

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0318

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1041** - 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: The Committee on Appropriations at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the discount on the sales of cigarette tax stamps
2 to distributors.

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

4 Section 1. That § 10-50-18 be amended to read as follows:

5 10-50-18. The secretary of revenue and regulation shall secure stamps, of the design and
6 denomination as the secretary prescribes, suitable to be affixed to packages of cigarettes as
7 evidence of the payment of the tax imposed by this chapter. The secretary shall sell the stamps
8 to licensed distributors at a discount of ~~two percent~~ one cent off of their face value and to no
9 other person.

10 Section 2. That § 10-50-18 be amended to read as follows:

11 10-50-18. The secretary of revenue and regulation shall secure stamps, of the design and
12 denomination as the secretary prescribes, suitable to be affixed to packages of cigarettes as
13 evidence of the payment of the tax imposed by this chapter. The secretary shall sell the stamps
14 to licensed distributors at a discount of ~~two~~ one percent of their face value and to no other



1 person.

2 Section 3. The provisions of section 2 of this Act are effective on July 1, 2012.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

517R0407

SENATE JUDICIARY ENGROSSED NO. **HB 1109** 3/2/2010

Introduced by: Representatives Lust, Cutler, Deadrick, Engels, and Feinstein and Senators Knudson, Heidepriem, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to business
2 organizations and to provide for certain filing fees relevant thereto.

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

4 Section 1. That § 47-34A-408 be amended to read as follows:

5 47-34A-408. (a) A limited liability company shall provide managers and members and ~~their~~
6 the respective agents and attorneys of members access for proper purposes to its records, if any,
7 at the company's principal office or other reasonable locations specified in the operating
8 agreement. The company shall provide former members and their respective agents and
9 attorneys access for proper purposes to records pertaining to the period during which they were
10 members. The right of access provides the opportunity to inspect and copy records during
11 ordinary business hours. The company may impose a reasonable charge, limited to the costs of
12 labor and material, for copies of records furnished.

13 (b) A limited liability company shall furnish to a manager:

14 (1) Without demand, information concerning the company's business or affairs



1 reasonably required for the proper exercise of the manager's performance of the
2 manager's duties under the operating agreement or this chapter; and

3 (2) On demand, other information concerning the company's business or affairs, except
4 to the extent the demand or the information demanded is unreasonable or otherwise
5 improper under the circumstances.

6 (c) A limited liability company shall furnish to a member, and to the legal representative of
7 a deceased member or member under legal disability:

8 (1) Without demand, information concerning the company's business or affairs
9 reasonably required for the proper exercise of the member's rights and performance
10 of the member's duties under the operating agreement or this chapter; and

11 (2) On demand, other information concerning the company's business or affairs, except
12 to the extent the demand or the information demanded is unreasonable or otherwise
13 improper under the circumstances.

14 ~~(e)~~(d) A member has the right upon written demand given to the limited liability company
15 to obtain at the company's expense a copy of any written operating agreement.

16 Section 2. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 (a) A foreign limited liability company may become a domestic limited liability company
19 only if the domestication is permitted by the organic law of the foreign limited liability
20 company.

21 (b) A domestic limited liability company not required by law to be a domestic limited
22 liability company may become a foreign limited liability company if the domestication is
23 permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign
24 jurisdiction require the adoption of a plan of domestication, the domestication shall be approved

1 by the adoption of the limited liability company of a plan of domestication in the manner
2 provided in sections 2 to 8, inclusive, of this Act.

3 Section 3. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 (a) The plan of domestication shall include:

6 (1) A statement of the jurisdiction in which the limited liability company is presently
7 domesticated; and

8 (2) A statement of the jurisdiction in which the limited liability company is to be
9 domesticated.

10 (b) The plan of domestication may include:

11 (1) As a referenced attachment, the articles of organization of the limited liability
12 company upon its domestication; and

13 (2) Any other provision relating to the domestication.

14 (c) The plan of domestication may also include a provision that the plan may be amended
15 at any time prior to filing the document required by the laws of this state or the other jurisdiction
16 to consummate the domestication.

17 Section 4. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 In the case of a domestic limited liability company:

20 (a) Unless the articles of organization or a written operating agreement of the limited
21 liability company provides otherwise, the members of the limited liability company shall
22 approve the plan of domestication by the members in the manner provided in the limited
23 liability company's operating agreement for amendments to the operating agreement or, if no
24 such provision is made in an operating agreement, by all the members.

1 (b) If an amendment to a plan of domestication is made in accordance with subsection (c)
2 of section 3 of this Act, and articles of domestication already have been filed with the secretary
3 of state, amended articles of domestication shall be filed with the secretary of state before the
4 effective date of any certificate of domestication issued by the secretary of state for the articles
5 of domestication which the amended articles are to supersede.

6 Section 5. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 (a) After the domestication of a foreign limited liability company is approved in the manner
9 required by the laws of the jurisdiction in which the limited liability company is organized, the
10 limited liability company shall file with the secretary of state articles of domestication setting
11 forth:

12 (1) The name of the limited liability company immediately prior to the filing of the
13 articles of domestication and, if that name is unavailable for use in this state or the
14 limited liability company desires to change its name in connection with the
15 domestication, a name that satisfies the requirements of § 47-34A-105;

16 (2) The plan of domestication; and

17 (3) The original jurisdiction of the limited liability company and the date the limited
18 liability company was organized in that jurisdiction, and each subsequent jurisdiction
19 and the date the limited liability company was domesticated in each such jurisdiction,
20 if any, prior to the filing of the articles of domestication.

21 (b) The articles of domestication shall have attached articles of organization that comply
22 with the requirements contained in § 47-34A-203.

23 (c) If the secretary of state finds that the articles of domestication comply with the
24 requirements of law and that all required fees have been paid, the secretary of state shall issue

1 a certificate of domestication.

2 (d) The articles of domestication shall become effective pursuant to § 47-34A-206.

3 (e) A foreign limited liability company's existence as a domestic limited liability company
4 shall begin when the certificate of domestication is effective. Upon becoming effective, the
5 certificate of domestication shall be conclusive evidence that all conditions precedent required
6 to be performed by the foreign limited liability company have been complied with and that the
7 limited liability company has been organized under this chapter.

8 (f) If the foreign limited liability company is authorized to transact business in this state
9 under § 47-34A-1004, its certificate of authority is canceled automatically on the effective date
10 of the certificate of domestication issued by the secretary of state.

11 Section 6. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 (a) If a domestic limited liability company has approved, in the manner required by section
14 4 of this Act, a plan of domestication providing for the limited liability company to be
15 domesticated under the laws of another jurisdiction, the limited liability company shall file with
16 the secretary of state articles of organization surrender setting forth:

- 17 (1) The name of the limited liability company;
- 18 (2) The limited liability company's new jurisdiction of organization;
- 19 (3) The plan of domestication;
- 20 (4) A statement that the articles of organization surrender are being filed in connection
21 with the domestication of the limited liability company as a foreign limited liability
22 company to be organized under the laws of another jurisdiction and that the limited
23 liability company is surrendering its certificate of organization under the laws of this
24 state;

1 (5) A statement that the limited liability company revokes the authority of its registered
2 agent to accept service on its behalf and appoints the secretary of state as its agent for
3 service of process in any proceeding based on a cause of action arising during the
4 time it was organized in this state;

5 (6) A mailing address to which the secretary of state may mail a copy of any process
6 served on the secretary of state under subdivision (5); and

7 (7) A commitment to notify the secretary of state in the future of any change in the
8 mailing address of the limited liability company.

9 (b) If the secretary of state finds that the articles of organization surrender comply with the
10 requirements of law and that all required fees have been paid, the secretary of state shall issue
11 a certificate of organization surrender.

12 (c) The limited liability company shall automatically cease to be a domestic limited liability
13 company when the certificate of organization surrender becomes effective.

