

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0213

## SENATE BILL NO. 24

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

1 FOR AN ACT ENTITLED, An Act to clarify payment of state aid to education by defining  
2 which schools are included in computation of average daily membership and repealing the  
3 waiver of tuition for nonresident students.

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 kindergarten through twelfth  
8 grade pupils enrolled in schools operated by the school district during the previous  
9 regular school year, minus average number of pupils for whom the district receives  
10 tuition, except pupils described in subdivision (1A) and plus the average number of  
11 pupils for whom the district pays tuition;

12 (1A) Nonresident students who are in the care and custody of the Department of Social  
13 Services, the Unified Judicial System, or other state agencies and are attending a  
14 public school may be included in the average daily membership of the receiving  
15 district when enrolled in the receiving district for more than thirty school days. When

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

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

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

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

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

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

18 (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive,  
19 is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student  
20 allocation shall be \$3,350 increased by the index factor. Each school fiscal year  
21 thereafter, the per student allocation shall be the previous fiscal year's per student  
22 allocation increased by the index factor;

23 (5) "Local need," the per student allocation multiplied by the adjusted average daily  
24 membership;

25 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by

1 applying the following levies:

2 (a) The levy for school district purposes is sixteen dollars and seventy-five cents  
3 per thousand dollars of taxable valuation subject to the limitations on  
4 agricultural property as provided in subsection (b) and owner-occupied  
5 property as provided in subsection (c);

6 (b) The tax levy on agricultural property for the school district is five dollars and  
7 seventy-five cents per thousand dollars of taxable valuation;

8 (c) The tax levy for owner-occupied single-family dwelling for the school district  
9 is nine dollars and twenty cents per thousand dollars of taxable valuation.

10 For the period January 1, 1997, to June 30, 1997, inclusive, local effort shall be  
11 one-half of the amount of ad valorem taxes generated in calendar year 1997 by  
12 applying the following levies:

13 (a) The levy for school district purposes is sixteen dollars and seventy-five cents  
14 per thousand dollars of taxable valuation subject to the limitations on  
15 agricultural property as provided in subsection (b) and owner-occupied  
16 property as provided in subsection (c);

17 (b) The tax levy on agricultural property for the school district is five dollars and  
18 seventy-five cents per thousand dollars of taxable valuation;

19 (c) The tax levy for owner-occupied single-family dwelling for the school district  
20 is nine dollars and twenty cents per thousand dollars of taxable valuation.

21 All levies shall be based on valuations including valuations pursuant to §§ 13-13-10.2 and  
22 13-13-20.4 such that the median level of assessment represents eighty-five percent of market  
23 value as determined by the Department of Revenue. The total amount of taxes that would be  
24 generated at the levies pursuant to this section shall be considered local effort.

25 Section 2. That § 13-28-15 be amended to read as follows:

1 13-28-15. Every school board shall make assignment and distribution of all elementary  
2 students with school residence within the district. The board shall take into consideration in  
3 assigning and distributing students its duty to provide an education within the guidelines of the  
4 State Board of Education's accreditation rules, the wishes of the parents or guardians of the child  
5 being assigned and the district patrons, the miles and time involved in transporting the child to  
6 school, and the educational and financial impact on the district. Any patron who is aggrieved by  
7 a decision of the school board may request a hearing within thirty days before the secretary of  
8 the Department of Education and Cultural Affairs or his representative. If the Department of  
9 Education and Cultural Affairs has not rendered a decision within thirty days following final  
10 submission of the appeal, the board's decision is affirmed.

11 Section 3. That § 13-28-19 be amended to read as follows:

12 13-28-19. The school board shall ~~have authority to~~ assign and distribute the resident students  
13 eligible for elementary and secondary education among the schools in the district or to any public  
14 school in this state or any other state.

15 Section 4. That § 13-28-22 be amended to read as follows:

16 13-28-22. All ~~nursery~~ preschool, kindergarten, elementary, and secondary students not  
17 entitled to the free school privileges of the district wherein they are enrolled ~~may~~ shall be charged  
18 tuition.

19 Section 5. That § 13-28-23 be amended to read as follows:

20 13-28-23. If a student has been assigned by the school board of the district where the student  
21 has a school residence or has been assigned as provided by statute, that school board shall pay  
22 the student's tuition. The school boards shall take action on any request regarding the  
23 establishment of the tuition rate or the payment of tuition within forty-five days after receiving  
24 the request. The school board may negotiate the rate of tuition with a school board or any other  
25 payer. A school board's decision with respect to the ~~rate of tuition~~ student assignment may be

1 appealed to the circuit court in the time and manner specified by § 13-46-1 or to the secretary  
2 of the Department of Education and Cultural Affairs within thirty days from the date of the  
3 decision of the school board by filing a notice with the secretary of the school board and mailing  
4 a copy of the notice to the secretary of the Department of Education and Cultural Affairs. The  
5 board shall take into consideration when negotiating the rate of tuition the average cost of  
6 educating a student in the district including transportation if required.

