



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0277

SENATE ENGROSSED NO. **HB 1016** - 3/3/2010

Introduced by: The Committee on State Affairs at the request of the Department of Public Safety

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding 911 emergency  
2 services.

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

4 Section 1. That § 34-45-10 be amended to read as follows:

5 34-45-10. At least once every calendar year, prior to September first, the governing body  
6 shall review the current charge and establish a rate of charge to be effective on the next January  
7 first, not to exceed the amount authorized, that together with any surplus revenues carried  
8 forward will produce sufficient revenues to fund the expenditures authorized by §§ 34-45-3 and  
9 34-45-4. Any amount collected in excess of expenses within a given year shall be carried  
10 forward to the next year. Immediately upon making ~~such the~~ determination and fixing ~~such the~~  
11 rate, the governing body shall publish its new rate, and it shall notify by registered mail every  
12 service provider at least ninety days before ~~such the~~ new rate ~~will become~~ becomes effective.  
13 The board or governing body may, at its own expense, require an annual audit of a service  
14 provider's books and records concerning the collection and remittance of the charge authorized  
15 by §§ 34-45-3 and 34-45-4.



1 Section 2. That § 34-45-12 be amended to read as follows:

2 34-45-12. There is hereby created within the state treasury the South Dakota 911  
3 coordination fund. Any funds collected from prepaid wireless telecommunications service  
4 pursuant to § 34-45-4 shall be deposited in the South Dakota 911 coordination fund. The board  
5 ~~may~~ shall authorize disbursements from the fund pursuant to this chapter for the expenses of the  
6 board and for approved nonrecurring costs requested by the governing body of eligible 911  
7 public safety answering points.

8 Section 3. That § 34-45-17 be amended to read as follows:

9 34-45-17. The 911 emergency reporting system provided by this chapter is within the  
10 governmental powers and authority of the governing body or public agency. In contracting for  
11 ~~such~~ the 911 emergency reporting system or the provisioning of ~~such~~ the 911 service, except for  
12 willful or wanton negligence or intentional acts, the board, the governing body, public agency,  
13 service provider, and service supplier, their employees and agents, are immune from liability  
14 for a failure in the use or operation of the 911 system. The immunity provided by this section  
15 does not extend to the installation or maintenance of the 911 system.

16 Section 4. That § 34-45-21 be amended to read as follows:

17 34-45-21. Each 911 emergency reporting system created by a governing body of a public  
18 corporation pursuant to an ordinance authorized by § 34-45-2 shall cooperate fully with the ~~task~~  
19 ~~force~~ board and provide operational and financial information ~~to the task force~~ in a timely  
20 manner as prescribed by the board.

21 Section 5. That § 34-45-18.2 be amended to read as follows:

22 34-45-18.2. The board may promulgate rules pursuant to chapter 1-26 setting:

- 23 (1) Minimum technical, operational, and procedural standards for the operation and  
24 utilization of a public safety answering point;

1 (2) Requirements and amounts for reimbursement of recurring and nonrecurring costs;  
2 and

3 (3) Standards for coordination of effective 911 service on a statewide basis.

4 Moreover, prior to December 31, 2010, the board shall promulgate rules specifying  
5 alternative arrangements that can be utilized by a public safety answering point to comply with  
6 ARSD 50:02:04:02(2). A public safety answering point shall comply with ARSD  
7 50:02:04:02(2) if the Legislature increases the monthly uniform charge, regardless of the  
8 amount of the increase. Furthermore, no public safety answering point may be required to  
9 comply with the provisions of ARSD 50:02:04:02(2) if the public safety answering point  
10 forswears the acceptance of revenue from any future legislative increase in the monthly uniform  
11 charge and formally resolves to continue to maintain itself pursuant to all other statutes, rules,  
12 and standards.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0270

SENATE STATE AFFAIRS  
ENGROSSED NO. **HB 1018** - 3/1/2010

Introduced by: The Committee on Commerce at the request of the State Unemployment Insurance Advisory Council

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding unemployment  
2 insurance benefit eligibility of part-time workers and to provide additional unemployment  
3 insurance benefits to workers attending approved training.

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

5 Section 1. That chapter 61-6 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 No individual may be denied regular benefits based on availability for work pursuant to  
8 subdivision 61-6-2(3), actively seeking work pursuant to rules promulgated pursuant to § 61-6-  
9 2, or refusal to accept work pursuant to § 61-6-15, solely because the individual is seeking only  
10 part-time work, if the department determines that a majority of the weeks of work in the  
11 individual's base period were for less than full-time work. For purposes of this section, seeking  
12 only part-time work, means seeking work that has comparable hours to the individual's part-time  
13 work experience in the individual's base period.

14 Section 2. That chapter 61-6 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 In addition to and subsequent to payment of all benefits otherwise allowed under this chapter  
3 and without restriction with respect to an individual's benefit year, training extension benefits  
4 shall be payable to any individual if all of the following criteria are met:

5 (1) The individual is unemployed;

6 (2) The individual has exhausted all rights to regular and extended benefits;

7 (3) The individual is enrolled, no later than the end of the benefit year established with  
8 respect to the separation that makes the individual eligible for the training benefit,  
9 and making satisfactory progress, as determined by the secretary, in a training  
10 program approved by the department, or in a job training program authorized under  
11 the Workforce Investment Act of 1998. Each such training program shall prepare the  
12 individual who has been separated from a declining occupation, as determined by the  
13 department, or who has been involuntarily and indefinitely separated from  
14 employment as a result of a permanent reduction of operations at the individual's  
15 place of employment, for entry into a high-demand occupation, as determined by the  
16 department; and

17 (4) The individual is not receiving similar stipends or other training allowances for  
18 nontraining costs.

19 The amount of unemployment compensation payable under this section to an individual for  
20 a week of unemployment shall be equal to the individual's weekly benefit amount for the  
21 individual's most recent benefit year, less deductible earnings or income, if any. The total  
22 amount payable under this section to any individual shall be equal to twenty-six times the  
23 individual's weekly benefit amount for the individual's most recent benefit year. The former  
24 employer's experience-rating account may not be charged for benefits paid under this section.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

569R0668

SENATE ENGROSSED NO. **HB 1248** - 3/3/2010

Introduced by: Representatives Hunt, Bolin, Curd, Hamiel, Krebs, Lucas, Romkema, Schlekeway, Steele, and Van Gerpen and Senators Abdallah and Gant

1 FOR AN ACT ENTITLED, An Act to revise the definition of fall enrollment in the state aid to  
2 education formula and to eliminate the one-time payments for school districts with  
3 increasing enrollments.

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

5 Section 1. That § 13-13-10.1 be amended to read as follows:

6 13-13-10.1. Terms used in this chapter mean:

7 (1) "Average daily membership," the average number of resident and nonresident  
8 kindergarten through twelfth grade pupils enrolled in all schools operated by the  
9 school district during the previous regular school year, minus average number of  
10 pupils for whom the district receives tuition, except pupils described in subdivision  
11 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the  
12 average number of pupils for whom the district pays tuition;

13 (1A) Nonresident students who are in the care and custody of the Department of Social  
14 Services, the Unified Judicial System, the Department of Corrections, or other state  
15 agencies and are attending a public school may be included in the average daily



1 membership of the receiving district when enrolled in the receiving district. When  
2 counting a student who meets these criteria in its general enrollment average daily  
3 membership, the receiving district may begin the enrollment on the first day of  
4 attendance. The district of residence prior to the custodial transfer may not include  
5 students who meet these criteria in its general enrollment average daily membership  
6 after the student ceases to attend school in the resident district;

7 (2) "Adjusted average daily membership," calculated as follows:

8 (a) For districts with an average daily membership of two hundred or less,  
9 multiply 1.2 times the average daily membership;

10 (b) For districts with an average daily membership of less than six hundred, but  
11 greater than two hundred, raise the average daily membership to the 0.8293  
12 power and multiply the result times 2.98;

13 (c) For districts with an average daily membership of six hundred or more,  
14 multiply 1.0 times their average daily membership;