14 (d) If the former domestic limited liability company intends to continue to transact business
15 in the state, within thirty days after the effective date of the certificate of organization surrender
16 issued pursuant to subsection (b), the former domestic limited liability company shall deliver
17 to the secretary of state an application for a certificate of authority to transact business in the
18 state pursuant to § 47-34A-1002 together with a certificate of existence or a record of similar
19 import authentication by the secretary of state or other official having custody of company
20 records in the state or country under whose law it is organized together with any fee required
21 by § 47-34A-1206 and any other required fee.

22 Section 7. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 (a) When a foreign limited liability company's certificate of domestication in this state

1 becomes effective, with respect to that limited liability company:

2 (1) The title to all real estate and other property remains in the limited liability company
3 without reversion or impairment;

4 (2) The liabilities remain the liabilities of the limited liability company;

5 (3) A proceeding pending may be continued by or against the limited liability company
6 as if the domestication did not occur;

7 (4) The articles of organization attached to the articles of domestication constitute the
8 articles of organization of the limited liability company; and

9 (5) The limited liability company is deemed to:

10 (i) Be organized under the laws of this state for all purposes;

11 (ii) Be the same limited liability company as the limited liability company that
12 existed under the laws of the jurisdiction or jurisdictions in which it was
13 originally organized or formerly domesticated; and

14 (iii) Have been organized on the date it was originally formed or organized.

15 (b) Any member of a foreign limited liability company that domesticates into this state who,
16 prior to the domestication, was liable for the liabilities or obligations of the limited liability
17 company is not released from those liabilities or obligations by reason of the domestication.

18 Section 8. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 (a) Unless the domestic limited liability company's articles of organization, operating
21 agreement, or the plan of domestication provides otherwise, after the domestication has been
22 authorized and at any time before the effective date of the certificate of domestication issued by
23 the Office of the Secretary of State, the domestication may be abandoned by majority vote of
24 the members of the domestic limited liability company.

1 (b) If a domestication is abandoned under subsection (a) after articles of organization
2 surrender have been filed with the secretary of state but before the certificate of organization
3 surrender has become effective, written notice that the domestication has been abandoned in
4 accordance with this section shall be filed with the secretary of state prior to the effective date
5 of the certificate of organization surrender. The notice shall take effect upon filing and the
6 domestication shall be deemed abandoned and shall not become effective.

7 (c) If the domestication of a foreign limited liability company into this state is abandoned
8 in accordance with the laws of the foreign jurisdiction after articles of domestication have been
9 filed with the secretary of state but before the certificate of domestication has become effective
10 in this state, written notice that the domestication has been abandoned shall be filed with the
11 secretary of state prior to the effective date of the certificate of domestication. The notice shall
12 take effect upon filing and the domestication shall be deemed abandoned and shall not become
13 effective.

14 Section 9. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 (a) A domestic limited liability company may be converted to a different type of entity
17 pursuant to this section by adopting a plan of conversion.

18 (b) The terms and conditions of a plan of conversion of a limited liability company to a
19 different type of entity must be approved by all of the members or by a number or percentage
20 of members specified in the operating agreement.

21 (c) To effect a conversion, the converting limited liability company must act on and the
22 members of the limited liability company must approve a plan of conversion containing the
23 provisions required by section 10 of this Act.

24 (d) A conversion may not take effect if the conversion is prohibited by or inconsistent with

1 the laws of this state, and the formation, incorporation, or organization of the converted entity
2 under the plan of conversion must be effected in compliance with those laws pursuant to the
3 plan of conversion.

4 (e) At the time a conversion takes effect, each member of the converting limited liability
5 company, other than those who receive payment of their membership interest under any
6 applicable provisions of this chapter, has, unless otherwise agreed to by that member, a
7 membership interest in, and is an owner, partner, or member of, the converted entity.

8 (f) A limited liability company may not convert under this section if a member or manager
9 of the limited liability company, as a result of the conversion, becomes personally liable,
10 without the consent of the member or manager, for a liability or other obligation of the
11 converted entity.

12 Section 10. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 (a) A plan of conversion must include:

15 (1) The name of the converting limited liability company;

16 (2) The name of the converted entity;

17 (3) A statement that the converting limited liability company is continuing its existence
18 in the organizational form of the converted entity;

19 (4) A statement of the type of entity that the converted entity is to be;

20 (5) The manner and basis of converting the membership interests of the converting
21 limited liability company into ownership or membership interests of the converted
22 entity;

23 (6) Any certificate of formation required to be filed under this chapter if the converted
24 entity is a filing entity; and

1 (7) The certificate of formation or similar organizational document of the converted
2 entity if the converted entity is not a filing entity.

3 (b) An item required by subsection (a)(6) or (7) may be included in the plan of conversion
4 by an attachment or exhibit to the plan.

5 Section 11. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A plan of conversion may include other provisions relating to the conversion that are not
8 inconsistent with the laws of this state.

9 Section 12. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The conversion of a limited liability company is effective upon the filing of the plan of
12 conversion with the secretary of state, or at such later date as the plan of conversion may
13 provide.

14 Section 13. That chapter 47-34A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 If a conversion takes effect:

17 (a) The converting limited liability company continues to exist without interruption in the
18 organizational form of the converted entity rather than in the organizational form of the
19 converting limited liability company;

20 (b) All rights, title, and interests to all property owned by the converting limited liability
21 company continues to be owned, subject to any existing liens or other encumbrances on the
22 property, by the converted entity in the new organizational form without:

23 (1) Reversion or impairment;

24 (2) Further act or deed; or

1 (3) Any transfer or assignment having occurred;

2 (c) All liabilities and obligations of the converting limited liability company continue to be
3 liabilities and obligations of the converted entity in the new organizational form without
4 impairment or diminution because of the conversion;

5 (d) The rights of creditors or other parties with respect to or against the previous owners or
6 members of the converting limited liability company in their capacities as members or managers
7 in existence when the conversion takes effect continue to exist as to those liabilities and
8 obligations and may be enforced by the creditors and obligees as if a conversion had not
9 occurred;

10 (e) A proceeding pending by or against the converting limited liability company or by or
11 against any of the converting limited liability company's members or managers in their
12 capacities as members or managers may be continued by or against the converted entity in the
13 new organizational form and by or against the previous members or managers without a need
14 for substituting a party;

15 (f) The membership interests of the converting limited liability company that are to be
16 converted into ownership or membership interests of the converted entity as provided in the plan
17 of conversion are converted as provided by the plan, and the former members and managers are
18 entitled only to the rights provided in the plan of conversion or elsewhere provided in this
19 chapter;

20 (g) If, after the conversion takes effect, an owner or member of the converted entity as an
21 owner or member is liable for the liabilities or obligations of the converted entity, the owner or
22 member is liable for the liabilities and obligations of the converting limited liability company
23 that existed before the conversion took effect only to the extent that the owner or member:

24 (1) Agrees in writing to be liable for the liabilities or obligations;

1 (2) Was liable, before the conversion took effect, for the liabilities or obligations; or

2 (3) By becoming an owner or member of the converted entity, becomes liable under

3 other applicable law for the existing liabilities and obligations of the converted entity;

4 and

5 (h) In a proceeding to enforce any obligation or right of dissenting owners or members of

6 the converting domestic entity, the provisions of § 15-6-4(d) govern the service of process.

7 Section 14. That chapter 47-34A be amended by adding thereto a NEW SECTION to read

8 as follows:

9 A member or manager of a limited liability company shall be fully protected in relying in

10 good faith upon the records of the limited liability company and upon such information,

11 opinions, reports, or statements presented to the limited liability company by any of its other

12 managers, members, officers, employees, or committees of the limited liability company, or any

13 other person, as to matters the member or manager reasonably believes are within such other

14 person's professional or expert competence and who has been selected with reasonable care by

15 or on behalf of the limited liability company, including information, opinions, reports, or

16 statements as to the value and amount of the assets, liabilities, profits, or losses of the limited

17 liability company or any other facts pertinent to the existence and amount of assets from which

18 distributions to members might properly be paid.

