~~of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive~~
11 ~~basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or~~
12 ~~otherwise materially participates in the administration of the trust.~~

13 Section 43. That chapter 55-16 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The term, qualified trustee, as used in this chapter means qualified person. The code counsel
16 in future supplements and revisions of the South Dakota Codified Laws shall substitute the term,
17 qualified person, and its derivatives for the term, qualified trustee, and its derivatives.

18 Section 44. That § 55-16-13 be amended to read as follows:

19 55-16-13. Notwithstanding any other provision of law, no action of any kind, including an
20 action to enforce a judgment entered by a court or other body having adjudicative authority, may
21 be brought at law or in equity against the trustee, or advisor described in § 55-16-4, of a trust
22 that is the subject of a qualified disposition, or against any person involved in the counseling,
23 drafting, preparation, execution, or funding of a trust that is the subject of a qualified
24 disposition, if, as of the date such action is brought, an action by a creditor with respect to such

1 qualified disposition would be barred under §§ 55-16-9 to 55-16-12, inclusive. A court of this
2 state has exclusive jurisdiction over an action brought under a claim for relief that is based on
3 a transfer of property to a trust that is the subject of this section. A court of this state may award
4 attorneys fees and costs to the prevailing party in such an action.

5 Section 45. That § 55-15-1 be amended to read as follows:

6 55-15-1. Terms used in this chapter mean:

- 7 (1) "Disinterested person," any person who is not a related or subordinate party, as
8 defined in section 672(c) of the Internal Revenue Code (26 U.S.C. section 1, et seq.),
9 with respect to the person then acting as trustee of the trust and excludes the trustor
10 of the trust and any interested trustee;
- 11 (2) "Income trust," any trust, created by either an inter vivos or a testamentary
12 instrument, which directs or permits the trustee to distribute the net income of the
13 trust to one or more persons, either in fixed proportions or in amounts or proportions
14 determined by the trustee. However, no trust that otherwise is an income trust may
15 qualify pursuant to this subdivision, if it is subject to taxation under I.R.C. section
16 2001 or section 2501, until the expiration of the period for filing the return therefor
17 (including extensions);
- 18 (3) "Interested distributee," any person to whom distributions of income or principal can
19 currently be made who has the power to remove the existing trustee and designate as
20 successor a person who may be a related or subordinate party, as defined in I.R.C.
21 section 672(c), with respect to such distributee;
- 22 (4) "Interested trustee," (i) any individual trustee to whom the net income or principal of
23 the trust can currently be distributed or would be distributed if the trust were then to
24 terminate and be distributed, or (ii) any trustee who may be removed and replaced by

- 1 an interested distributee, or (iii) any individual trustee whose legal obligation to
2 support a beneficiary may be satisfied by distributions of income and principal of the
3 trust, or (iv) any of the above;
- 4 (5) "Total return unitrust," any income trust which has been converted under and meets
5 the provisions of this chapter;
- 6 (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted
7 otherwise, whether acting in their discretion or on the direction of one or more
8 persons acting in a fiduciary capacity;
- 9 (7) "Trustor," any individual who created an inter vivos or a testamentary trust;
- 10 (7A) "Unitrust," a trust, the terms of which require or permit distribution of a unitrust
11 amount, without regard to whether the trust has been converted to a unitrust in
12 accordance with this chapter or whether the trust is established by express terms of
13 the governing instrument;
- 14 (8) "Unitrust amount," an amount ~~computed as a percentage of the fair market value of~~
15 the trust equal to a percentage of a unitrust's assets that may or are required to be
16 distributed to one or more beneficiaries annually in accordance with the terms of the
17 unitrust. The unitrust amount may be determined by reference to the net fair market
18 value of the unitrust's assets as of a particular date each year or as an average
19 determined on a multiple year basis;
- 20 (9) "Current valuation year," the accounting period of the trust for which the unitrust
21 amount is being determined;
- 22 (10) "Prior valuation year," each of the two accounting periods of the trust immediately
23 preceding the current valuation year; and
- 24 (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.).

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

914Q0424

SENATE TRANSPORTATION ENGROSSED NO. **SB 129** - 2/2/2009

Introduced by: Senators Bartling and Garnos and Representatives Juhnke, Lucas, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain conditions that must be met before an
2 extension of State Highway 53 in Tripp County is added to the state trunk highway system.