15 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled  
16 in all schools operated by the school district on the last Friday of September of the  
17 ~~previous~~ current school year minus the number of students for whom the district  
18 receives tuition, except nonresident students who are in the care and custody of a  
19 state agency and are attending a public school and students for whom tuition is being  
20 paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
21 tuition. When computing state aid to education for a school district under the  
22 foundation program pursuant to § 13-13-73, the secretary of the Department of  
23 Education shall use either the school district's fall enrollment or the average of the  
24 school district's fall enrollment ~~and the school district's fall enrollment from the prior~~

1 year from the previous two years, whichever is higher. ~~However, if a school district~~  
2 ~~qualifies to benefit from both the averaging permitted in this subdivision and the one-~~  
3 ~~time payment provided in § 13-13-80 in the same fiscal year, the school district may~~  
4 ~~not benefit from both, but only from the one that provides the most additional~~  
5 ~~funding to the district;~~

6 ~~(2B) "Current fall enrollment," the number of kindergarten through twelfth grade students~~  
7 ~~enrolled in all schools operated by the school district on the last Friday of September~~  
8 ~~of the current school year minus the number of students for whom the district~~  
9 ~~receives tuition except nonresident students who are in the care and custody of a state~~  
10 ~~agency and are attending a public school and students for whom tuition is being paid~~  
11 ~~pursuant to § 13-28-42.1, plus the number of students for whom the district pays~~  
12 ~~tuition;~~

13 (2C) "Small school adjustment," calculated as follows:

14 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
15 \$4,237.72;

16 (b) For districts with a fall enrollment of greater than two hundred, but less than  
17 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
18 result; and multiply the sum obtained times \$4,237.72;

19 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
20 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
21 the United States Department of Labor for the year before the year immediately  
22 preceding the year of adjustment or three percent, whichever is less;

23 (4) "Per student allocation," for school fiscal year 2009 is \$4,664.66. Each school fiscal  
24 year thereafter, the per student allocation is the previous fiscal year's per student

1 allocation increased by the index factor;

2 (5) "Local need," is the sum of:

3 (a) The per student allocation multiplied by the fall enrollment; and

4 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;

5 and

6 (c) The payment distributed pursuant to § 13-13-80, if applicable;

7 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
8 applying the levies established pursuant to § 10-12-42;

9 (7) "General fund balance," the unreserved fund balance of the general fund, less general  
10 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
11 out of the general fund for the previous school fiscal year;

12 (8) "General fund balance percentage," is a school district's general fund balance divided  
13 by the school district's total general fund expenditures for the previous school fiscal  
14 year, the quotient expressed as a percent;

15 (9) "General fund base percentage," is the lesser of:

16 (a) The general fund balance percentage as of June 30, 2000; or

17 (b) The maximum allowable percentage for that particular fiscal year as stated in  
18 this subsection.

19 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for  
20 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year  
21 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five  
22 percent. However, the general fund base percentage can never be less than twenty-  
23 five percent;

24 (10) "Allowable general fund balance," the general fund base percentage multiplied by the

1 district's general fund expenditures in the previous school fiscal year;

- 2 (11) "General fund exclusions," revenue a school district has received from the imposition  
3 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
4 from gifts, contributions, grants, or donations; revenue a school district has received  
5 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district  
6 has received as compensation for being a sparse school district under the terms of  
7 §§ 13-13-78 and 13-13-79; any revenue a school district has received under the  
8 provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);  
9 and any revenue in the general fund set aside for a noninsurable judgment.

10 Section 2. That § 13-13-73 be amended to read as follows:

11 13-13-73. The secretary of the Department of Education shall compute state aid to education  
12 for each school district under the foundation program according to the following calculations:

- 13 (1) Determine each school district's fall enrollment;
- 14 (2) To arrive at the local need per district:
- 15 (a) Multiply the per student allocation by the fall enrollment;
- 16 (b) Multiply the small school adjustment, if applicable, by the fall enrollment; and
- 17 (c) Add the product of subsection (a) to the product of subsection (b) ~~plus the~~  
18 ~~amount of any payments received pursuant to § 13-13-80;~~
- 19 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a  
20 negative number;
- 21 (4) If the state aid appropriation for the general support of education is in excess of the  
22 entitlement provided for in this section, the excess shall be used to fund any shortfall  
23 of the appropriation as provided for in § 13-37-36.3. The secretary shall report to the  
24 Governor by January seventh of each year, the amount of state aid necessary to fully

1 fund the general aid formula in the current year. If a shortfall in the state aid  
2 appropriation for general education exists that cannot be covered by § 13-37-45, the  
3 Governor shall inform the Legislature and provide a proposal to eliminate the  
4 shortfall.

5 Section 3. That § 13-13-80 be repealed.

6 ~~13-13-80. If a school district's current fall enrollment, as defined in § 13-13-10.1, increases~~  
7 ~~by at least five percent or by a minimum of twenty-five students over the fall enrollment, that~~  
8 ~~school district shall receive a one-time payment equal to fifty percent of the per student~~  
9 ~~allocation times the number of students by which the current fall enrollment exceeds the fall~~  
10 ~~enrollment. The payment shall be made to the district prior to the first of December in the~~  
11 ~~current school year. However, if a school district qualifies to benefit from both the averaging~~  
12 ~~permitted in subdivision 13-13-10.1(2A) and the one-time payment pursuant to this section in~~  
13 ~~the same fiscal year, the school district may not benefit from both, but only from the one that~~  
14 ~~provides the most additional funding to the district.~~

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

358R0146

## HOUSE JUDICIARY ENGROSSED NO. **SB 12** - 3/3/2010

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

Introduced by: Senators Abdallah and Jerstad and Representatives Gosch, Engels, Gibson, and Sly at the request of the Interim Sex Offender Registry Committee

1 FOR AN ACT ENTITLED, An Act to provide for a tiered sex offender registry and to establish  
2 certain criteria for eligibility to petition for removal or reassignment.

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

4 Section 1. That § 22-24B-19 be amended to read as follows:

5 22-24B-19. To be eligible for removal from the registry as a Tier I offender, the petitioner  
6 shall show, by clear and convincing evidence, that all of the following criteria have been met:

7 (1) At least ten years have elapsed since the date the petitioner first registered pursuant  
8 to this chapter. ~~For purposes of this subdivision, any period of time during which the~~  
9 ~~petitioner was incarcerated or during which the petitioner was confined in a mental~~  
10 ~~health facility does not count toward the ten-year calculation, regardless of whether~~  
11 ~~such incarceration or confinement was for the sex offense requiring registration or~~  
12 ~~for some other offense;~~

13 (2) The crime requiring registration was for:

14 (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory



- 1 rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one  
2 years of age or younger at the time the offense was committed or attempted;
- 3 (b) A juvenile adjudication for a sex crime as defined in § 22-24B-1(1), 22-24B-  
4 1(9), or 22-22-7.2; ~~or~~
- 5 (c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen  
6 and sixteen and the petitioner was at least three years older than the victim, but  
7 only if the petitioner was twenty-one years of age or younger at the time the  
8 offense was committed; or
- 9 (d) An out-of-state, federal or court martial offense that is comparable to the  
10 elements of the crimes listed in (a) ~~or~~, (b), or (c);
- 11 (3) The circumstances surrounding the crime requiring registration did not involve a  
12 child under the age of thirteen;
- 13 (4) The petitioner is not a recidivist sex offender. ~~A recidivist sex offender is a person~~  
14 ~~who has been convicted or adjudicated for more than one sex crime listed in~~  
15 ~~subdivisions 22-24B-1(1) to (17), inclusive, regardless of when those convictions or~~  
16 ~~adjudications occurred. For purposes of this subdivision, a conviction or adjudication~~  
17 ~~includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea~~  
18 ~~of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13,~~  
19 ~~regardless of whether it has been discharged; a deferred prosecution agreement~~  
20 ~~entered by a prosecutor; and a determination made in another state, federal~~  
21 ~~jurisdiction, or courts martial that is comparable to any of these events; and;~~
- 22 (5) The petitioner has ~~completely and truthfully~~ substantially complied in good faith with  
23 the registration and re-registration requirements imposed under chapter 22-24B; and  
24

1       (6)   Petitioner demonstrates to the satisfaction of the court that he or she does not pose  
2           a risk or danger to the community.

3       For purposes of this section, any period of time during which the petitioner was incarcerated  
4       or during which the petitioner was confined in a mental health facility does not count toward  
5       the ten-year calculation, regardless of whether such incarceration or confinement was for the sex  
6       offense requiring registration or for some other offense.