19 Section 15. That § 47-34A-1206 be amended to read as follows:

20 47-34A-1206. The secretary of state may charge the following fees:

21 (a) For amending or restating the articles of organization in the case of a domestic

22 limited liability company, a filing fee of sixty dollars. For amending the registration

23 in the case of a foreign limited liability company, a filing fee of seven hundred fifty

24 dollars;

- 1 (b) For filing articles of termination, ten dollars;
- 2 (c) For filing articles of merger, sixty dollars;
- 3 (d) For filing a statement of dissociation, ten dollars;
- 4 (e) For filing an application to reserve a name, twenty-five dollars;
- 5 (f) For issuing a certificate of existence, twenty dollars;
- 6 (g) For filing an application for registration of name, twenty-five dollars;
- 7 (h) For filing an annual renewal of registration, a limited liability company which has in
8 effect a registration of its name, may renew such registration from year to year by
9 annually filing an application for renewal setting forth the facts required to be set
10 forth in an original application for registration and a certificate of good standing as
11 required for the original registration and by paying a fee of fifteen dollars. A renewal
12 application may be filed between the first day of October and the thirty-first day of
13 December in each year and shall extend the registration for the following year;
- 14 (i) For acting as agent for service of process the secretary of state shall charge and
15 collect at the time of such service thirty dollars which may be recoverable as taxable
16 costs by the party to the suit or action causing the service to be made if the party
17 prevails in the suit or action;
- 18 (j) For filing articles of domestication, one hundred fifty dollars;
- 19 (k) For filing articles of organization surrender, one hundred fifty dollars;
- 20 (l) For filing a plan of conversion, one hundred fifty dollars.

21 Section 16. That § 47-1A-728 be amended to read as follows:

22 47-1A-728. ~~Unless otherwise provided in the articles of incorporation, directors are elected~~
23 ~~by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which~~
24 ~~a quorum is present.~~ Shareholders may cumulate their votes for directors. The right to cumulate

- 1 votes for directors means that the shareholders are entitled to multiply the number of votes that
- 2 they are entitled to cast by the number of directors for whom they are entitled to vote and cast
- 3 the product for a single candidate or distribute the product among two or more candidates.

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

400R0242

HOUSE APPROPRIATIONS

ENGROSSED NO. **SB 22** - 3/8/2010

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

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise the per student allocation in the state aid to general
2 education formula, and to revise certain allocations for disabilities in the state aid to special
3 education formula.

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



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

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

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

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

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

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

1 school district's fall enrollment and the school district's fall enrollment from the prior
2 year, whichever is higher. However, if a school district qualifies to benefit from both
3 the averaging permitted in this subdivision and the one-time payment provided in
4 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but
5 only from the one that provides the most additional 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~~ 2011 is ~~\$4,664.66~~ \$4,804.60.
24 Each school fiscal year thereafter, the per student allocation is the previous fiscal

1 year's per student 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 § 13-37-35.1 be amended to read as follows:

11 13-37-35.1. Terms used in chapter 13-37 mean:

- 12 (1) "Level one disability," a mild disability;
- 13 (2) "Level two disability," cognitive disability or emotional disorder;
- 14 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-
- 15 blindness, orthopedic impairment, or traumatic brain injury;
- 16 (4) "Level four disability," autism;
- 17 (5) "Level five disability," multiple disabilities;
- 18 (5A) "Level six disability," prolonged assistance;
- 19 (6) "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 (7) "Local effort," shall be calculated for taxes payable in 2011 and shall be the amount
- 24 of revenue that could have been generated for the taxes payable in 2010 using a

1 special education levy of one dollar and twenty cents per one thousand dollars of
 2 valuation increased by the lesser of three percent or the index factor, as defined in
 3 § 10-13-38, plus a percentage increase of value resulting from any improvements or
 4 change in use of real property, annexation, minor boundary changes, and any
 5 adjustments in taxation of real property separately classified and subject to statutory
 6 adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except
 7 § 10-6-31.4, only if assessed the same as property of equal value.

8 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort
 9 shall be increased by the lesser of three percent or the index factor, established
 10 pursuant to § 10-13-38 plus a percentage increase of value resulting from any
 11 improvements or change in use of real property, annexation, minor boundary
 12 changes, and any adjustments in taxation of real property separately classified and
 13 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and
 14 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value;

15 (8) "Allocation for a student with a level one disability," for the school fiscal year
 16 beginning July 1, ~~2009~~ 2010, is \$4,057. For each school year thereafter, the allocation
 17 for a student with a level one disability shall be the previous fiscal year's allocation
 18 for such child increased by the lesser of the index factor or three percent;

19 (9) "Allocation for a student with a level two disability," for the school fiscal year
 20 beginning July 1, ~~2009~~ 2010, is \$9,471. For each school year thereafter, the allocation
 21 for a student with a level two disability shall be the previous fiscal year's allocation
 22 for such child increased by the lesser of the index factor or three percent;

23 (10) "Allocation for a student with a level three disability," for the school fiscal year
 24 beginning July 1, ~~2009~~ 2010, is \$15,220. For each school year thereafter, the

- 1 allocation for a student with a level three disability shall be the previous fiscal year's
2 allocation for such child increased by the lesser of the index factor or three percent;
- 3 (11) "Allocation for a student with a level four disability," for the school fiscal year
4 beginning July 1, ~~2009~~ 2010, is \$13,164. For each school year thereafter, the
5 allocation for a student with a level four disability shall be the previous fiscal year's
6 allocation for such child increased by the lesser of the index factor or three percent;
- 7 (12) "Allocation for a student with a level five disability," for the school fiscal year
8 beginning July 1, ~~2009~~ 2010, is \$16,539. For each school year thereafter, the
9 allocation for a student with a level five disability shall be the previous fiscal year's
10 allocation for such child increased by the lesser of the index factor or three percent;
- 11 (12A) "Allocation for a student with a level six disability," for the school fiscal year
12 beginning July 1, ~~2009~~ 2010, is \$8,438. For each school year thereafter, the allocation
13 for a student with a level six disability shall be the previous fiscal year's allocation
14 for such child increased by the lesser of the index factor or three percent;
- 15 (13) "Child count," is the number of students in need of special education or special
16 education and related services according to criteria set forth in rules promulgated
17 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in
18 accordance with rules promulgated pursuant to § 13-37-1.1;
- 19 (14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled
20 in all schools operated by the school district on the last Friday of September of the
21 previous school year minus the number of students for whom the district receives
22 tuition, except any nonresident student who is in the care and custody of a state
23 agency and is attending a public school and any student for whom tuition is being
24 paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays

1 tuition;

2 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
3 secretary of education for the purpose of instructing children of compulsory school
4 age. This definition excludes any school that receives a majority of its revenues from
5 public funds;

6 (16) "Nonpublic fall enrollment," until June 30, 2008, the number of children under age
7 sixteen, and beginning July 1, 2009, the number of children under age eighteen, who
8 are approved for alternative instruction pursuant to § 13-27-2 on the last Friday of
9 September of the previous school year plus:

10 (a) For nonpublic schools located within the boundaries of a public school district
11 with a fall enrollment of six hundred or more on the last Friday of September
12 of the previous school year, the number of kindergarten through twelfth grade
13 pupils enrolled on the last Friday of September of the previous regular school
14 year in all nonpublic schools located within the boundaries of the public
15 school district;

16 (b) For nonpublic schools located within the boundaries of a public school district
17 with a fall enrollment of less than six hundred on the last Friday of September
18 of the previous school year, the number of resident kindergarten through
19 twelfth grade pupils enrolled on the last Friday of September of the previous
20 school year in all nonpublic schools located within the State of South Dakota;

21 (17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;

22 (18) "Local need," an amount to be determined as follows:

23 (a) Multiply the special education fall enrollment by 0.1062 and multiply the
24 result by the allocation for a student with a level one disability;

- 1 (b) Multiply the number of students having a level two disability as reported on
- 2 the child count for the previous school fiscal year by the allocation for a
- 3 student with a level two disability;
- 4 (c) Multiply the number of students having a level three disability as reported on
- 5 the child count for the previous school fiscal year by the allocation for a
- 6 student with a level three disability;
- 7 (d) Multiply the number of students having a level four disability as reported on
- 8 the child count for the previous school fiscal year by the allocation for a
- 9 student with a level four disability;
- 10 (e) Multiply the number of students having a level five disability as reported on
- 11 the child count for the previous school fiscal year by the allocation for a
- 12 student with a level five disability;
- 13 (f) Multiply the number of students having a level six disability as reported on the
- 14 child count for the previous school fiscal year by the allocation for a student
- 15 with a level six disability;
- 16 (g) Sum the results of (a) through (f);
- 17 (19) "Effort factor," for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort
- 18 factor is the amount of taxes payable for the year divided by the amount of local
- 19 effort as calculated in subdivision (7). The maximum effort factor is 1.0.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0385

SENATE APPROPRIATIONS ENGROSSED NO. **SB 49** - 2/17/2010

Introduced by: The Committee on Appropriations at the request of the Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to revise the General Appropriations Act for fiscal year
2 2010.