7 Section 6. That § 13-28-38 be repealed.

8 ~~— 13-28-38. Tuition required pursuant to § 13-28-22 may be waived if agreed to by the school  
9 boards involved. Notwithstanding §§ 13-6-85, 13-28-9, 13-28-10, 13-28-20, and 13-28-21, the  
10 decision of a school board to waive or not to waive tuition is final except as specifically provided  
11 in this section. Any request for a waiver of tuition shall be made to the affected school boards  
12 by the parent or guardian of the affected student. The school boards shall take action on the  
13 request within forty-five days after receiving the request. A school board's decision pursuant to  
14 this section may be appealed to the circuit court in the time and manner specified by § 13-46-1  
15 or to the secretary of the Department of Education and Cultural Affairs within thirty days from  
16 the date of the decision of the school board by filing a notice with the secretary of the school  
17 board and mailing a copy of the notice to the secretary of the Department of Education and  
18 Cultural Affairs. The granting of any waiver is not a legal precedent for any future request for  
19 waiver.~~

20 Section 7. That § 13-37-7 be repealed.

21 ~~— 13-37-7. The secretary of the Department of Education and Cultural Affairs shall have the  
22 authority to assign children to a vendor for purposes of special education as provided in this  
23 chapter. Such assignments must indicate the beginning date for, and the nature of, the specific  
24 service to be provided. When a child has been so assigned, the school district wherein such child  
25 has school residence shall be responsible for the costs of such special education to the extent~~

1 ~~hereinafter provided.~~

2 Section 8. That § 13-37-35 be amended to read as follows:

3 13-37-35. Terms used in §§ 13-37-35 to 13-37-47, inclusive, mean:

4 (1) "Average daily membership," the average number of kindergarten through twelfth  
5 grade pupils enrolled in schools operated by the school district during the previous  
6 regular school year minus the average number of pupils for whom the district receives  
7 tuition and plus the average number of pupils for whom the district pays tuition;

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

12 (3) "Local effort," is the amount of taxes payable each year, using the maximum levy for  
13 the special education fund of a school district of one dollar and forty cents per  
14 thousand dollars of taxable valuation. The levy shall be based on valuations including  
15 valuations pursuant to §§ 13-13-10.2 and 13-13-20.4 such that the median level of  
16 assessment represents 85% of market value as determined by the Department of  
17 Revenue. For the period January 1, 1997, through June 30, 1997, local effort shall be  
18 one-half of the amount of taxes payable in calendar year 1997, using the maximum  
19 levy for the special education fund of a school district of one dollar and forty cents per  
20 thousand dollars of taxable valuation. The levy shall be based on valuations such that  
21 the median level of assessment represents 85% of market value as determined by the  
22 Department of Revenue;

23 (4) "Allocation for a student with a mild disability," for the period January 1, 1997,  
24 through June 30, 1997, is \$807. For school fiscal year beginning July 1, 1997, the  
25 allocation for a student with a mild disability shall be \$1,614 increased by the lesser

1 of the index factor or three percent. For each school year thereafter, the allocation for  
2 a student with a mild disability shall be the previous fiscal year's allocation for such  
3 child increased by the lesser of the index factor or three percent;

4 (5) "Allocation for a student with a severe disability," for the period January 1, 1997,  
5 through June 30, 1997, is \$9,682. For school fiscal year beginning July 1, 1997, the  
6 allocation for a child with a severe disability shall be \$19,364 increased by the lesser  
7 of the index factor or three percent. For each school year thereafter, the allocation for  
8 a child with a severe disability shall be the previous fiscal year's allocation for such  
9 child increased by the lesser of the index factor or three percent;

10 (6) "Local need," an amount to be determined as follows:

11 (a) For a school district with an average daily membership of less than 13,000:

12 (i) Multiply the average daily membership times 0.1025;

13 (ii) Multiply the result of (i) times the allocation for a student with a mild  
14 disability;

15 (iii) Multiply the average daily membership times 0.015;

16 (iv) Multiply the result of (iii) times the allocation for a student with a severe  
17 disability;

18 (v) Add together the result of (ii) and the result of (iv);

19 (b) For a school district with an average daily membership greater than 13,000:

20 (i) Multiply the average daily membership times 0.1025;

21 (ii) Multiply the result of (i) times the allocation for a student with a mild  
22 disability;

23 (iii) Subtract 13,000 from the average daily membership, the difference of  
24 which is multiplied times 0.0000034, the result of which is added to  
25 0.015;

1 (iv) Multiply the average daily membership times the lesser of the result of  
2 (iii) or 0.03;

3 (v) Multiply the result of (iv) times the allocation for a student with a severe  
4 disability;

5 (vi) Add together the result of (ii) and the result of (v);

6 (7) "Student with mild disability," is a student whose performance level is not sufficient  
7 to demonstrate success in the regular education environment without the provision  
8 of special education, who meets eligibility criteria under Part B, IDEA, and who has  
9 been identified as a student in need of special education or special education and  
10 related services according to criteria set forth in rules promulgated pursuant to  
11 § 13-37-46;

12 (8) "Student with severe disability," is a student with a low-incidence disability who:

13 (a) Meets eligibility criteria under Part B, IDEA;

14 (b) Has been identified as a student in need of special education or special  
15 education and related services according to criteria set forth in rules  
16 promulgated pursuant to § 13-37-46; and

17 (c) Presents needs which require intervention skills which are substantially  
18 different from those provided to nondisabled students, in that the skills are  
19 disability-specific and require special training, equipment, and facilities to  
20 perform;

21 (9) "Effort factor," the school district's special education tax levy in dollars per thousand  
22 divided by \$1.40.

23 Section 9. That subdivision (1) of section 1 of chapter 108 of the 1996 Session Laws be  
24 amended to read as follows:

25 (1) "Average daily membership," the average number of kindergarten through twelfth

1 grade pupils enrolled in schools operated by the school district during the previous  
2 regular school year minus the average number of pupils for whom the district receives  
3 tuition and plus the average number of pupils for whom the district pays tuition;