7       Section 2. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
8       follows:

9       To be eligible for removal from the registry as a Tier II offender, the petitioner shall show,  
10      by clear and convincing evidence, that all of the following criteria have been met:

11      (1)   At least twenty-five years have elapsed since the date the petitioner first registered  
12           pursuant to this chapter;

13      (2)   The crime requiring registration was for:

14           (a)   Incest as defined in § 22-22A-2; or

15           (b)   An out-of-state, federal or court martial offense that is comparable to the  
16               elements of incest as defined in § 22-22A-2; or

17           (c)   Bestiality as set forth in § 22-22-42; or

18           (d)   Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory  
19               rape under subdivision 22-22-1(5), but only if the petitioner was twenty-two  
20               years of age but not more than twenty-five years of age at the time the offense  
21               was committed or attempted; or

22           (e)   Sexual contact under § 22-22-7 if the victim was between the ages of thirteen  
23               and sixteen and the petitioner was at least three years older than the victim, but  
24               only if the petitioner was twenty-two years of age but not more than twenty-

1                   five years of age at the time the offense was committed;

2       (3)    The circumstances surrounding the crime requiring registration did not involve a  
3            child under the age of thirteen;

4       (4)    The petitioner is not a recidivist sex offender;

5       (5)    The petitioner has substantially complied in good faith with the registration and re-  
6            registration requirements imposed under chapter 22-24B; and

7       (6)    Petitioner demonstrates to the satisfaction of the court that he or she does not pose  
8            a risk or danger to the community.

9            For purposes of this section, any period of time during which the petitioner was incarcerated  
10          or during which the petitioner was confined in a mental health facility does not count toward  
11          the twenty-five year calculation, regardless of whether such incarceration or confinement was  
12          for the sex offense requiring registration or for some other offense.

13          Section 3. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
14          follows:

15            Any person, who is on the sex offender registry and who is not eligible for removal pursuant  
16          to sections 1 and 2 of this Act, is a Tier III offender.

17          Section 4. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
18          follows:

19            A recidivist sex offender is a person who has been convicted or adjudicated for more than  
20          one sex crime listed in § 22-24B-1, regardless of when those convictions or adjudications  
21          occurred. However, no person is a recidivist sex offender unless the person committed the  
22          second sex crime after having been convicted or adjudicated of a previous sex crime. For  
23          purposes of this section, a conviction or adjudication includes a verdict or plea of guilty; a  
24          verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of

1 sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred  
2 prosecution agreement entered by a prosecutor; and a determination made in another state,  
3 federal jurisdiction, or courts martial that is comparable to any of these events.

4 Section 5. That § 22-24B-20 be amended to read as follows:

5 22-24B-20. If the court finds that all of the criteria described in § 22-24B-19 or in section  
6 2 of this Act have been met and that the petitioner is not likely to offend again, then the court  
7 may, in its discretion, enter an order terminating the petitioner's obligation to register in this  
8 state and require the removal of petitioner's name from the registry. However, if the court finds  
9 that the offender has provided false, misleading, or incomplete information in support of the  
10 petition, or failed to serve the petition and supporting documentation upon the respondent, then  
11 the petition may be denied. If the petition is denied, the petitioner may not file a subsequent  
12 petition for at least two years from the date the previous petition was denied.

13 Section 6. That § 22-24B-17 be amended to read as follows:

14 22-24B-17. Any person required to register under this chapter who is eligible to seek  
15 removal from the registry as provided for in § 22-24B-19 or in section 2 of this Act may petition  
16 the circuit court in the county where the person resides for an order terminating the person's  
17 obligation to register. If the person seeking removal from the registry is not a resident of this  
18 state, but is required to register under other requirements of § 22-24B-2, then the person may  
19 petition the circuit court of any county of this state where the person is currently registered. The  
20 offender shall serve the petition and all supporting documentation on the state's attorney in the  
21 county where the offender is currently registered, the office of the prosecutor in the jurisdiction  
22 where the offense occurred, and the Attorney General. The Attorney General's office shall  
23 respond to each petition to request removal from the sex offender registry.

24 No person petitioning the court under this section for an order terminating the person's

1 obligation to register is entitled to court appointed counsel, experts, or publicly funded  
2 witnesses.

3 Section 7. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The sex offender registry shall consist of three tiers as provided for in this Act. Placement  
6 in Tier III requires registrants to register throughout their lifetime. Placement in Tier II requires  
7 registrants to register for a minimum of twenty-five years. Placement in Tier I requires  
8 registrants to register for a minimum of ten years.

9 Section 8. That § 22-24B-2 be amended to read as follows:

10 22-24B-2. Any person who has been convicted for commission of a sex crime, as defined  
11 in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea  
12 of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been  
13 discharged pursuant to § 23A-27-14 prior to July 1, 1995. Any juvenile ~~fifteen~~ fourteen years  
14 or older shall register as a sex offender if that juvenile has been adjudicated of a ~~sex crime~~ rape  
15 as defined in ~~§ 22-22-7.2~~, subdivision 22-24B-1(1), ~~or 22-24B-1(9)~~, or of an out-of-state or  
16 federal offense that is comparable to the elements of these ~~three sex~~ crimes of rape or any crime  
17 committed in another state if the state also requires a juvenile adjudicated of that crime to  
18 register as a sex offender in that state. The term, adjudicated, includes a court's finding of  
19 delinquency, an admission, and a suspended adjudication of delinquency which has not been  
20 discharged pursuant to § 26-8C-4 prior to July 1, 2009. The sex offender shall register within  
21 five days of coming into any county to reside, temporarily domicile, attend school, attend  
22 postsecondary education classes, or work. Registration shall be with the chief of police of the  
23 municipality in which the sex offender resides, temporarily domiciles, attends school, attends  
24 postsecondary education classes, or works, or, if no chief of police exists, then with the sheriff

1 of the county. If the sex offender is not otherwise registered in the state, the sex offender shall  
2 register within five days of coming into any county when the sex offender applies for or receives  
3 a South Dakota driver license, registers a motor vehicle, establishes a postal address, or registers  
4 to vote. A violation of this section is a Class 6 felony. Any person whose sentence is discharged  
5 under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge  
6 by certified mail to the Division of Criminal Investigation and to local law enforcement where  
7 the person is then registered under this section. Upon receipt of such notice, the person shall be  
8 removed from the sex offender registry open to public inspection and shall be relieved of further  
9 registration requirements under this section. Any juvenile whose suspended adjudication is  
10 discharged under § 26-8C-4 after July 1, 2009, shall forward a certified copy of the formal  
11 discharge by certified mail to the Division of Criminal Investigation and to local law  
12 enforcement where the juvenile is then registered under this section. Upon receipt of the notice,  
13 the juvenile shall be removed from the sex offender registry open to public inspection and shall  
14 be relieved of further registration requirements under this section.

15 Section 9. That § 22-24B-1 be amended to read as follows:

16 22-24B-1. For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of  
17 the following crimes regardless of the date of the commission of the offense or the date of  
18 conviction:

- 19 (1) Rape as set forth in § 22-22-1;
- 20 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if  
21 committed by an adult;
- 22 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 23 (4) Incest if committed by an adult;
- 24 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-

- 1           24A-3;
- 2       (6)   Sale of child pornography as set forth in § 22-24A-1;
- 3       (7)   Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 4       (8)   Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 5       (9)   Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 6       (10)  Criminal pedophilia as previously set forth in § 22-22-30.1;
- 7       (11)  Felony indecent exposure as previously set forth in former § 22-24-1 or felony
- 8           indecent exposure as set forth in § 22-24-1.2;
- 9       (12)  Solicitation of a minor as set forth in § 22-24A-5;
- 10      (13)  Felony indecent exposure as set forth in § 22-24-1.3;
- 11      (14)  Bestiality as set forth in § 22-22-42;
- 12      (15)  An attempt to commit any of the crimes listed in this section;
- 13      (16)  Any crime committed in a place other than this state which would constitute a sex
- 14           crime under this section if committed in this state;
- 15      (17)  Any federal crime or court martial offense that would constitute a sex crime under
- 16           federal law;
- 17      (18)  Any crime committed in another state if that state also requires that anyone convicted
- 18           of that crime register as a sex offender in that state; or
- 19      (19)  If the victim is a minor:
- 20           (a)   Any sexual acts between a jail employee and a detainee as set forth in § 22-22-
- 21                 7.6;
- 22           (b)   Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 23           (c)   Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 24      (20)  Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0338

## HOUSE RETIREMENT LAWS ENGROSSED NO. **SB 21** - 3/3/2010

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding exclusive benefit  
2 requirements and the range of investments available to the South Dakota Retirement System  
3 member trust fund.