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

4 Section 1. That section 7 of chapter 22 of the 2009 Session Laws be amended to read as
5 follows:

6 DEPARTMENT OF SOCIAL SERVICES

7 (2) Economic Assistance

8 Operating Expenses, Federal Funds, delete "\$59,417,940" and insert "\$71,417,940"

9 Adjust all totals accordingly.

10 Section 2. That section 7 of chapter 22 of the 2009 Session Laws be amended to read as
11 follows:

12 DEPARTMENT OF SOCIAL SERVICES

13 (3) Medical and Adult Services

14 Operating Expenses, Federal Funds, delete "\$462,115,457" and insert "\$516,183,956"



1 Adjust all totals accordingly.

2 Section 3. That section 7 of chapter 22 of the 2009 Session Laws be amended to read as
3 follows:

4 DEPARTMENT OF SOCIAL SERVICES

5 (4) Children's Services

6 Operating Expenses, Federal Funds, delete "\$50,406,838" and insert "\$51,438,612"

7 Adjust all totals accordingly.

8 Section 4. That section 8 of chapter 22 of the 2009 Session Laws be amended to read as
9 follows:

10 DEPARTMENT OF HEALTH

11 (2) Health Systems Development and Regulation

12 Operating Expenses, Federal Funds, delete "\$9,857,188" and insert "\$13,857,188"

13 Operating Expenses, Other Funds, delete "\$171,023" and insert "\$3,171,023"

14 Adjust all totals accordingly.

15 Section 5. That section 8 of chapter 22 of the 2009 Session Laws be amended to read as
16 follows:

17 DEPARTMENT OF HEALTH

18 (3) Health and Medical Services

19 Personal Services, Federal Funds, delete "\$7,477,254" and insert "\$8,477,254"

20 Adjust all totals accordingly.

21 Section 6. That section 10 of chapter 22 of the 2009 Session Laws be amended to read as
22 follows:

23 DEPARTMENT OF TRANSPORTATION

24 (1) General Operations

1 Operating Expenses, Other Funds, delete "\$86,543,144" and insert "\$86,227,604"

2 Adjust all totals accordingly.

3 Section 7. That section 9 of chapter 22 of the 2009 Session Laws be amended to read as
4 follows:

5 DEPARTMENT OF LABOR

6 (1) Administration, Secretary of Labor

7 Operating Expenses, Federal Funds, delete "\$16,019,146" and insert "\$18,519,146"

8 Adjust all totals accordingly.

9 Section 8. That section 10 of chapter 22 of the 2009 Session Laws be amended to read as
10 follows:

11 DEPARTMENT OF TRANSPORTATION

12 (2) Construction Contracts – Informational

13 Operating Expenses, Federal Funds, delete "\$375,797,103" and insert "\$387,283,183"

14 Adjust all totals accordingly.

15 Section 9. That section 11 of chapter 22 of the 2009 Session Laws be amended to read as
16 follows:

17 DEPARTMENT OF EDUCATION

18 (11) Education Resources

19 Operating Expenses, General Funds, delete "\$5,874,554" and insert "\$5,533,335"

20 Operating Expenses, Federal Funds, delete "\$223,392,375" and insert "\$223,727,714"

21 Adjust all totals accordingly.

22 Section 10. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as
23 follows:

24 BOARD OF REGENTS

1 (1) Regents Central Office

2 Operating Expenses, General Funds, delete "\$10,149,282" and insert "\$10,827,118"

3 Adjust all totals accordingly.

4 Section 11. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

5 follows:

6 BOARD OF REGENTS

7 (3) University of South Dakota Proper

8 Operating Expenses, General Funds, delete "\$308,109" and insert "\$189,082"

9 Adjust all totals accordingly.

10 Section 12. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

11 follows:

12 BOARD OF REGENTS

13 (5) South Dakota State University Proper

14 Personal Services, Federal Funds, delete "\$8,929,386" and insert "\$14,116,886"

15 Personal Services, Other Funds, delete "\$54,065,934" and insert "\$65,065,934"

16 Operating Expenses, General Funds, delete "\$519,048" and insert "\$359,215"

17 Operating Expenses, Federal Funds, delete "\$28,220,473" and insert "\$35,532,973"

18 Operating Expenses, Other Funds, delete "\$56,142,859" and insert "\$67,342,859"

19 F.T.E., delete "1,740.3" and insert "1,830.3"

20 Adjust all totals accordingly.

21 Section 13. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

22 follows:

23 BOARD OF REGENTS

24 (7) Agriculture Experiment Station

1 Personal Services, Federal Funds, delete "\$6,666,515" and insert "\$7,366,515"

2 Personal Services, Other Funds, delete "\$4,416,394" and insert "\$5,816,394"

3 Operating Expenses, Federal Funds, delete "\$6,260,134" and insert "\$7,160,134"

4 Operating Expenses, Other Funds, delete "\$6,101,541" and insert "\$8,201,541"

5 Adjust all totals accordingly.

6 Section 14. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as
7 follows:

8 BOARD OF REGENTS

9 (8) South Dakota School of Mines and Technology

10 Operating Expenses, General Funds, delete "\$419,833" and insert "\$371,482"

11 Adjust all totals accordingly.

12 Section 15. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as
13 follows:

14 BOARD OF REGENTS

15 (9) Northern State University

16 Operating Expenses, General Funds, delete "\$636,644" and insert "\$441,586"

17 Adjust all totals accordingly.

18 Section 16. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as
19 follows:

20 BOARD OF REGENTS

21 (10) Black Hills State University

22 Operating Expenses, General Funds, delete "\$83,383" and insert "\$20,534"

23 Adjust all totals accordingly.

24 Section 17. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

1 follows:

2 BOARD OF REGENTS

3 (11) Dakota State University

4 Operating Expenses, General Funds, delete "\$153,505" and insert "\$79,144"

5 Adjust all totals accordingly.

6 Section 18. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

7 follows:

8 BOARD OF REGENTS

9 (12) South Dakota School for the Deaf

10 Personal Services, General Funds, delete "\$3,045,877" and insert "\$2,368,041"

11 Operating Expenses, General Funds, delete "\$679,913" and insert "\$650,242"

12 Adjust all totals accordingly.

13 Section 19. That section 13 of chapter 22 of the 2009 Session Laws be amended to read as

14 follows:

15 BOARD OF REGENTS

16 (13) South Dakota School for the Blind and Visually Impaired

17 Operating Expenses, General Funds, delete "\$217,271" and insert "\$211,950"

18 Adjust all totals accordingly.

19 Section 20. That section 14 of chapter 22 of the 2009 Session Laws be amended to read as

20 follows:

