

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0348

SENATE ENGROSSED NO. **SB 15** - 02/20/2013

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 provide for expenditures for early learning services from
2 the special education fund.

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

4 Section 1. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Up to fifteen percent of the local need as defined in subdivision 13-37-35.1(18) may be used
7 to develop and implement coordinated, early intervening services for students in kindergarten
8 through grade twelve who are not currently identified as needing special education or special
9 education and related services, but who need additional academic and behavioral interventions
10 to succeed in a general education environment to prevent them from being identified as having
11 a special education disability.

12 Coordinated, early intervening services include:

13 (1) Professional development for teachers and other school staff to enable them to
14 deliver scientifically-based academic instruction and behavioral interventions,
15 including scientifically-based literacy instruction, and, if appropriate, instruction on



1 the use of adaptive and instructional software; and

2 (2) Providing educational and behavioral evaluations, services and supports, including
3 scientifically-based literacy instruction.

4 Section 2. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A school district seeking to use funds pursuant to section 1 of this Act shall apply for
7 approval for the use of such funds from the Department of Education on forms provided by the
8 department.

9 Section 3. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any school district that uses funds pursuant to section 1 of this Act shall annually report to
12 the Department of Education on:

- 13 (1) The number of students who receive coordinated, early intervening services; and
14 (2) The number of students who received early intervening services, and who
15 subsequently receive special education or special education and related services
16 within two years after receiving the coordinated, early intervening services.

17 Section 4. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The Board of Education shall promulgate rules pursuant to chapter 1-26 establishing the
20 application process, the application timelines, the criteria the department will use in approving
21 a district's use of special education funds pursuant to section 1 of this Act, and the collection of
22 data on children served pursuant to section 3 of this Act.

23 Section 5. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 A school district that provides early intervening services pursuant to section 1 of this Act
2 is not eligible for funding from the money set aside pursuant to § 13-37-40 within a period of
3 three years following the expenditure of such funds.

4 Section 6. That § 13-37-2.1 be amended to read as follows:

5 13-37-2.1. As used in this chapter, the term, surrogate parent, means any individual ~~certified~~
6 ~~by the Department of Education~~ assigned by the district to act in place of the parent of a child
7 in need of special education when the school district cannot identify or locate the parent or the
8 child is a ward of the state.

9 Section 7. That § 13-37-16 be amended to read as follows:

10 13-37-16. For taxes payable in ~~1997~~ 2014, and each year thereafter, the school board shall
11 levy no more than one dollar and ~~forty~~ fifty-five and two tenths cents per thousand dollars of
12 taxable valuation, as a special levy in addition to all other levies authorized by law for the
13 amount so determined to be necessary, and such levy shall be spread against all of the taxable
14 property of the district. The proceeds derived from such levy shall constitute a school district
15 special education fund of the district for the payment of costs for the special education of all
16 children in need of special education or special education and related services who reside within
17 the district pursuant to the provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this
18 section shall be based on valuations such that the median level of assessment represents 85%
19 of market value as determined by the Department of Revenue. The total amount of taxes that
20 would be generated at the levy pursuant to this section shall be considered local effort. Money
21 in the special education fund may be expended for the purchase or lease of any assistive
22 technology that is directly related to special education and specified in a student's individualized
23 education plan. This section does not apply to real property improvements.

24 ~~— For taxes payable in 2011, the total amount of revenue payable from the levy provided in~~

1 ~~this section may not increase more than the lesser of three percent or the index factor, as defined~~
2 ~~in § 10-13-38, over the maximum amount of revenue that could have been generated for the~~
3 ~~taxes payable in 2010. After applying the index factor, a school district may increase the revenue~~
4 ~~payable from taxes on real property above the limitations provided by this section by the~~
5 ~~percentage increase of value resulting from any improvements or change in use of real property,~~
6 ~~annexation, minor boundary changes, and any adjustments in taxation of real property separately~~
7 ~~classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,~~
8 ~~and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.~~

9 ~~— Any school district created or reorganized after January 1, 2009, is exempt from the~~
10 ~~limitation provided by this section for a period of two years immediately following its creation.~~

11 ~~— For taxes payable in 2012, 2013, 2014, and 2015, the total amount of revenue payable from~~
12 ~~the levy provided in this section may not increase more than the lesser of three percent or the~~
13 ~~index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have~~
14 ~~been generated for the taxes payable in 2010 plus any unused index factor from the previous~~
15 ~~years. After applying the index factor, a school district may increase the revenue payable from~~
16 ~~taxes on real property above the limitations provided by this section by the percentage increase~~
17 ~~of value resulting from any improvements or change in use of real property, annexation, minor~~
18 ~~boundary changes, and any adjustments in taxation of real property separately classified and~~
19 ~~subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,~~
20 ~~except § 10-6-31.4, only if assessed the same as property of equal value.~~