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

5 Section 1. That § 3-12-54 be amended to read as follows:

6 3-12-54. The system shall be under the Board of Trustees. The Board of Trustees shall be  
7 held to the standard of conduct of a fiduciary and shall carry out its functions solely in the  
8 interest of the members and benefit recipients and for the exclusive purpose of providing  
9 benefits and defraying reasonable expenses incurred in performing such duties as required by  
10 law. The system may not engage in any activity that is not solely designed to provide for the  
11 exclusive benefit of the members and benefit recipients of the system. The attorney general is  
12 the legal adviser to the board.

13 Section 2. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read as  
14 follows:



1 "Social investment," investment, divestment, or prohibition of investment of the assets of  
2 the system for purposes other than maximum risk-adjusted investment return, which other  
3 purposes include ideological purposes, environmental purposes, political purposes, religious  
4 purposes, or purposes of local or regional economic development;

5 Section 3. That § 3-12-117 be amended to read as follows:

6 3-12-117. The State Investment Council as provided in § 4-5-12 is responsible for the  
7 investment of the assets of the system. The Investment Council may pool the several retirement  
8 funds for investment purposes and the investment of such funds is not restricted by the  
9 provisions of § 4-5-26, but is governed by the provisions of § 4-5-27. However, the assets of the  
10 system may not be used as venture capital, nor may the assets of the system be managed in any  
11 manner for the purposes of social investment. The State Investment Council shall invest  
12 member trust funds in a manner that is solely designed to provide for the exclusive benefit of  
13 the members and benefit recipients of the system. However, the foregoing provisions  
14 notwithstanding, the State Investment Council shall establish a shareholder activism policy to  
15 engage and promote compliance with federal divestiture enactments by the United States  
16 Congress and to recognize the risks associated with companies doing business in the countries  
17 identified. Once the United States Congress has acted, the State Investment Council may initiate  
18 the shareholder activism policy on its own accord, or shall do so at the direction of the  
19 Legislature by resolution. The State Investment Council shall report semi-annually and fifteen  
20 months after the effective date of this Act on council actions related to the shareholder activism  
21 policy. The report shall include an analysis of the success of the policy in accomplishing the  
22 goal of promoting compliance with the federal enactments and its impact on all sales of affected  
23 companies.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0343

## SENATE ENGROSSED NO. **SB 58** - 2/3/2010

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain real property taxes for small renewable  
2 energy facilities.

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

4 Section 1. For purposes of this Act, a renewable resource is a resource that generates  
5 electricity or energy from facilities using one or more of the following sources:

6 (1) Wind that uses wind as the source of energy to produce electricity;

7 (2) Solar that uses the sun as the source of energy to produce electricity or energy;

8 (3) Hydroelectric that uses water as the source of energy to produce electricity;

9 (4) Hydrogen that is generated from one of the sources listed in this section;

10 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and  
11 wood wastes and residues, animal and other degradable organic wastes, municipal  
12 solid waste, or landfill gas as the fuel to produce electricity; or

13 (6) Geothermal that uses energy contained in heat that continuously flows outward from  
14 the earth as the source of energy to produce electricity or energy.

15 Section 2. For purposes of this Act, a renewable energy facility is a facility that uses a



1 renewable resource as its energy source for the purpose of producing electricity or energy.

2 Section 3. For renewable energy facilities with less than five megawatts of nameplate  
3 capacity, all real property used or constructed for the purpose of producing electricity using a  
4 renewable resource as an energy source is classified for tax purposes as renewable energy  
5 property and shall be assessed and taxed in the same manner as other real property and shall be  
6 locally assessed by the county director of equalization pursuant to § 10-3-16. For the purposes  
7 of this Act, the first fifty thousand dollars of the assessed value of the renewable energy property  
8 or seventy percent of the assessed value of the renewable energy property, whichever is greater,  
9 is exempt from the real property tax. However, for geothermal renewable energy facilities that  
10 produce energy, but not electricity, this exemption is limited to the first four continuous years  
11 for residential geothermal renewable energy facilities and the first three continuous years for  
12 commercial geothermal renewable energy facilities.

13 Section 4. Renewable energy property is not subject to any discretionary formulas authorized  
14 by Title 10.

15 Section 5. That § 10-4-36 be repealed.

16 ~~10-4-36. For wind energy properties with less than five thousand kilowatts of nameplate~~  
17 ~~capacity, all real property used or constructed for the purpose of producing electricity for~~  
18 ~~commercial purposes that utilizes the wind as an energy source is classified for tax purposes as~~  
19 ~~wind energy property and shall be assessed and taxed in the same manner as other real property~~  
20 ~~and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For~~  
21 ~~the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation,~~  
22 ~~tower, and substations. Real property does not include the wind turbine or blades attached~~  
23 ~~thereto.~~

24 Section 6. That § 10-4-37 be repealed.

1 ~~10-4-37. Any wind energy property of a commercial wind power production facility with~~  
2 ~~less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions~~  
3 ~~of this chapter.~~

4 Section 7. That § 10-4-38 be repealed.

5 ~~10-4-38. Wind energy property is not subject to any discretionary formulas authorized by~~  
6 ~~Title 10.~~

7 Section 8. That § 10-6-35.8 be repealed.

8 ~~10-6-35.8. Terms used in §§ 10-6-35.8 to 10-6-35.18, inclusive, unless the context otherwise~~  
9 ~~requires, mean:~~

10 ~~(1) "Base credit," the property tax assessment credit as authorized during the last year of~~  
11 ~~qualification under § 10-6-35.15;~~

12 ~~(2) "Biomass," an energy source derived from the conversion of organic matter by~~  
13 ~~biological, thermochemical combustion, and advanced processes. The organic matter~~  
14 ~~may include, but is not limited to, agricultural products, agriculture and forest~~  
15 ~~residues, municipal sewage, and other organic wastes;~~

16 ~~(3) "Commercial application" or "commercial," the use of a renewable resource energy~~  
17 ~~system in commercial, industrial, or agricultural production or processing;~~

18 ~~(4) "Equipment," all the controls, tanks, pumps, heat exchangers, generators, and other~~  
19 ~~hardware necessary to install a renewable resource energy system, except that~~  
20 ~~associated with a secondary system;~~

21 ~~(5) "Passive solar energy system," the equipment used, designed, and installed for~~  
22 ~~conductive, convective, or radiant energy transfer in the heating or cooling of a~~  
23 ~~structure. However, "passive solar energy system" does not include materials that~~  
24 ~~serve primarily as structural components of a structure;~~

1 ~~(6) "Renewable resource energy system" or "system," the equipment which produces~~  
2 ~~energy from a renewable resource for on-site consumption, including a passive solar~~  
3 ~~energy system;~~

4 ~~(7) "Renewable resources," a relatively nondepleting source of energy, including, but not~~  
5 ~~limited to the sun, wind, and geothermal and biomass sources;~~

6 ~~(8) "Residential applications" or "residential," the use of a renewable resource energy~~  
7 ~~system for space conditioning, water heating, or electrical generation or any~~  
8 ~~combination thereof, for a structure;~~

9 ~~(9) "Secondary system," the equipment and hardware necessary to supplement,~~  
10 ~~complement, or in any manner support a renewable resource energy system;~~

11 ~~(10) "Secretary," the secretary of revenue and regulation;~~

12 ~~(11) "Structure," a building whose interior space is conditioned by heating or cooling. The~~  
13 ~~term includes but is not limited to dwellings, operating plants, office buildings, and~~  
14 ~~public buildings.~~

15 Section 9. That § 10-6-35.9 be repealed.

16 ~~10-6-35.9. An owner of any real property is entitled to a property tax assessment credit if~~  
17 ~~the owner attaches or includes a renewable resource energy system as a part of an improvement~~  
18 ~~to real property for either residential or commercial applications.~~