21 DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

22 (2) Army Guard

23 Operating Expenses, General Funds, delete "\$1,097,677" and insert "\$1,056,480"

24 Operating Expenses, Federal Funds, delete "\$14,162,774" and insert "\$13,929,325"

1 Adjust all totals accordingly.

2 Section 21. That section 14 of chapter 22 of the 2009 Session Laws be amended to read as
3 follows:

4 DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

5 (3) Air Guard

6 Operating Expenses, General Funds, delete "\$222,875" and insert "\$200,028"

7 Operating Expenses, Federal Funds, delete "\$2,646,937" and insert "\$2,578,394"

8 Adjust all totals accordingly.

9 Section 22. That section 14 of chapter 22 of the 2009 Session Laws be amended to read as
10 follows:

11 DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

12 (5) State Veterans' Home

13 Operating Expenses, General Funds, delete "\$902,598" and insert "\$840,557"

14 Operating Expenses, Other Funds, delete "\$2,612,148" and insert "\$2,519,088"

15 Adjust all totals accordingly.

16 Section 23. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
17 follows:

18 DEPARTMENT OF CORRECTIONS

19 (1) Administration, Central Office

20 Personal Services, Federal Funds, delete "\$133,544" and insert "\$159,397"

21 Personal Services, Other Funds, delete "\$53,936" and insert "\$66,866"

22 Operating Expenses, Federal Funds, delete "\$9,910,243" and insert "\$10,417,865"

23 Operating Expenses, Other Funds, delete "\$1,280,000" and insert "\$1,533,887"

24 Adjust all totals accordingly.

1 Section 24. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
2 follows:

3 DEPARTMENT OF CORRECTIONS

4 (2) Mike Durfee State Prison

5 Operating Expenses, General Funds, delete "\$4,621,333" and insert "\$4,121,122"

6 Adjust all totals accordingly.

7 Section 25. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
8 follows:

9 DEPARTMENT OF CORRECTIONS

10 (3) State Penitentiary

11 Operating Expenses, General Funds, delete "\$5,073,448" and insert "\$4,906,703"

12 Adjust all totals accordingly.

13 Section 26. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
14 follows:

15 DEPARTMENT OF CORRECTIONS

16 (4) Women's Prison

17 Operating Expenses, General Funds, delete "\$924,327" and insert "\$881,678"

18 Adjust all totals accordingly.

19 Section 27. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
20 follows:

21 DEPARTMENT OF CORRECTIONS

22 (6) Community Services

23 Operating Expenses, General Funds, delete "\$1,325,063" and insert "\$1,345,415"

24 Adjust all totals accordingly.

1 Section 28. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
2 follows:

3 DEPARTMENT OF CORRECTIONS

4 (7) Parole Services

5 Personal Services, Federal Funds, delete "\$0" and insert "\$23,984"

6 Personal Services, Other Funds, delete "\$256,404" and insert "\$268,399"

7 Operating Expenses, Federal Funds, delete "\$0" and insert "\$2,595"

8 Operating Expenses, Other Funds, delete "\$0" and insert "\$1,298"

9 Adjust all totals accordingly.

10 Section 29. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
11 follows:

12 DEPARTMENT OF CORRECTIONS

13 (8) Juvenile Community Corrections

14 Operating Expenses, General Funds, delete "\$12,104,079" and insert "\$11,778,939"

15 Operating Expenses, Federal Funds, delete "\$8,734,080" and insert "\$9,024,594"

16 Operating Expenses, Other Funds, delete "\$480,087" and insert "\$625,387"

17 Adjust all totals accordingly.

18 Section 30. That section 15 of chapter 22 of the 2009 Session Laws be amended to read as
19 follows:

20 DEPARTMENT OF CORRECTIONS

21 (11) State Treatment and Rehabilitation Academy

22 Operating Expenses, General Funds, delete "\$2,420,997" and insert "\$2,425,642"

23 Adjust all totals accordingly.

24 Section 31. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as

1 follows:

2 DEPARTMENT OF HUMAN SERVICES

3 (2) Developmental Disabilities

4 Operating Expenses, General Funds, delete "\$32,249,326" and insert "\$30,295,331"

5 Adjust all totals accordingly.

6 Section 32. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as

7 follows:

8 DEPARTMENT OF HUMAN SERVICES

9 (3) South Dakota Developmental Center--Redfield

10 Personal Services, General Funds, delete "\$7,052,170" and insert "\$6,729,560"

11 Operating Expenses, General Funds, delete "\$573,795" and insert "\$320,672"

12 Operating Expenses, Federal Funds, delete "\$4,745,639" and insert "\$4,602,876"

13 Adjust all totals accordingly.

14 Section 33. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as

15 follows:

16 DEPARTMENT OF HUMAN SERVICES

17 (4) Alcohol and Drug Abuse

18 Operating Expenses, General Funds, delete "\$8,155,211" and insert "\$8,045,933"

19 Adjust all totals accordingly.

20 Section 34. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as

21 follows:

22 DEPARTMENT OF HUMAN SERVICES

23 (5) Rehabilitation Services

24 Operating Expenses, General Funds, delete "\$2,804,711" and insert "\$2,713,709"

1 Adjust all totals accordingly.

2 Section 35. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as
3 follows:

4 DEPARTMENT OF HUMAN SERVICES

5 (12) Human Services Center

6 Personal Services, General Funds, delete "\$21,320,032" and insert "\$21,082,466"

7 Operating Expenses, General Funds, delete "\$9,071,724" and insert "\$9,042,817"

8 Operating Expenses, Federal Funds, delete "\$2,156,245" and insert "\$2,150,739"

9 Adjust all totals accordingly.

10 Section 36. That section 16 of chapter 22 of the 2009 Session Laws be amended to read as
11 follows:

12 DEPARTMENT OF HUMAN SERVICES

13 (13) Community Mental Health

14 Operating Expenses, General Funds, delete "\$14,100,350" and insert "\$13,753,235"

15 Adjust all totals accordingly.

16 Section 37. That section 19 of chapter 22 of the 2009 Session Laws be amended to read as
17 follows:

18 UNIFIED JUDICIAL SYSTEM

19 (2) Unified Judicial System

20 Operating Expenses, Other Funds, delete "\$5,393,204" and insert "\$5,548,204"

21 Adjust all totals accordingly.

22 Section 38. That chapter 22 of the 2009 Session Laws be amended to by adding thereto a
23 NEW SECTION to read as follows:

24 Section 35. The state treasurer shall transfer to the state general fund nine million six

1 hundred seventeen thousand one hundred forty-two dollars (\$9,617,142), or so much thereof as
2 may be necessary, from the tax refund construction liability fund within the Department of
3 Revenue and Regulation.

4 Section 39. That chapter 22 of the 2009 Session Laws be amended to by adding thereto a
5 NEW SECTION to read as follows:

6 Section 36. Notwithstanding the provisions of § 10-45C-14, the state treasurer shall transfer
7 to the state general fund two million thirty-three thousand five hundred eighty-two dollars
8 (\$2,033,582), or so much thereof as may be necessary, from the tax relief fund created pursuant
9 to § 10-45C-14.

10 Section 40. That chapter 22 of the 2009 Session Laws be amended to by adding thereto a
11 NEW SECTION to read as follows:

12 Section 37. The state treasurer shall transfer to the state general fund two million thirty-three
13 thousand five hundred eighty-one dollars (\$2,033,581), or so much thereof as may be necessary,
14 from the state aeronautics fund.

15 Section 41. That chapter 22 of the 2009 Session Laws be amended to by adding thereto a
16 NEW SECTION to read as follows:

17 Section 38. The state treasurer shall transfer to the state general fund two million twenty
18 thousand twenty-one dollars (\$2,020,021), or so much thereof as may be necessary, from the
19 budgetary accounting fund.

20 Section 42. Funds appropriated by this Act which are unspent at the end of fiscal year
21 2010 may be carried over to fiscal year 2011.