21 ~~— For taxes payable in 2011, 2012, 2013, 2014, and 2015, the levy limitation of one dollar and~~
22 ~~forty cents per thousand dollars of taxable valuation does not apply to any school district.~~

23 Section 8. That § 13-37-16.2 be amended to read as follows:

24 13-37-16.2. If local effort increases on a statewide aggregate basis by a greater percentage

1 than local need on a statewide aggregate basis from any one year to the next, for the following
2 year, the levy specified in subdivision ~~13-37-35.1(19)~~ 13-37-35.1(7) shall be reduced
3 proportionally so that the percentage increase in local effort on a statewide aggregate basis
4 equals the percentage increase in need on a statewide aggregate basis.

5 Section 9. That § 13-37-16.3 be amended to read as follows:

6 13-37-16.3. Any adjustments in the levy specified in subdivision ~~13-37-35.1(19)~~ 13-37-
7 35.1(7) made pursuant to § 13-37-16.2 shall be based on maintaining the relationship between
8 statewide local effort as a percentage of statewide local need in the fiscal year succeeding the
9 fiscal year in which the adjustment is made. However, for fiscal year 2014, and each year
10 thereafter, if the levy specified in subdivision 13-37-35.1(7) is not adjusted to maintain this
11 relationship, the funding allocation for each disability level as defined in § 13-37-35.1 shall be
12 reduced proportionally to maintain the relationship between statewide local effort as a
13 percentage of statewide local need.

14 Section 10. That § 13-37-18 be amended to read as follows:

15 13-37-18. Special education costs and statistical information shall be included in the annual
16 ~~application for state aid~~ financial report as provided in § 13-13-37.

17 Section 11. That § 13-37-35.1 be amended to read as follows:

18 13-37-35.1. Terms used in chapter 13-37 mean:

- 19 (1) "Level one disability," a mild disability;
- 20 (2) "Level two disability," cognitive disability or emotional disorder;
- 21 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-
22 blindness, orthopedic impairment, or traumatic brain injury;
- 23 (4) "Level four disability," autism;
- 24 (5) "Level five disability," multiple disabilities;

- 1 (5A) "Level six disability," prolonged assistance;
- 2 (6) "Index factor," is the annual percentage change in the consumer price index for urban
3 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
4 the United States Department of Labor for the year before the year immediately
5 preceding the year of adjustment or three percent, whichever is less;
- 6 (7) "Local effort," shall be calculated for taxes payable in 2011 and shall be the amount
7 of revenue that could have been generated for the taxes payable in 2010 using a
8 special education levy of one dollar and twenty cents per one thousand dollars of
9 valuation increased by the lesser of three percent or the index factor, as defined in
10 § 10-13-38, plus a percentage increase of value resulting from any improvements or
11 change in use of real property, annexation, minor boundary changes, and any
12 adjustments in taxation of real property separately classified and subject to statutory
13 adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except
14 § 10-6-31.4, only if assessed the same as property of equal value.
- 15 ~~For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort~~
16 ~~shall be increased by the lesser of three percent or the index factor, established~~
17 ~~pursuant to § 10-13-38 plus a percentage increase of value resulting from any~~
18 ~~improvements or change in use of real property, annexation, minor boundary~~
19 ~~changes, and any adjustments in taxation of real property separately classified and~~
20 ~~subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and~~
21 ~~10-6B, except § 10-6-31.4, only if assessed the same as property of equal value 2014~~
22 ~~and thereafter using a special education levy of one dollar and thirty-five and two~~
23 ~~tenths cents per one thousand dollars of valuation;~~
- 24 (8) "Allocation for a student with a level one disability," for the school fiscal year

1 beginning July 1, 2012, is \$4,525. For each school year thereafter, the allocation for
2 a student with a level one disability shall be the previous fiscal year's allocation for
3 such child increased by the lesser of the index factor or three percent;

4 (9) "Allocation for a student with a level two disability," for the school fiscal year
5 beginning July 1, 2012, is \$11,124. For each school year thereafter, the allocation for
6 a student with a level two disability shall be the previous fiscal year's allocation for
7 such child increased by the lesser of the index factor or three percent;

8 (10) "Allocation for a student with a level three disability," for the school fiscal year
9 beginning July 1, 2012, is \$14,788. For each school year thereafter, the allocation for
10 a student with a level three disability shall be the previous fiscal year's allocation for
11 such child increased by the lesser of the index factor or three percent;

12 (11) "Allocation for a student with a level four disability," for the school fiscal year
13 beginning July 1, 2012, is \$13,204. For each school year thereafter, the allocation for
14 a student with a level four disability shall be the previous fiscal year's allocation for
15 such child increased by the lesser of the index factor or three percent;