19 Section 10. That § 10-6-35.10 be repealed.

20 ~~10-6-35.10. No property tax assessment credit may be used for systems which produce~~  
21 ~~energy for sale to persons other than the owner of the real property on which the system is~~  
22 ~~located, unless the system is a biomass renewable resource energy system using an anaerobic~~  
23 ~~digester.~~

24 Section 11. That § 10-6-35.11 be repealed.

1 ~~10-6-35.11. The property tax assessment credit shall not apply when title to the property has~~  
2 ~~been transferred. This section does not apply to transfers of residential property when the new~~  
3 ~~owner will be the first occupant of the structure.~~

4 Section 12. That § 10-6-35.12 be repealed.

5 ~~10-6-35.12. The property tax assessment credit for a residential application of a renewable~~  
6 ~~resource energy system or for an ethyl alcohol production system is a sum equal to the assessed~~  
7 ~~valuation of the real property with the renewable resource energy system minus the assessed~~  
8 ~~valuation of the real property without the system. However, a property tax assessment credit~~  
9 ~~shall not be less than the actual installed cost of the renewable resource energy system or the~~  
10 ~~ethyl alcohol production system.~~

11 Section 13. That § 10-6-35.13 be repealed.

12 ~~10-6-35.13. The property tax assessment credit for a commercial application is fifty percent~~  
13 ~~of the actual installed cost of the renewable resource energy system.~~

14 Section 14. That § 10-6-35.14 be repealed.

15 ~~10-6-35.14. The property tax assessment credit provided for in §§ 10-6-35.12 and 10-6-~~  
16 ~~35.13 shall be adjusted to include any federal income tax credit which may be available at the~~  
17 ~~time the owner applies for the assessment credit.~~

18 Section 15. That § 10-6-35.15 be repealed.

19 ~~10-6-35.15. The property tax assessment credit may be applied for three continuous years~~  
20 ~~for a residential application of a renewable resource energy system and three continuous years~~  
21 ~~for a commercial application or an ethyl alcohol production system. At the end of this time, the~~  
22 ~~owner of the real property is entitled to a property tax assessment credit of:~~

23 ~~(1) Seventy-five percent of the base credit for the first year subsequent to termination of~~  
24 ~~the credit period;~~

1 ~~—(2)— Fifty percent of the base credit for the second year subsequent to termination of the~~  
2 ~~credit period;~~

3 ~~—(3)— Twenty-five percent of the base credit for the third year subsequent to termination of~~  
4 ~~the credit period.~~

5 Section 16. That § 10-6-35.16 be repealed.

6 ~~—10-6-35.16. An applicant for an energy property tax assessment credit shall file two copies~~  
7 ~~of the statement with the county director of equalization of the county in which the property is~~  
8 ~~located and one copy with the Department of Revenue and Regulation. An owner of more than~~  
9 ~~one renewable resource energy system shall file a separate statement for each system. The~~  
10 ~~statement shall be filed between November first and December tenth of the first year for which~~  
11 ~~the credit is to be applied. The applicant does not need to resubmit the application for the~~  
12 ~~property tax assessment credit unless the property ownership is transferred or the property has~~  
13 ~~a change in use.~~

14 Section 17. That § 10-6-35.17 be repealed.

15 ~~—10-6-35.17. The statement shall be made on forms prescribed by the secretary of the~~  
16 ~~Department of Revenue and Regulation. The forms shall include at least the following~~  
17 ~~information:~~

18 ~~—(1)— The name and current address of the owner;~~

19 ~~—(2)— The legal description of the property;~~

20 ~~—(3)— Whether the credit is for a residential or commercial application of a renewable~~  
21 ~~resource energy system or for an ethyl alcohol production system;~~

22 ~~—(4)— The type of general energy source for the system;~~

23 ~~—(5)— The primary use of the system;~~

24 ~~—(6)— The total installed cost of the system; and~~

1 ~~— (7) —~~ Such other information as the secretary requires.

2 ~~— Copies of all receipts and such other records as may be necessary to establish the actual~~  
3 ~~installed cost of the system shall be attached to a certified statement.~~

4 Section 18. That § 10-6-35.18 be repealed.

5 ~~— 10-6-35.18. Upon verification of the statement by the director of equalization of the county~~  
6 ~~in which the real property is located, the auditor shall make the deduction.~~

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

951R0450

## HOUSE TAXATION ENGROSSED NO. **SB 67** - 3/2/2010

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 ~~2010~~ 2011 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 ~~sixty-five and six tenths~~ sixty-three  
8 cents per thousand dollars of taxable valuation subject to the limitations on  
9 agricultural property as provided in subdivision (2) of this section, and owner-  
10 occupied property as provided for in subdivision (3) of this section, ~~and~~  
11 ~~nonagricultural acreage property 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 ~~fifty-seven and three tenths~~ fifty-five cents per thousand dollars of taxable  
14 valuation. If the district's levies are less than the maximum levies as stated in this



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

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 ~~four and two~~  
5 ~~tenths~~ two cents per thousand dollars of taxable valuation. If the district's levies are  
6 less than the maximum levies as stated in this section, the levies shall maintain the  
7 same 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 fifty-seven and three tenths~~  
11 ~~cents per 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.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

228R0499

## SENATE ENGROSSED NO. **SB 75** - 2/23/2010

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

Introduced by: Senators Maher, Bartling, Bradford, Garnos, Hanson (Gary), Novstrup (Al), Peterson, Rhoden, and Vehle and Representatives Hoffman, Brunner, Carson, Frerichs, Hamiel, Jensen, McLaughlin, Olson (Betty), Russell, Schrempp, Sly, Sorenson, Street, Verchio, and Wink

1 FOR AN ACT ENTITLED, An Act to define certain terms related to liability for agritourism  
2 activities.

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

4 Section 1. That § 20-9-12 be amended to read as follows:

5 20-9-12. Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

- 6 (1) "Charge," the admission price or fee asked in return for invitation or permission to  
7 enter or go upon the land. Any nonmonetary gift to an owner that is less than one  
8 hundred dollars in value may not be construed to be a charge;
- 9 (2) "Land," land, trails, water, watercourses, private ways and agricultural structures, and  
10 machinery or equipment if attached to the realty;
- 11 (3) "Outdoor recreational purpose," includes, but is not limited to, any of the following  
12 activities, or any combination thereof: hunting, fishing, swimming other than in a  
13 swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road



1 driving, nature study, water skiing, winter sports, snowmobiling, viewing, or  
2 enjoying historical, archaeological, scenic, or scientific sites;

3 (4) "Agritourism activity," any activity that allows members of the general public, for  
4 recreational, entertainment, or educational purposes, to view or participate in  
5 agriculture activities, including pumpkin picking patches, corn mazes, U-Pick  
6 operations, petting and feeding zoos, hay rides, cut-your-own Christmas tree farms,  
7 dude ranches, demonstration farms, agricultural museums, living history farms,  
8 farmers' markets, winery tours and wine tasting, rural bed and breakfasts, or garden  
9 tours;

10 (5) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in  
11 control of the premises.

12 Section 2. That § 20-9-13 be amended to read as follows:

13 20-9-13. Except as provided in § 20-9-16, an owner of land owes no duty of care to keep the  
14 land safe for entry or use by others for outdoor recreational purposes or agritourism activities,  
15 or to give any warning of a dangerous condition, use, structure, or activity on ~~his~~ the owner's  
16 land to persons entering for outdoor recreational purposes.

17 Section 3. That § 20-9-14 be amended to read as follows:

18 20-9-14. Except as provided in § 20-9-16, an owner of land who either directly or indirectly  
19 invites or permits with or without charge any person to use ~~his~~ the owner's property for outdoor  
20 recreational purposes or agritourism activities, including any person who is on the property  
21 pursuant to § 41-9-8, does not thereby:

- 22 (1) Extend any assurance that the land is safe for any purpose;
- 23 (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of  
24 care is owed; or

1 (3) Assume responsibility for, or incur liability for, any injury to persons or property  
2 caused by an act of omission of the owner as to maintenance of the land.