22 Section 43. This Act is effective June 28, 2010.

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

400R0492

SENATE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **SB 69** - 2/12/2010

Introduced by: The Committee on Health and Human Services at the request of the Office of
the Governor

1 FOR AN ACT ENTITLED, An Act to authorize certain exceptions to the nursing facility
2 moratorium.

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

4 Section 1. That chapter 34-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of §§ 34-12-35.4 and 34-12-39.2, a new nursing facility as
7 defined in § 34-12-1.1 may be constructed, operated, and maintained in an area if the facility
8 is to be located in the eastern half of the state and is required to serve military veterans and their
9 spouses. No more than one new nursing facility for military veterans may be located in the
10 eastern half of the state, and the number of beds in the new nursing facility may not exceed fifty.
11 The new nursing facility shall meet the specifications of chapter 34-12 for a licensed nursing
12 facility in order to participate in the medicaid program. Any solicitation for a provider for the
13 new facility shall be conducted pursuant to the provisions of §§ 5-18-57 to 5-18-62, inclusive.

14 Section 2. The provisions of section 1 of this Act are repealed on June 30, 2013.



1 Section 3. That chapter 34-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Notwithstanding the provisions of § 34-12-39.2, a new nursing facility as defined in § 34-12-
4 1.1 may be constructed, operated, and maintained as part of an existing nursing facility licensed
5 under chapter 34-12 if:

- 6 (1) The new nursing facility is located within fifteen miles of the existing nursing
7 facility;
- 8 (2) The combined bed capacity of both the licensed existing nursing facility and the new
9 nursing facility do not exceed the total number of beds afforded to the existing
10 nursing facility under § 34-12-35.4; and
- 11 (3) Both the existing nursing facility and the new nursing facility serve medicaid
12 residents and both facilities independently maintain an annual minimum medicaid
13 occupancy rate no less than ten percent below the state-wide average at the time rates
14 are established.

15 For the purposes of medicaid reimbursement, the facility shall submit a combined annual
16 cost report to include the combined costs for both the existing nursing facility and the new
17 nursing facility. Medicaid reimbursement rates shall be calculated using the combined cost
18 report, and rates will be subject to the ceilings and limitations set forth in rules promulgated
19 pursuant to § 28-6-1. The existing facility's medicaid reimbursement rate shall be used to
20 establish the overall ceiling as outlined in rules promulgated pursuant to § 28-6-1. The existing
21 nursing facility is limited to construction of one new facility under 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

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

653R0542

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **SB 104** - 3/4/2010

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

Introduced by: Senators Knudson, Abdallah, Adelstein, Bradford, Brown, Dempster, Fryslie, Gant, Garnos, Gray, Hansen (Tom), Hanson (Gary), Heidepriem, Hunhoff (Jean), Kloucek, Miles, Olson (Russell), Rhoden, Tieszen, Turbak Berry, and Vehle and Representatives Faehn, Gosch, Hamiel, Hunhoff (Bernie), Noem, Peters, Rausch, Rave, and Solberg

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding disclosure of public
2 information and public meetings.

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

4 Section 1. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a meeting is required to be open to the public pursuant to § 1-25-1 and if any printed
7 material relating to an agenda item of the meeting is prepared or distributed by or at the
8 direction of the governing body or any of its employees and the printed material is distributed
9 before the meeting to all members of the governing body, the material shall either be posted on
10 the governing body's website or made available at the official business office of the governing
11 body at least twenty-four hours prior to the meeting or at the time the material is distributed to
12 the governing body, whichever is later. If the material is not posted to the governing body's



1 website, at least one copy of the printed material shall be available in the meeting room for
2 inspection by any person while the governing body is considering the printed material. However,
3 the provisions of this section do not apply to any printed material or record that is specifically
4 exempt from disclosure under the provisions of this chapter or to any printed material or record
5 regarding the agenda item of an executive or closed meeting held in accordance with § 1-25-2.
6 A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do
7 not apply to printed material, records, or exhibits involving contested case proceedings held in
8 accordance with the provisions of chapter 1-26.

9 Section 2. That § 1-25-1 be amended to read as follows:

10 ~~1-25-1. Except as otherwise provided by law, the official meetings of the state and the~~
11 ~~political subdivisions thereof, including all related boards, commissions and other agencies, and~~
12 ~~the official meetings of boards, commissions and agencies created by statute or which are~~
13 ~~nontaxpaying and derive a source of revenue directly from public funds, shall be open to the~~
14 ~~public, except as provided in this chapter. It does not constitute an official meeting if members~~
15 ~~of a political subdivision of this state are attending a meeting of the state or one of its political~~
16 ~~subdivisions, a board, a commission, an association, an agency, or any other public entity for~~
17 ~~which public notice is provided pursuant to § 1-25-1.1 for the purpose of providing information~~
18 ~~or observing, and the notice requirements in § 1-25-1.1 do not apply. Meetings, including~~
19 ~~executive or closed meetings may be conducted by teleconference. Members shall be deemed~~
20 ~~present if they answer present to the roll call taken by teleconference. Any vote at a meeting held~~
21 ~~by teleconference shall be taken by roll call. Except for executive or closed meetings held by~~
22 ~~teleconference, there shall be provided one or more places at which the public may listen to and~~
23 ~~participate in the proceeding. Except for executive or closed meetings held by teleconference~~
24 ~~of related boards and commissions of the state, there shall be provided two or more places at~~

1 ~~which the public may listen to and participate in the proceeding. Except for the Digital Dakota~~
2 ~~Network, no teleconference may be used in conducting hearings or taking final disposition~~
3 ~~pursuant to § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter~~
4 ~~1-25. The official meetings of the state, its political subdivisions, and any public body of the~~
5 ~~state or its political subdivisions are open to the public unless a specific law is cited by the state,~~
6 ~~the political subdivision, or the public body to close the official meeting to the public. For the~~
7 ~~purposes of this section, a political subdivision or a public body of a political subdivision means~~
8 ~~any association, authority, board, commission, committee, council, task force, school district,~~
9 ~~county, city, town, township, or other agency of the state, which is created or appointed by~~
10 ~~statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power~~
11 ~~derived from state law.~~

12 It is not an official meeting of one political subdivision or public body if its members
13 provide information or attend the official meeting of another political subdivision or public body
14 for which the notice requirements of § 1-25-1.1 have been met.

15 Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. A
16 teleconference may be used to conduct a hearing or take final disposition regarding an
17 administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers
18 present to the roll call conducted by teleconference for the purpose of determining a quorum.
19 Each vote at an official meeting held by teleconference shall be taken by roll call.

20 If the state, a political subdivision, or a public body conducts an official meeting by
21 teleconference, the state, the political subdivision, or public body shall provide one or more
22 places at which the public may listen to and participate in the teleconference meeting. The
23 requirement to provide one or more places for the public to listen to the teleconference does not
24 apply to an executive or closed meeting.

1 A violation of this section is a Class 2 misdemeanor.

2 Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are
5 required to be kept by law shall be available for inspection by any person within ten business
6 days after the meeting. However, this section does not apply if an audio or video recording of
7 the meeting is available to the public on the governing body's website within five business days
8 after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions
9 of this section do not apply to draft minutes of contested case proceedings held in accordance
10 with the provisions of chapter 1-26.

11 Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any final recommendations, findings, or reports that result from a meeting of a committee,
14 subcommittee, task force, or other working group which does not meet the definition of a
15 political subdivision or public body pursuant to § 1-25-1, but was appointed by the governing
16 body, shall be reported in open meeting to the governing body which appointed the committee,
17 subcommittee, task force, or other working group. The governing body shall delay taking any
18 official action on the recommendations, findings, or reports until the next meeting of the
19 governing body.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

578R0406

HOUSE APPROPRIATIONS ENGROSSED NO. **SB 106** - 3/8/2010

Introduced by: Senators Dempster, Abdallah, Ahlers, Brown, Gant, Garnos, Gray, Hansen (Tom), Heidepriem, Jerstad, Knudson, Maher, Miles, Nelson, Olson (Russell), Peterson, Rhoden, Tieszen, and Turbak Berry and Representatives Noem, Blake, Bolin, Boomgarden, Burg, Curd, Cutler, Engels, Faehn, Gibson, Gosch, Hunhoff (Bernie), Kirkeby, Krebs, Lucas, Lust, McLaughlin, Moser, Peters, Putnam, Rausch, Rave, Rounds, Schlekeway, Solum, Thompson, Turbiville, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents and the Building
2 Authority to contract for construction of classroom facilities at the University Center in
3 Sioux Falls to replace facilities leased from the Sioux Falls School District, and to make an
4 appropriation therefor.