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

4 Section 1. That section 1 of chapter 190 of the 2004 Session laws be amended to read as
5 follows:

6 Section 1. That section 2 of chapter 189 of the 1996 Session Laws be amended to read as
7 follows:

8 Tripp County is responsible for any maintenance or snow removal on the portion of the state
9 trunk highway system described in subdivision (3) of section 1 of this Act until construction of
10 that portion of the state trunk highway system is complete. ~~Subdivision (3) of section 1 of this~~
11 ~~Act is repealed on July 1, 2010, unless the sum of five hundred ten thousand dollars, originating~~
12 ~~from any person, local government, or other lawful source for purposes of construction of the~~
13 ~~portion of the state trunk highway system described in the subdivision, has been deposited in~~
14 ~~the state treasury.~~ Subdivision (3) of section 1 of this Act is repealed on December 31, 2010



- 1 2012, if construction of the portion of the state trunk highway system described in the
- 2 subdivision is not complete.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

677Q0455

SENATE EDUCATION ENGROSSED NO. **SB 140** - 2/12/2009

Introduced by: Senators Bartling, Brown, Garnos, and Hanson (Gary) and Representatives Frerichs, Fargen, Greenfield, Lucas, Noem, Van Gerpen, and Vanneman

1 FOR AN ACT ENTITLED, An Act to allow school districts to enter into contractual
2 agreements to provide for the whole-grade sharing of students.

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

4 Section 1. That chapter 13-15 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of § 13-5-1, the school board of any school district may
7 enter into an agreement or contract with one or more school boards of other school districts to
8 provide for the whole-grade sharing of students among the participating school districts if:

9 (1) The school district offers an instructional program within the boundaries of the
10 school district; and

11 (2) The school district meets the minimum fall enrollment requirements pursuant to §
12 13-6-97.

13 For purposes of this Act, whole-grade sharing is a sharing arrangement for students among
14 participating school districts that allows the resident students at any one or more grade levels



1 within one school district to attend school in one or more of the other participating school
2 districts. The whole-grade sharing may be one-way whereby a participating school district sends
3 all of its students at one or more grade levels to attend school in one or more of the other
4 participating school districts without receiving any students in return.

5 The whole-grade sharing may also be two-way whereby a school district sends all of its
6 students at one or more grade levels to attend school in one or more of the other participating
7 school districts, and in return receives students at one or more grade levels from one or more
8 of the other participating school districts.

9 Section 2. That chapter 13-15 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any agreement or contract entered into pursuant to section 1 of this Act shall be approved
12 by the secretary of education and shall remain in effect for a period of at least three years. It
13 shall provide for the sharing of governance among the participating school districts. The school
14 board of each participating school district shall adopt the contract or agreement no later than
15 February first of the school year preceding the school year for which the agreement will take
16 effect. The contract or agreement may be terminated by any participating school district if that
17 school district provides written notice to the other participating school districts at least eighteen
18 months prior to the termination.

19 The contract or agreement shall adhere to the following provisions:

- 20 (1) Students at one grade level within a school district are only eligible to attend school
21 in another participating school district if all the students at that particular grade level
22 within the school district are sent to another participating school district. The school
23 boards of the participating school districts shall determine which students and which
24 facilities will be shared under the terms of the agreement;

- 1 (2) The participating school districts may negotiate the rate of tuition that will be charged
2 for any student sent to attend school in another participating school district. However,
3 the rate of tuition per year may not be less than the per student allocation as defined
4 in § 13-13-10.1 for that school fiscal year;
- 5 (3) The fall enrollment as defined in § 13-13-10.1 for each participating school district
6 shall include any students that the school district sends to another participating school
7 district to attend school, and may not include any students that are sent to the school
8 district to attend school from other participating school districts;
- 9 (4) For the purposes of determining adequate yearly progress under the state's
10 accountability system established in § 13-3-62, and calculating the graduation rates,
11 any student sent to another participating school district to attend school shall be
12 counted in the receiving school district; and
- 13 (5) For the purposes of state aid for special education, the school residence of any
14 student in need of special education or special education and related services who is
15 sent to a participating school district to attend school remains with the sending school
16 district. However, both the sending and the receiving school districts shall agree upon
17 the student's individualized education program.

18 Section 3. That chapter 13-15 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The Department of Education shall promulgate rules pursuant to chapter 1-26 to establish
21 the procedures and timelines for approving the contracts and agreements.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

561Q0688

SENATE LOCAL GOVERNMENT ENGROSSED NO. **SB 158** - 2/4/2009

Introduced by: Senator Vehle and Representatives Hamiel and Vanneman

1 FOR AN ACT ENTITLED, An Act to provide for the recall of certain officials in third class
2 municipalities.

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

4 Section 1. That § 9-13-29 be amended to read as follows:

5 9-13-29. In ~~municipalities of the first and second classes~~ any municipality, with or without
6 a city manager, the mayor ~~or~~, any commissioner ~~or~~, any alderman, or any member of the board
7 of trustees may be removed from office at any time by the voters qualified to vote for ~~his~~ a
8 successor as provided in §§ 9-13-30 to 9-13-32, inclusive.