3 Section 4. That § 20-9-15 be amended to read as follows:

4 20-9-15. Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply  
5 to the duties and liability of an owner of land leased to the state or any political subdivision  
6 ~~thereof of the state~~ for outdoor recreational purposes or agritourism activities.

7 Section 5. That § 20-9-16 be amended to read as follows:

8 20-9-16. Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any liability which  
9 otherwise exists:

- 10 (1) For gross negligence or willful or wanton misconduct of the owner;
- 11 (2) For injury suffered in any case where the owner of land charges any person who  
12 enters or goes on the land for the outdoor recreational use ~~thereof of the land or for~~  
13 agritourism activity, except that in the case of land leased to the state or a political  
14 subdivision ~~thereof of the state~~, any consideration received by the owner for ~~such the~~  
15 lease may not be deemed a charge within the meaning of this section nor may any  
16 incentive payment paid to the owner by the state or federal government to promote  
17 public access for outdoor recreational purposes or agritourism activities be  
18 considered a charge; or
- 19 (3) For injury suffered in any case where the owner has violated a county or municipal  
20 ordinance or state law which violation is a proximate cause of the injury.

21 Section 6. That § 20-9-17 be amended to read as follows:

22 20-9-17. Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create a duty of  
23 care or ground of liability for injury to persons or property, or relieve any person using the land  
24 of another for outdoor recreational purposes or agritourism activities from any obligation which

1 ~~he~~ the person may have in the absence of §§ 20-9-12 to 20-9-18, inclusive, to exercise care in  
2 his or her use of ~~such~~ the land and in his or her activities ~~thereon~~ on the land, or from the legal  
3 consequences of failure to employ such care.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

366R0350

## HOUSE TAXATION ENGROSSED NO. **SB 78** 3/2/2010

Introduced by: Senators Gant, Maher, and Tieszen and Representatives Kirkeby and Vanderlinde

1 FOR AN ACT ENTITLED, An Act to revise the total amount of revenue payable to  
2 municipalities from taxes on real property.

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

4 Section 1. That § 10-13-35.3 be amended to read as follows:

5 10-13-35.3. Any county or municipality may decrease the total amount of revenue payable  
6 from taxes on real property below the maximum limit allowed by § 10-13-35 in any year. The  
7 decrease may not affect the amount of revenue payable that may be raised in accordance with  
8 §§ 10-13-35.4 and 10-13-35.5.

9 Section 2. That § 10-13-35.4 be amended to read as follows:

10 10-13-35.4. For taxes payable in the year 2003 and each year thereafter, the county auditor  
11 shall calculate what the maximum amount of revenue payable the county or municipality may  
12 request based on growth and the index factor pursuant to § 10-13-35. The calculation shall also  
13 show any accumulative percent of the index factor not used by the county or municipality. This  
14 calculation shall exclude the levy pursuant to § 10-13-36.



1 Section 3. That § 10-13-35.5 be amended to read as follows:

2 10-13-35.5. The county or municipality may increase the total amount of revenue payable  
3 from taxes on real property in any year up to the maximum amount calculated in accordance  
4 with § 10-13-35.4 utilizing any unused index factor from the prior three years. However, such  
5 an amount may not exceed the prior three year index factor total or ten percent, whichever is  
6 less.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

880R0614

HOUSE STATE AFFAIRS

ENGROSSED NO. **SB 102** - 3/3/2010

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

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

1 FOR AN ACT ENTITLED, An Act to ratify and continue the lease agreement on the Black  
2 Hills Playhouse.

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

4 Section 1. The lease agreement entered into effective October 1, 1999, by the State of South  
5 Dakota by and through the South Dakota Department of Game, Fish and Parks and the Black  
6 Hills Playhouse, Inc., is hereby modified and continued and shall remain in full force and effect  
7 until September 30, 2019.

8 Section 2. The Black Hills Playhouse, Inc., shall correct to the satisfaction of the state the  
9 building violations cited by state inspectors in the Office of Risk Management inspection report  
10 dated January 12, 2010. If repairs are not completed on or before September 30, 2012, the lease  
11 is null and void.

12 Section 3. The Black Hills Playhouse, Inc., shall expend no less than five percent of its  
13 annual operating budget each year for the maintenance and repair of the buildings occupied by  
14 the Black Hills Playhouse, Inc. The amount shall be spent according to a plan submitted by the



1 Black Hills Playhouse, Inc., and approved by the Department of Game, Fish and Parks. The  
2 Black Hills Playhouse, Inc., shall share in the cost of replacing infrastructure necessary to  
3 operate the facility. Any negotiations between the Department of Game, Fish and Parks and the  
4 Black Hills Playhouse, Inc., regarding the maintenance and repair plan or the cost share for  
5 replacing infrastructure shall be conducted in good faith.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

751R0136

## SENATE COMMERCE ENGROSSED NO. **SB 108** - 2/11/2010

Introduced by: Senators Olson (Russell), Dempster, Gant, Merchant, Nelson, Nesselhuf, Peterson, and Tieszen and Representatives Rausch, Blake, Bolin, Cronin, Elliott, Engels, Fargen, Feickert, Gibson, Hamiel, Jensen, Kirkeby, Kirschman, Krebs, Lederman, Lucas, Moser, Novstrup (David), Pitts, Romkema, Schlekeway, Solberg, Solum, Sorenson, Steele, Van Gerpen, and Vanderlinde

1 FOR AN ACT ENTITLED, An Act to prohibit dental insurers from setting fees for noncovered  
2 services.

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

4 Section 1. No contract between an insurer and a dentist may require a dentist to provide  
5 services for an insured at a fee set by the contract unless the services are covered services under  
6 the terms of the insured's plan or policy. For the purposes of this section, the term, covered  
7 services, means services reimbursable under the plan, policy, or contract, subject to such  
8 contractual limitations on benefits as may apply, including deductibles, waiting periods,  
9 frequency limitations, or charges over the benefit maximum.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

497R0467

## HOUSE EDUCATION ENGROSSED NO. **SB 124** 3/1/2010

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

Introduced by: Senators Knudson, Adelstein, Bartling, Brown, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Heidepriem, Jerstad, Kloucek, Miles, Nelson, Nesselhuf, Olson (Russell), Peterson, Tieszen, and Vehle and Representatives Cutler, Curd, Elliott, Frerichs, Hunhoff (Bernie), Kirkeby, Lederman, Lucas, Lust, McLaughlin, Rausch, Rave, Schlekeway, Sorenson, Thompson, and Turbiville

1 FOR AN ACT ENTITLED, An Act to establish the per student allocation for FY 2011, and to  
2 revise the index factor in the state aid to education formula.

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

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

- 6 (1) "Average daily membership," the average number of resident and nonresident  
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the  
8 school district during the previous regular school year, minus average number of  
9 pupils for whom the district receives tuition, except pupils described in subdivision  
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the  
11 average number of pupils for whom the district pays tuition;  
12 (1A) Nonresident students who are in the care and custody of the Department of Social



1 Services, the Unified Judicial System, the Department of Corrections, or other state  
2 agencies and are attending a public school may be included in the average daily  
3 membership of the receiving district when enrolled in the receiving district. When  
4 counting a student who meets these criteria in its general enrollment average daily  
5 membership, the receiving district may begin the enrollment on the first day of  
6 attendance. The district of residence prior to the custodial transfer may not include  
7 students who meet these criteria in its general enrollment average daily membership  
8 after the student ceases to attend school in the resident district;

9 (2) "Adjusted average daily membership," calculated as follows:

10 (a) For districts with an average daily membership of two hundred or less,  
11 multiply 1.2 times the average daily membership;

12 (b) For districts with an average daily membership of less than six hundred, but  
13 greater than two hundred, raise the average daily membership to the 0.8293  
14 power and multiply the result times 2.98;

15 (c) For districts with an average daily membership of six hundred or more,  
16 multiply 1.0 times their average daily membership;

17 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled  
18 in all schools operated by the school district on the last Friday of September of the  
19 previous school year minus the number of students for whom the district receives  
20 tuition, except nonresident students who are in the care and custody of a state agency  
21 and are attending a public school and students for whom tuition is being paid  
22 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
23 tuition. When computing state aid to education for a school district under the  
24 foundation program pursuant to § 13-13-73, the secretary of the Department of