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

6 Section 1. The South Dakota Building Authority may contract for the construction,
7 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
8 plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and
9 engineering services, and such other services or actions as may be required to construct,
10 classroom facilities at the University Center in Sioux Falls to replace facilities leased from the
11 Sioux Falls School District, at the estimated cost of ten million five hundred thirty thousand one
12 hundred seventy-two dollars. The facilities may be erected as freestanding buildings, as



1 additions to existing buildings, or as a combination of buildings and additions, but the aggregate
2 additional space at the University Center in Sioux Falls authorized by this Act may not exceed
3 fifty thousand square feet.

4 Section 2. The Building Authority may finance up to eight million nine hundred seventy
5 thousand dollars of the construction costs through the issuance of revenue bonds, in accordance
6 with this Act and chapter 5-12.

7 Section 3. There is hereby appropriated the sum of one million five hundred sixty thousand
8 one hundred seventy-two dollars (\$1,560,172) of other fund expenditure authority for the
9 construction authorized in section 1 of this Act, payable from funds received from the Sioux
10 Falls School District in consideration of the Board of Regents' release of a leasehold to a facility
11 at Southeast Technical Institute.

12 Section 4. The Building Authority and the Board of Regents may accept, transfer, and
13 expend any property or funds obtained for these purposes from federal sources, gifts,
14 contributions, or any source other than general funds, all of which shall comprise a special fund
15 for the project authorized in this Act and all moneys deposited into that fund are hereby
16 appropriated to the construction authorized by this Act.

17 Section 5. No indebtedness, bond, or obligation incurred or created under the authority of
18 this Act may be or may become a lien, charge, or liability against the State of South Dakota, nor
19 against the property or funds of the State of South Dakota within the meaning of the
20 Constitution or statutes of the state.

21 Section 6. The Board of Regents may make and enter into a lease agreement with the
22 Building Authority and make rental payments under the terms thereof, pursuant to chapter 5-12,
23 from the higher education facilities fund for the purposes of this Act.

24 Section 7. Expenditure authority may be increased based on the receipt of grants or

1 donations received pursuant to this Act. However, no adjustment to any cost estimate may
2 exceed one hundred twenty-five percent of the authorized expenditure authority stated in section
3 1 of this Act. No increase in gross square footage authorized by section 1 of this Act may exceed
4 ten percent. Any increase in gross square footage may only be made to accommodate design
5 changes needed to comply with building code requirements, and to address unforeseeable
6 structural, subsoil, or environmental conditions.

7 Section 8. The design and construction of the facility authorized in this Act shall be under
8 the general supervision of the Bureau of Administration as provided in chapter 5-14. The
9 commissioner of the Bureau of Administration and the executive director of the Board of
10 Regents shall approve vouchers, and the state auditor shall draw warrants to pay expenditures
11 authorized by this Act.

12 Section 9. For purposes of this Act, the term, gross square footage, means the sum of all
13 areas on all floors of a building included within the outside faces of the building's exterior walls,
14 including floor penetration areas, however insignificant, for circulation and shaft areas that
15 connect one floor to another as computed by physically measuring or scaling measurements
16 from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, or any other
17 features that extend beyond the wall faces. The term includes excavated basement area;
18 mezzanines and attics; garages; multiple floor parking structures; enclosed porches, inner or
19 outer balconies whether walled or not, if the balconies are utilized for operational functions; and
20 corridors whether walled or not, if the corridors are within the outside face lines of the building,
21 to the extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on
22 each floor through which the corridors pass. The term does not include open areas such as
23 unenclosed parking lots, playing fields, courts, and light wells, clear span areas not exceeding
24 three feet in height, or portions of upper floors eliminated by rooms or lobbies that rise about

1 single-floor height.

2 Section 10. The Board of Regents shall file its plan to provide for the operation and the
3 maintenance and repair expenses related to the project authorized in this Act, with the special
4 interim committee created in § 4-8A-2, no later than November 1, 2010.

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

717R0452

HOUSE STATE AFFAIRS

ENGROSSED NO. **SB 139** - 3/8/2010

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

Introduced by: Senators Vehle, Brown, Fryslie, Garnos, and Rhoden and Representatives Hamiel, Brunner, Carson, Cronin, Krebs, Lust, McLaughlin, and Street

1 FOR AN ACT ENTITLED, An Act to permit the secretary of state to cancel a trademark or
2 service mark registration under certain conditions.

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

4 Section 1. That § 37-6-18 be amended to read as follows:

5 37-6-18. The secretary of state shall cancel from the register any registration ~~concerning~~ for
6 which the secretary of state ~~shall receive~~ has received a voluntary request for cancellation
7 ~~thereof~~ from the registrant or the assignee of record. The secretary of state, upon notice to the
8 registrant, may cancel from the register any registration that the secretary of state granted in the
9 previous one hundred eighty days upon a finding that:

10 (1) The registration was granted improperly or in error; or

11 (2) The registration was obtained fraudulently.

12 If the registrant objects, a hearing shall be conducted pursuant to chapter 1-26.



State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

736R0588

SENATE JUDICIARY ENGROSSED NO. **SB 149** 2/18/2010

Introduced by: Senators Tieszen, Abdallah, Gillespie, and Gray and Representatives Cutler, Engels, and Hunt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions providing for the method of
2 calculating subsequent DUI offenses.

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

4 Section 1. That § 32-23-4.1 be amended to read as follows:

5 32-23-4.1. No previous conviction for, or plea of guilty to, a violation of § 32-23-1, 22-18-
6 36, or 22-16-41 occurring more than ten years prior to the date of the violation being charged
7 may be used to determine that the violation being charged is a second, third, or subsequent
8 offense. However, any period of time during which the defendant was incarcerated for a
9 previous violation may not be included when calculating if the time period provided in this
10 section has elapsed.

11 Section 2. That § 32-23-4.5 be amended to read as follows:

12 32-23-4.5. Any conviction for, or plea of guilty to, an offense in another state which, if
13 committed in this state, would be a violation of § 32-23-1, 22-18-36, or 22-16-41 and occurring
14 within ten years prior to the date of the violation being charged, shall be used to determine if the



1 violation being charged is a second, third, or subsequent offense.

2 Section 3. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 For purposes of determining whether a conviction for a violation of § 32-23-1 is for a second
5 or subsequent offense, any conviction for a violation of § 22-18-36 or 22-16-41 counts as a
6 conviction of § 32-23-1.

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

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

781R0747

HOUSE STATE AFFAIRS
ENGROSSED NO. **SB 187** - 3/8/2010

Introduced by: Senators Gray and Knudson and Representatives Faehn, Noem, and Rave

1 FOR AN ACT ENTITLED, An Act to provide for the adjustment of appropriated moneys to
2 projected available revenues.

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

4 Section 1. Fifty percent of moneys appropriated in the general appropriations act may not
5 exceed the amount determined to be available by the Legislature.



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.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

735R0749

HOUSE STATE AFFAIRS

ENGROSSED NO. **SB 195** - 3/8/2010

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

Introduced by: Senators Gray, Dempster, Knudson, and Rhoden and Representatives Faehn, Rave, and Tidemann

1 FOR AN ACT ENTITLED, An Act to revise the refunds for new or expanded agricultural
2 facilities and new or expanded business facilities and to sunset the refunds for new or
3 expanded agricultural facilities and new or expanded business facilities.

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

5 Section 1. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs
8 incurred and paid after the effective date of this Act, up to and including thirty-six months from
9 the construction date. No refund may be paid unless the person applying for the refund obtains
10 a permit from the secretary as set forth in § 10-45B-6.