16 (12) "Allocation for a student with a level five disability," for the school fiscal year
17 beginning July 1, 2012, is \$19,993. For each school year thereafter, the allocation for
18 a student with a level five disability shall be the previous fiscal year's allocation for
19 such child increased by the lesser of the index factor or three percent;

20 (12A) "Allocation for a student with a level six disability," for the school fiscal year
21 beginning July 1, 2012, is \$7,205. For each school year thereafter, the allocation for
22 a student with a level six disability shall be the previous fiscal year's allocation for
23 such child increased by the lesser of the index factor or three percent;

24 (13) "Child count," is the number of students in need of special education or special

1 education and related services according to criteria set forth in rules promulgated
2 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in
3 accordance with rules promulgated pursuant to § 13-37-1.1;

4 (14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled
5 in all schools operated by the school district on the last Friday of September of the
6 previous school year minus the number of students for whom the district receives
7 tuition, except any nonresident student who is in the care and custody of a state
8 agency and is attending a public school and any student for whom tuition is being
9 paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays
10 tuition;

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

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

19 (a) For nonpublic schools located within the boundaries of a public school district
20 with a fall enrollment of six hundred or more on the last Friday of September
21 of the previous school year, the number of kindergarten through twelfth grade
22 pupils enrolled on the last Friday of September of the previous regular school
23 year in all nonpublic schools located within the boundaries of the public
24 school district;

- 1 (b) For nonpublic schools located within the boundaries of a public school district
- 2 with a fall enrollment of less than six hundred on the last Friday of September
- 3 of the previous school year, the number of resident kindergarten through
- 4 twelfth grade pupils enrolled on the last Friday of September of the previous
- 5 school year in all nonpublic schools located within the State of South Dakota;
- 6 (17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;
- 7 (18) "Local need," an amount to be determined as follows:
- 8 (a) Multiply the special education fall enrollment by 0.1004 and multiply the
- 9 result by the allocation for a student with a level one disability;
- 10 (b) Multiply the number of students having a level two disability as reported on
- 11 the child count for the previous school fiscal year by the allocation for a
- 12 student with a level two disability;
- 13 (c) Multiply the number of students having a level three disability as reported on
- 14 the child count for the previous school fiscal year by the allocation for a
- 15 student with a level three disability;
- 16 (d) Multiply the number of students having a level four disability as reported on
- 17 the child count for the previous school fiscal year by the allocation for a
- 18 student with a level four disability;
- 19 (e) Multiply the number of students having a level five disability as reported on
- 20 the child count for the previous school fiscal year by the allocation for a
- 21 student with a level five disability;
- 22 (f) Multiply the number of students having a level six disability as reported on the
- 23 child count for the previous school fiscal year by the allocation for a student
- 24 with a level six disability;

1 (g) When calculating local need at the statewide level, include the amount set
2 aside for extraordinary costs defined in § 13-37-40;

3 (h) Sum the results of (a) ~~through (f)~~ to (g), inclusive;

4 (19) "Effort factor," ~~for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort~~
5 ~~factor is the amount of taxes payable for the year divided by the amount of local~~
6 ~~effort as calculated in subdivision (7)~~ the school district's special education tax levy
7 in dollars per thousand divided by \$1.352. The maximum effort factor is 1.0.

8 Section 12. That § 13-37-36.1 be amended to read as follows:

9 13-37-36.1. To establish the school district special education fund statutory carryover
10 ~~excluding federal funds, the following calculations shall be performed:~~

11 ~~(1) Divide the total federal special education revenue by the total special education~~
12 ~~revenues; and~~

13 ~~(2) Multiply the federal special education percentage calculated in (1) times the total~~
14 ~~special education fund balance; and~~

15 ~~(3) Deduct the amount of federal revenue calculated in (2) from the special education~~
16 ~~fund balance, deduct from the total ending fund balance the amount of Title VIII of~~
17 ~~the Elementary and Secondary Education Act funds receipted or transferred to the~~
18 ~~special education fund.~~

19 Section 13. That § 13-37-40 be amended to read as follows:

20 13-37-40. Subject to the limitation in § 13-37-42, the secretary of the Department of
21 Education shall, for school fiscal year ~~1999~~ 2014 and each year thereafter, set aside ~~5.75%~~ four
22 million dollars of the state aid to districts for special education appropriation for extraordinary
23 expenses incurred in providing special education programs or services to one or more children
24 with disabilities, with expenditures to be made as recommended by an oversight board and

1 approved by the secretary of the Department of Education. Any funds not expended or obligated
2 pursuant to this section shall not be subject to reversion pursuant to § 4-8-19. ~~The maximum~~
3 ~~amount not subject to reversion is equal to 5.75% of the state special education appropriation.~~
4 The total amount set aside for extraordinary expenses each fiscal year plus the total amount not
5 reverted from previous fiscal years may not exceed five million five hundred thousand dollars.