1 Education shall use either the school district's fall enrollment or the average of the  
2 school district's fall enrollment and the school district's fall enrollment from the prior  
3 year, whichever is higher. However, if a school district qualifies to benefit from both  
4 the averaging permitted in this subdivision and the one-time payment provided in  
5 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but  
6 only from the one that provides the most additional funding to the district;

7 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students  
8 enrolled in all schools operated by the school district on the last Friday of September  
9 of the current school year minus the number of students for whom the district  
10 receives tuition except nonresident students who are in the care and custody of a state  
11 agency and are attending a public school and students for whom tuition is being paid  
12 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
13 tuition;

14 (2C) "Small school adjustment," calculated as follows:

15 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
16 \$4,237.72;

17 (b) For districts with a fall enrollment of greater than two hundred, but less than  
18 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
19 result; and multiply the sum obtained times \$4,237.72;

20 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
21 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
22 the United States Department of Labor for the year before the year immediately  
23 preceding the year of adjustment or ~~three~~ two percent, whichever is ~~less~~ greater;  
24 however, the index factor may never exceed five percent;

- 1 (4) "Per student allocation," for school fiscal year ~~2009 is \$4,664.66~~ 2011 is \$4,804.60.
- 2 Each school fiscal year thereafter, the per student allocation is the previous fiscal
- 3 year's per student allocation increased by the index factor;
- 4 (5) "Local need," is the sum of:
- 5 (a) The per student allocation multiplied by the fall enrollment; and
- 6 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;
- 7 and
- 8 (c) The payment distributed pursuant to § 13-13-80, if applicable;
- 9 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
- 10 applying the levies established pursuant to § 10-12-42;
- 11 (7) "General fund balance," the unreserved fund balance of the general fund, less general
- 12 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
- 13 out of the general fund for the previous school fiscal year;
- 14 (8) "General fund balance percentage," is a school district's general fund balance divided
- 15 by the school district's total general fund expenditures for the previous school fiscal
- 16 year, the quotient expressed as a percent;
- 17 (9) "General fund base percentage," is the lesser of:
- 18 (a) The general fund balance percentage as of June 30, 2000; or
- 19 (b) The maximum allowable percentage for that particular fiscal year as stated in
- 20 this subsection.
- 21 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for
- 22 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year
- 23 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five
- 24 percent. However, the general fund base percentage can never be less than twenty-

1 five percent;

2 (10) "Allowable general fund balance," the general fund base percentage multiplied by the  
3 district's general fund expenditures in the previous school fiscal year;

4 (11) "General fund exclusions," revenue a school district has received from the imposition  
5 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
6 from gifts, contributions, grants, or donations; revenue a school district has received  
7 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district  
8 has received as compensation for being a sparse school district under the terms of  
9 §§ 13-13-78 and 13-13-79; any revenue a school district has received under the  
10 provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);  
11 and any revenue in the general fund set aside for a noninsurable judgment.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

286R0600

SENATE ENGROSSED NO. **SB 155** - 2/18/2010

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

Introduced by: Senators Brown and Gant and Representative Hamiel

1 FOR AN ACT ENTITLED, An Act to revise the rules promulgation process for administrative  
2 rules with a financial impact upon political subdivisions of state government.

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

4 Section 1. That § 1-26-4.7 be amended to read as follows:

5 1-26-4.7. The Interim Rules Review Committee may require an agency to revert to any step  
6 in the adoption procedure provided in § 1-26-4. The Interim Rules Review Committee may  
7 require an agency to hold public hearings in addition to those provided for in § 1-26-4 if, in the  
8 judgment of the committee:

9 (1) The substance of the proposed rule has been significantly rewritten from the  
10 originally proposed rule which was not the result of testimony received from the  
11 public hearing;

12 (2) The proposed rule needs to be significantly rewritten in order to accomplish the intent  
13 of the agency;

14 (3) The proposed rule needs to be rewritten to address the recommendations or  
15 objections of the Interim Rules Review Committee;



- 1 (4) The proposed rule is not a valid exercise of delegated legislative authority;
- 2 (5) The proposed rule is not in proper form;
- 3 (6) The notice given prior to the proposed rule's adoption was not sufficient to give
- 4 adequate notice to persons likely to be affected by the proposed rule;
- 5 (7) The proposed rule is not consistent with the expressed legislative intent pertaining
- 6 to the specific provision of law which the proposed rule implements; or
- 7 (8) The proposed rule is not a reasonable implementation of the law as it affects the
- 8 convenience of the general public or persons likely affected by the proposed rule.

9 The Interim Rules Review Committee shall consider whether any rule complies with the  
10 provisions of § 6-15-1. If the committee determines that any proposed rule does not comply with  
11 § 6-15-1, the committee shall require an agency to revert to any step in the adoption procedure  
12 provided in § 1-26-4.

13 If the committee requires an agency to revert to any step in the adoption procedure pursuant  
14 to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

398R0379

## SENATE EDUCATION ENGROSSED NO. **SB 156** - 2/18/2010

Introduced by: Senators Gray, Merchant, Olson (Russell), and Tieszen and Representatives Schlekeway, Bolin, Conzet, Fargen, Hoffman, Kopp, Lederman, Lucas, Moser, Olson (Betty), Romkema, Rounds, Russell, Sorenson, Steele, Vanneman, and Verchio

1 FOR AN ACT ENTITLED, An Act to require that determinations in both adult and juvenile  
2 court proceedings relative to a controlled substance violation of a high school student  
3 participating in extracurricular activities be reported to the South Dakota High School  
4 Activities Association and to the school administrator.

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

6 Section 1. That § 13-32-9 be amended to read as follows:

7 13-32-9. Any person adjudicated, convicted, the subject of an informal adjustment or court-  
8 approved ~~juvenile~~ diversion program, or the subject of a suspended imposition of sentence or  
9 suspended adjudication of delinquency for possession, use, or distribution of controlled drugs  
10 or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise  
11 taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in  
12 any extracurricular activity at any secondary school accredited by the Department of Education  
13 for one calendar year from the date of adjudication, conviction, diversion, or suspended



1 imposition of sentence. The one-year suspension may be reduced to sixty school days if the  
2 person participates in an assessment with a certified chemical dependency counselor or  
3 completes an accredited intensive prevention or treatment program. If the assessment indicates  
4 the need for a higher level of care, the student is required to complete the prescribed program  
5 before becoming eligible to participate in extracurricular activities. Upon a subsequent  
6 adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or  
7 distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for  
8 ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-  
9 15, by a court of competent jurisdiction, that person is ineligible to participate in any  
10 extracurricular activity at any secondary school accredited by the Department of Education.  
11 Upon such a determination in any juvenile court proceeding the Unified Judicial System shall  
12 give notice of that determination to the South Dakota High School Activities Association and  
13 the chief administrator of the school in which the person is participating in any extracurricular  
14 activity. The Unified Judicial System shall give notice to the chief administrators of secondary  
15 schools accredited by the Department of Education for any such determination in a court  
16 proceeding for any person eighteen to twenty-one years of age without regard to current status  
17 in school or involvement in extracurricular activities. The notice shall include name, date of  
18 birth, city of residence, and offense. The chief administrator shall give notice to the South  
19 Dakota High School Activities Association if any such person is participating in extracurricular  
20 activities.

21 Upon placement of the person in an informal adjustment or court-approved juvenile  
22 diversion program, the state's attorney who placed the person in that program shall give notice  
23 of that placement to the South Dakota High School Activities Association and chief  
24 administrator of the school in which the person is participating in any extracurricular activity.

1       As used in this section, the term, extracurricular activity, means any activity sanctioned by  
2       the South Dakota High School Activities Association.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

763R0544

## SENATE COMMERCE ENGROSSED NO. **SB 169** - 2/18/2010

Introduced by: Senators Turbak Berry, Adelstein, Ahlers, Bradford, Dempster, Gillespie, Heidepriem, Maher, Merchant, Nelson, Olson (Russell), Peterson, Rhoden, and Schmidt and Representatives Cutler, Deadrick, Engels, Faehn, Gibson, Greenfield, Hamiel, Hunhoff (Bernie), Jensen, Juhnke, Kirkeby, Krebs, Lust, Moser, Nygaard, Pitts, Solberg, Solum, Turbiville, and Verchio

1 FOR AN ACT ENTITLED, An Act to limit the subrogation of certain insurers unless and until  
2 the insured is made whole.