11 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Notwithstanding any provision of chapter 10-45B or this Act, this section controls the
14 amount of refunds payable under chapter 10-45B for any new agricultural processing facility



1 or new business facility that has a construction date on or after July 1, 2010:

2 (1) For project cost incurred and paid from July 1, 2010, to December 31, 2012,
3 inclusive, the amount of the refund shall be determined by applying the provisions
4 of chapter 10-45B in effect on July 1, 2010, and prior to the repeal of chapter 10-45B
5 on January 1, 2013; and

6 (2) For project costs incurred and paid before December 31, 2012, the amount of the
7 refund shall be as follows:

8 (a) For project costs of less than ten million dollars, there shall be no refund; and

9 (b) For project costs of ten or more million dollars, there shall be a refund of fifty-
10 five percent of the taxes paid.

11 Section 3. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 No claim for refund pursuant to this chapter may be considered by the department if the
14 claim for refund is received twelve months after the thirty-six month time period of section 1
15 of this Act. Moreover, any such claim is barred from any future refund eligibility.

16 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
17 follows:

18 No document or record in support of any claim for refund may be considered by the
19 department if the document or record in support of any claim for refund is received twelve
20 months after the thirty-six month time period of section 1 of this Act. Moreover, any such
21 document or record is barred from any future consideration.

22 However, if the department requests any additional document or record from the project
23 owner after a review of the claim for refund, and the request is made after the applicable time
24 period provided by this section has expired, the project owner has sixty days to provide the

1 requested document or record. No document or record received after this sixty-day period may
2 be considered by the department. Moreover, any such document or record is barred from any
3 future consideration.

4 Section 5. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The provisions of chapter 10-45B in effect prior to the effective date of this Act apply to any
7 project where the construction date was before the effective date of this Act.

8 Section 6. That § 10-45B-2 be amended to read as follows:

9 10-45B-2. ~~Any person~~ As provided in this chapter, any person holding a permit issued
10 pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes
11 imposed and paid under the provisions of chapter 10-46A for the construction of a new
12 agricultural processing facility and for sales or use taxes imposed and paid by such person under
13 the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing
14 equipment.

15 Section 7. That § 10-45B-8 be amended to read as follows:

16 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for
17 refund to the department no more frequently than on or before the last day of each month and
18 no less frequently than on or before the last day of each month following each calendar quarter.
19 The secretary shall determine and pay the amount of the tax refund within ninety days of receipt
20 of the claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant
21 in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
22 department. No interest may be paid on the refund amount. ~~If electronic funds transfer is~~
23 ~~available to the secretary, the secretary shall pay the refund by electronic funds transfer if~~
24 ~~requested by the claimant.~~ The secretary shall pay the refund by electronic funds transfer.

1 Section 8. That § 10-45B-9 be amended to read as follows:

2 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be
3 retained until the project has been completed and the claimant has met all the conditions of ~~§ 10-~~
4 ~~45B-4 or 10-45B-4.1~~ section 1 of this Act, at which time all sums retained shall be paid to
5 claimant.

6 Section 9. That § 10-45B-4 be repealed.

7 ~~10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to~~
8 ~~project costs incurred and paid after April 1, 1997, and within thirty-six months of the~~
9 ~~construction date as stated on the application required by § 10-45B-6. No refund may be made~~
10 ~~unless:~~

11 ~~(1) The project cost exceeds the sum of four million five hundred thousand dollars; and~~

12 ~~(2) The person applying for the refund obtains a permit from the secretary as set forth in~~
13 ~~§ 10-45B-6.~~

14 Section 10. That § 10-45B-4.1 be repealed.

15 ~~10-45B-4.1. The refund of taxes pursuant to § 10-45B-2.1 pertains only to project costs~~
16 ~~incurred and paid after February 1, 2005, up to and including thirty-six months from the~~
17 ~~construction date if the project costs are sixty million dollars or less and after February 1, 2005,~~
18 ~~up to and including seventy-two months from the construction date if the project costs are more~~
19 ~~than sixty million dollars. There is no refund if the person applying for the refund does not~~
20 ~~obtain a permit from the secretary as set forth in § 10-45B-6.~~

21 ~~Upon a showing of good cause, the time limits prescribed by this section may be extended~~
22 ~~by the secretary for a period not to exceed twenty-four months.~~

23 Section 11. That § 10-45B-5 be repealed.

24 ~~10-45B-5. If the project cost for a new agricultural processing facility exceeds four million~~

1 ~~five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed~~
2 ~~to the project cost.~~

3 Section 12. That § 10-45B-5.1 be repealed.

4 ~~10-45B-5.1. The amount of the tax refund for a new business facility shall be a percentage~~
5 ~~of the taxes paid, as follows:~~

6 ~~(1) For project costs of less than ten million dollars, there shall be no refund;~~

7 ~~(2) For project costs of ten or more million dollars but less than fifteen million dollars~~
8 ~~there shall be a refund of twenty-five percent of the taxes paid;~~

9 ~~(3) For project costs of fifteen or more million dollars but less than twenty million~~
10 ~~dollars there shall be a refund of thirty-three percent of the taxes paid;~~

11 ~~(4) For project costs of twenty or more million dollars but less than forty million dollars~~
12 ~~there shall be a refund of fifty percent of the taxes paid;~~

13 ~~(5) For project costs of forty or more million dollars but less than sixty million dollars~~
14 ~~there shall be a refund of sixty-seven percent of the taxes paid;~~

15 ~~(6) For project costs of sixty million dollars or more but less than six hundred million~~
16 ~~dollars there shall be a refund of seventy-five percent of the taxes paid; and~~

17 ~~(7) For project costs of six hundred million dollars and greater there shall be a refund of~~
18 ~~ninety percent of the taxes paid.~~

19 Section 13. That § 10-45B-6.1 be repealed.

20 ~~10-45B-6.1. Any person issued a permit pursuant to this chapter prior to March 31, 1997,~~
21 ~~may continue to submit claims for the project.~~

22 Section 14. That § 10-45B-8.1 be repealed.

23 ~~10-45B-8.1. No claim for refund pursuant to this chapter may be considered by the~~
24 ~~department if the claim for refund is received after the following applicable time period:~~

- 1 ~~— (1) — Twelve months after the thirty-six month time period of § 10-45B-4;~~
- 2 ~~— (2) — Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
3 ~~with project costs of sixty million dollars or less;~~
- 4 ~~— (3) — Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
5 ~~with project costs of more than sixty million dollars; or~~
- 6 ~~— (4) — Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
7 ~~obtained a time limit extension from the secretary.~~

8 Moreover, any such claim is barred from any future refund eligibility.

9 Section 15. That § 10-45B-8.2 be repealed.

10 ~~— 10-45B-8.2. No document or record in support of any claim for refund may be considered~~
11 ~~by the department if the documents or records in support of any claim for refund are received~~
12 ~~after the following applicable time period:~~

- 13 ~~— (1) — Twelve months after the thirty-six month time period of § 10-45B-4;~~
- 14 ~~— (2) — Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
15 ~~with project costs of sixty million dollars or less;~~
- 16 ~~— (3) — Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
17 ~~with project costs of more than sixty million dollars; or~~
- 18 ~~— (4) — Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
19 ~~obtained a time limit extension from the secretary.~~

20 ~~Moreover, any such document or record is barred from any future consideration.~~

21 ~~— However, if the department requests any additional document or record from the project~~
22 ~~owner after a review of the claim for refund, and the request is made after the applicable time~~
23 ~~period provided by this section has expired, the project owner has sixty days to provide the~~
24 ~~requested document or record. No document or record received after this sixty-day period may~~

1 ~~be considered by the department. Moreover, any such document or record is barred from any~~
2 ~~future consideration.~~

3 Section 16. That § 10-45B-8.3 be repealed.

4 ~~10-45B-8.3. The provisions of §§ 10-45B-8.1 and 10-45B-8.2 apply to refunds for projects~~
5 ~~only if the permit was applied for after June 30, 2009.~~

6 Section 17. That chapter 10-45B be repealed on January 1, 2013.