9 Section 2. That § 9-13-30 be amended to read as follows:

10 9-13-30. A petition signed by fifteen percent of the registered voters of the ~~first or second~~
11 ~~class~~ municipality, based upon the total number of registered voters at the last preceding general
12 election, demanding the election of a successor to the mayor, commissioner, ~~or~~ alderman, or
13 trustee sought to be removed shall be filed with the auditor and presented by the auditor to the
14 governing body. The allowable grounds for removal are misconduct, malfeasance, nonfeasance,
15 crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross



1 partiality. The petition shall contain a specific statement of the grounds on which removal is
2 sought. The form for the municipal recall petition shall be prescribed by the state Board of
3 Elections pursuant to chapter 1-26. No signature on a petition is valid if signed more than sixty
4 days prior to the filing of the petitions.

5 Section 3. That § 9-13-32 be amended to read as follows:

6 9-13-32. Any mayor ~~or~~, commissioner ~~or~~, alderman, or trustee sought to be removed may
7 be a candidate to succeed himself or herself and, unless ~~he~~ the incumbent requests otherwise in
8 writing, the auditor shall place ~~his~~ the incumbent's name on the official ballot without
9 nomination. The auditor shall also place on the official ballot the name of any other candidate
10 nominated as provided in this chapter. If no other candidate is nominated for the position, no
11 recall election may be held, and the incumbent shall remain in office.

12 Any secondary election required shall be conducted as provided by this chapter.

13 Section 4. That § 9-13-35 be amended to read as follows:

14 9-13-35. The successor of any removed mayor ~~or~~, commissioner ~~or~~, alderman, or trustee
15 shall hold office during the remainder of the predecessor's unexpired term ~~of his predecessor.~~

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

488Q0645

SENATE EDUCATION ENGROSSED NO. **SB 185** - 2/10/2009

Introduced by: Senators Olson (Russell), Bradford, Garnos, and Maher and Representatives Frerichs, Fargen, Hamiel, Lucas, Moser, Olson (Ryan), and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to revise the graduation requirements for students entering
2 ninth grade in 2010 and thereafter by eliminating the option of the basic high school
3 program.

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

5 Section 1. That § 13-33-19 be amended to read as follows:

6 13-33-19. For students entering the ninth grade in the 2006-2007 school year and thereafter,
7 a school district shall require that each student enrolls in courses of instruction necessary to
8 complete the recommended high school program established by the State Board of Education
9 pursuant to § 13-1-12.1. However, a student entering the ninth grade in the 2006-2007, 2007-
10 2008, 2008-2009, or 2009-2010 school years may be excused from taking courses of instruction
11 necessary to complete the recommended high school program if the student's parent or guardian
12 and a school counselor or school administrator agree that the student should instead take courses
13 of instruction necessary to complete the basic high school program also established by the board
14 pursuant to § 13-1-12.1.



1 Any student who is seeking eligibility in the South Dakota scholarship program established
2 in § 13-55-30 and is therefore adhering to the high school course requirements as provided in
3 Board of Regents Policy Number 2:3(2)(F) as in effect on January 1, 2003, meets the
4 requirements of this section.

5 Section 2. That § 13-1-12.1 be amended to read as follows:

6 13-1-12.1. The South Dakota Board of Education shall promulgate rules pursuant to chapter
7 1-26 to establish standards for the classification and accreditation of schools within this state,
8 to establish standards for preparation of certified personnel, to set forth procedures for
9 determining the eligibility of school districts to receive state foundation aid effective January
10 1, 1997, to adopt policies and rules necessary to establish standards and procedures for
11 ~~vocation-technical~~ career and technical education and to establish curriculum requirements for
12 ~~both a basic high school program and for a recommended high school program for all public and~~
13 ~~nonpublic schools within the state. Both programs~~ The recommended high school program shall
14 include a rigorous high school curriculum, ~~and the recommended high school program shall be~~
15 ~~more academically challenging in the areas of mathematics and science than the basic high~~
16 ~~school program. Both programs shall enhance and may not diminish the academic preparation~~
17 ~~necessary for students to complete high school~~ in both academic and career and technical
18 courses. The requirements of the ~~basic~~ recommended program shall be aligned to the academic
19 content standards developed pursuant to § 13-3-48 and shall, at a minimum, include the content
20 standards tested pursuant to § 13-3-55.

21 Section 3. Section 2 of this Act is effective on July 1, 2013.