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

4 Section 1. That chapter 58-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No insurer under this chapter is entitled to participate in any recovery from any tortfeasor  
7 on account of bodily injury or death or damage to property unless and until its insured has first  
8 been made whole.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

591R0568

## SENATE TAXATION ENGROSSED NO. **SB 172** - 2/10/2010

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

Introduced by: Senator Peterson and Representative Noem

1 FOR AN ACT ENTITLED, An Act to revise the definition for environmental upgrades used to  
2 provide a property tax exemption for coal-fired power plants.

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

4 Section 1. That § 10-35-1.7 be amended to read as follows:

5 10-35-1.7. Terms as used in §§ 10-35-1.7 to 10-35-1.10, inclusive, mean:

6 (1) "Coal-fired power plant," any person, corporation, limited liability company,  
7 association, company, partnership, political subdivision, municipality, rural electric  
8 cooperative, consumers power district, or any group or combination acting as a unit,  
9 owning or holding under lease, or otherwise, real property used, or intended for use,  
10 for the conversion of coal into electric power;

11 (2) "Environmental upgrade," an investment in an existing coal-fired power plant of  
12 more than ten million dollars in real or personal property that is designed to ~~reduce~~  
13 ~~the plant's emission of an air pollutant to the level imposed as an emission standard~~  
14 ~~at a comparable coal-fired power plant permitted under best available control~~



1 ~~technology requirements within five years preceding the application for exemption~~  
2 facilitate environmental improvements, including any requirements under the Clean  
3 Air Act, the Clean Water Act, or any other federal law or rule, or any state law or rule  
4 implementing a federal law or rule, or any voluntary environmental measures  
5 designed to protect the environment.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

429R0720

## SENATE TAXATION ENGROSSED NO. **SB 184** - 2/17/2010

Introduced by: Senators Novstrup (Al), Brown, Fryslie, Gant, Hansen (Tom), Howie, Hundstad, Jerstad, and Schmidt and Representatives Peters, Cronin, Cutler, Deadrick, Dennert, Fargen, Feickert, Rausch, and Steele

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the taxes imposed  
2 by water development districts and the addition and withdrawal of territory for water  
3 development districts.

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

5 Section 1. That § 46A-3E-1 be amended to read as follows:

6 46A-3E-1. A water development district board of directors may levy taxes, not to exceed  
7 thirty cents per thousand dollars of taxable valuation in the district, for accomplishment of the  
8 purposes of chapters 46A-3A to 46A-3E, inclusive, and chapters 46A-1 and 46A-2. If an area  
9 is included in more than one water development district, that area's tax levy payable to each of  
10 the water development districts shall be determined by multiplying the greater of the  
11 overlapping water development districts' levies by each water development district's taxing  
12 fraction. Each water development district's taxing fraction is determined by dividing that water  
13 development district's proposed tax levy for the overlapped area by the sum of all water  
14 development districts' levies for the overlapped area. ~~For purposes of chapter 10-13, any~~ Any



1 water development district for which boundaries are revised under §§ 46A-3A-2 to ~~46A-3A-5~~  
2 46A-3A-7.1, inclusive, is not considered a new taxing district ~~created on the date specified~~  
3 ~~pursuant to § 46A-3A-1. If any water development district levied a tax pursuant to chapter 10-13~~  
4 in a manner used by a new taxing district for taxes payable in 2010, such water development  
5 district shall revert to the amount of revenue payable to the district for taxes payable in 2009  
6 including any excess levy approved pursuant to § 10-13-36 before July 1, 2002. The water  
7 development district may adjust the maximum amount of revenue payable for property taxes  
8 based on the growth and index factor for each year thereafter. Any excess levy approved by the  
9 water development district pursuant to § 10-13-36 before July 1, 2002, is null and void.

10 Section 2. That § 46A-3A-16 be amended to read as follows:

11 46A-3A-16. After a water development district has been established pursuant to the  
12 provisions of chapters 46A-3A to 46A-3E, inclusive, any county, township, or group of  
13 townships contiguous to the external boundary of the water development district may be added  
14 to and become a part of that water development district by an affirmative vote of ~~at least sixty~~  
15 ~~percent~~ a majority of the votes cast on the question in the area proposed for addition, if the board  
16 of directors of the water development district to which any addition is to be made by resolution  
17 advises the Board of Water and Natural Resources that the water development district board  
18 favors the addition. Any county or that entire portion of a county included within a water  
19 development district may be withdrawn from a water development district by an affirmative  
20 vote of ~~at least sixty percent~~ a majority of the votes cast on the question in the county proposed  
21 for withdrawal. Proposals for additions or withdrawals shall be in the form of a written  
22 resolution or petition to the Board of Water and Natural Resources ~~and~~.

23 The resolution shall be approved with an affirmative four-fifths vote of the governing body  
24 of a county.

1        The petition shall be signed by a number of qualified voters in the area proposed for the  
2 addition or withdrawal equal to at least ~~fifteen~~ five percent of the number of votes cast within  
3 the area in the most recent gubernatorial election. The county auditor in each county where a  
4 petition is circulated shall verify the signatures on the petition.

5        The resolution or petition shall include a statement whether the election is for the purpose  
6 of becoming a part of an existing water development district or withdrawing from an existing  
7 water development district and a statement describing the purpose of the action. The resolution  
8 or petition shall be presented to the Board of Water and Natural Resources not more than one  
9 hundred twenty days nor less than ninety days before a regularly scheduled general election.  
10 Upon receipt of the resolution or petition, the Board of Water and Natural Resources shall call  
11 an election on the question of whether the addition or withdrawal should be made. The election  
12 shall be held in conjunction with the next regularly scheduled general election.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

717R0683

## HOUSE TAXATION ENGROSSED NO. **SB 192** 3/2/2010

Introduced by: Senators Merchant, Brown, Fryslie, Hundstad, and Jerstad and  
Representatives Street, Bolin, Frerichs, Kirkeby, Nygaard, and Rausch

1 FOR AN ACT ENTITLED, An Act to modify distributions from the wind energy tax fund.

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

3 Section 1. That § 10-35-21 be amended to read as follows:

4 10-35-21. The secretary shall distribute all of the tax deposited in the wind energy tax fund  
5 pursuant to § 10-35-18 and twenty percent of the tax deposited in the wind energy tax fund  
6 pursuant to § 10-35-19 to the county treasurer where the wind farm is located. If the wind  
7 energy tax fund contains less than twenty percent of the gross receipts tax from § 10-35-19, due  
8 to the transmission line rebate under § 10-35-22, the secretary shall distribute the remainder of  
9 funds after the rebate to the county treasurer where the wind farm is located. If a wind farm is  
10 located in more than one county, each county shall receive the same percentage of the tax as the  
11 percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes, the  
12 county auditor shall apportion the tax among all taxing jurisdictions where a wind tower is  
13 located. The tax shall be apportioned in the same manner as agricultural real property taxes  
14 would have been apportioned between the taxing jurisdictions. However, the taxes shall be



1 reapportioned to the township in which the wind farm is located based on the ratio of township  
2 road miles to county road miles within the township as specified in sections 2 and 3 of this Act.

3 The secretary shall distribute the money to the counties on or before the first day of May.

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

6 The taxes apportioned to the township in which the wind farm is located shall be based on  
7 the ratio of township road miles to county road miles within the township in which the wind  
8 farm is located as defined in section 3 of this Act. If the wind farm is located in more than one  
9 township, the percentage of taxes allocated to each township shall be equal to the percentage  
10 of wind towers in the wind farm located in each township.

11 Section 3. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The county auditor shall total the taxes apportioned to each township, in which the wind  
14 farm is located, pursuant to § 10-35-21 and the taxes apportioned to the county for such  
15 township area to determine the sum of such taxes available for distribution. The county auditor  
16 shall divide the township road miles by the total of the township road miles plus county road  
17 miles within such township. This ratio shall be multiplied by the sum of taxes available for  
18 distribution and such amount shall be distributed to the township. The remaining balance shall  
19 be distributed to the county. However, in no case may the apportionment distributed to the  
20 township exceed fifty percent of the sum of the taxes available for distribution pursuant to this  
21 section.