6 The amount appropriated for extraordinary expenses shall be recalculated at the same time
7 as the amount of the allocations for disability levels as provided in § 13-37-35.2.

8 Section 14. That § 13-37-40.1 be amended to read as follows:

9 13-37-40.1. A school district is not eligible for funding from the money set aside in §§ 13-
10 37-38 to 13-37-40, inclusive, unless the school district certifies to the secretary of education that
11 its ending special education fund balance will not exceed ~~five~~ ten percent of its special
12 education expenditures for the current fiscal year.

13 Section 15. That § 13-37-44 be amended to read as follows:

14 13-37-44. A school district's state aid for special education as calculated pursuant to § 13-
15 37-36.1 ~~or 13-37-51~~ shall be reduced by the amount which its ending special education fund
16 balance exceeds ~~twenty~~ twenty-five percent of its special education expenditures for the prior
17 fiscal year or ~~fifty~~ one hundred thousand dollars, whichever is greater, if the school district did
18 not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount which its
19 ending special education fund balance exceeds ~~five~~ ten percent of its special education
20 expenditures for the prior fiscal year if the school district received money set aside in §§ 13-37-
21 38 to 13-37-40, inclusive, during the prior fiscal year.

22 Section 16. That § 13-37-48.1 be repealed.

23 ~~— 13-37-48.1. In addition to the purposes specified in § 13-37-40, money set aside pursuant~~
24 ~~to § 13-37-40 may be used by the Department of Education to establish and maintain a program~~

1 to assist school districts with legal matters relating to special education, to employ personnel
2 to audit school districts for compliance with the provisions of §§ 13-37-36.1 to 13-37-52, to
3 establish and maintain state protocols to assist school districts in developing individualized
4 education plans, to support activities under Part C of the Individuals with Disabilities Education
5 Act, Infants and Toddlers with Disabilities, or to purchase assistive technology for students with
6 a level two, three, four, or five disability.

7 — Any approved K-12 application under the extraordinary cost fund must be funded prior to
8 funding the Part C requests.

9 Section 17. That § 13-37-51 be repealed.

10 — 13-37-51. For the transition period from school fiscal year 2000 through school fiscal year
11 2003, state aid for special education shall be determined according to the following calculations:

12 — (1) — Multiply local need of a school district by 0.96 in school fiscal year 2000, 0.97 in
13 school fiscal year 2001, 0.98 in school fiscal year 2002, and 0.99 in school fiscal year
14 2003;

15 — (2) — After making the adjustment to local need pursuant to subdivision (1) of this section,
16 calculate state aid for special education pursuant to § 13-37-36.1;

17 — (3) — Subtract the result of subdivision (2) from the amount of state aid received pursuant
18 to § 13-37-36.3 or 13-37-43 in school fiscal year 1999;

19 — (4) — Multiply the result of subdivision (3) by 0.80 in school fiscal year 2000, 0.60 in
20 school fiscal year 2001, 0.40 in school fiscal year 2002, and 0.20 in school fiscal year
21 2003;

22 — (5) — Add the result of subdivision (2) to the result of subdivision (4);

23 — (6) — State aid for special education is the greater of the result of subdivision (2) or the
24 result of subdivision (5).

1 Section 18. That § 13-37-53 be repealed.

2 ~~13-37-53. If the parents or guardian of a child assigned to and enrolled in an out-of-district~~
3 ~~special education residential or tuition day program move to another South Dakota school~~
4 ~~district and that school district provides special education services to the child, the Department~~
5 ~~of Education shall allocate any state aid to special education attributable to the child received~~
6 ~~or scheduled to be received by the resident school district as defined by § 13-28-9.1 to the~~
7 ~~school district to which the parents or guardian have moved for the period of time that the~~
8 ~~resident school district is not providing special education services to the child. For the purposes~~
9 ~~of §§ 13-28-9.1 and 13-37-54, an approved special education program includes out-of-district~~
10 ~~residential programs and tuition day programs.~~

11 Section 19. That § 13-37-54 be amended to read as follows:

12 13-37-54. The Department of Education may promulgate rules pursuant to chapter 1-26 to
13 provide for the reallocation of state aid to special education as provided for in §§ § 13-28-9.1
14 and 13-37-53.

15 Section 20. That § 13-16-7.1 be amended to read as follows:

16 13-16-7.1. For taxes payable in ~~2011, 2012, 2013, 2014, and 2015~~, the provisions of §§ 13-
17 10-6, and 13-16-7, ~~13-37-16, and 13-37-35.1~~ that limit the maximum amount of revenue that
18 may be generated by the pension; and capital outlay; ~~and special education~~ tax levies do not
19 apply to any school district that has less than a ten percent change in the total taxable valuation
20 from the previous year of all real property in the school district, not including the increase of
21 value resulting from any improvements or change in use of real property.