

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

725C0625

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB127** - 1/29/99

Introduced by: Senators Everist and Lawler and Representatives Michels, Haley, Hunt, Solum,  
and Wilson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the financial  
2 arrangements school districts may have with the Health and Educational Facilities Authority.

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

4 Section 1. That § 13-13-39 be amended to read as follows:

5 13-13-39. The ~~Division of Education~~ Department of Education and Cultural Affairs shall  
6 apportion the foundation program funds to each eligible school district and shall prepare such  
7 a list of apportionments in triplicate. One copy shall be filed with the state auditor as a voucher,  
8 one copy to each school district, and one copy shall be retained in the files of the ~~division~~  
9 department.

10 The state auditor shall issue the warrant to each school district when the apportionment  
11 voucher is presented for the total amount of the foundation program funds each school district  
12 is to receive, subject to any reduction necessitated by the issuance of a warrant to the health and  
13 educational facilities authority as provided below.

14 If the ~~Division of Education~~ Department of Education and Cultural Affairs receives written  
15 notice from the Health and Educational Facilities Authority of a pledge of foundation program  
16 funds or other amounts under Title 13 by a school district pursuant to a lease, resolution,

1 certificate, or other arrangement ~~under any lease~~ with the authority or any ~~note~~ bond, certificate,  
2 note, or other obligation issued to or in connection with a program sponsored by the Health and  
3 Educational Facilities Authority for school districts in anticipation of funds under Title 13, the  
4 ~~Division of Education~~ Department of Education and Cultural Affairs shall deduct from amounts  
5 otherwise due to a school district for the current month and the next two succeeding months  
6 under the apportionment of foundation program funds or other amounts under Title 13 an  
7 amount sufficient to pay rentals, bonds, notes, certificates, or other amounts then due but unpaid  
8 and ~~other amounts pledged to pay any promissory notes~~ the amount so deducted shall be paid  
9 to the authority or any financial institution designated by the authority acting as a fiduciary in  
10 connection therewith, all as specified by the authority. A record of the amount so pledged as  
11 security or otherwise payable to the authority shall be filed with the state auditor.

12 The state auditor shall issue a warrant to the authority for the deducted amount specified by  
13 the Health and Educational Facilities Authority as above provided. No pledge by a school district  
14 of foundation program funds or other amounts under Title 13 for any other purpose may be  
15 permitted and if made is voidable at the election of the Health and Educational Facilities  
16 Authority.

17 Section 2. That § 13-13-74 be amended to read as follows:

18 13-13-74. ~~Payment~~ Except as provided in § 13-13-39, payment from funds provided in aid  
19 of the public schools in any school fiscal year shall be made in twelve monthly installments on  
20 or about the thirtieth of each month. For the period July first to December thirty-first, inclusive,  
21 the total of the six payments shall be one-half of local need of current school fiscal year less local  
22 effort for the period July first to December thirty-first, inclusive. For the period January first to  
23 June thirtieth, inclusive, the total of the six payments shall be one-half of local need of current  
24 school fiscal year less local effort for the period January first to June thirtieth, inclusive.

25 Section 3. That § 13-16-7 be amended to read as follows:

1 13-16-7. The school board of any school district of this state may at its discretion authorize  
2 an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation on  
3 the taxable valuation of the district for the capital outlay fund for assets as defined by § 13-16-6  
4 or for its obligations under a resolution, lease-purchase agreement, capital outlay certificate, or  
5 other arrangement with the Health and Educational Facilities Authority. Taxes collected pursuant  
6 to such levy may be irrevocably pledged by the school board to the payment of principal of and  
7 interest on installment purchase contracts or capital outlay certificates entered into or issued  
8 pursuant to § 13-16-6 or 13-16-6.2 or lease-purchase agreements or other arrangement with the  
9 Health and Educational Facilities Authority and, so long as any capital outlay certificates are  
10 outstanding ~~or~~, installment agreement payments, lease-purchase agreements, or other  
11 arrangements are unpaid, the school board of any district may be compelled by mandamus or  
12 other appropriate remedy to levy an annual tax sufficient to pay principal and interest thereon,  
13 but not to exceed the three dollars per thousand dollars of taxable valuation in any year  
14 authorized to be levied hereby.

15 Section 4. That § 13-16-29 be amended to read as follows:

16 13-16-29. There is created a separate trust fund designated the school district lease  
17 repayment fund consisting of all revenues with respect to school district lease, resolution,  
18 certificate, or other arrangement, or any bond, note, or certificate issued to or in connection with  
19 a program sponsored by the Health and Educational Facilities Authority for school districts and  
20 entered into under §§ 13-13-39, 13-16-6.4, 13-16-7 and §§ 13-19-27 to 13-19-29, inclusive. The  
21 Health and Educational Facilities Authority may pledge revenues received or to be received by  
22 the fund to secure bonds, notes or other obligations issued under §§ 13-13-39, 13-16-6.4,  
23 13-16-7 and §§ 13-19-27 to 13-19-29, inclusive. The authority may create sub-funds or accounts  
24 within the repayment fund created under this section as the authority considers necessary.

25 Section 5. That § 13-19-27 be amended to read as follows:

1 13-19-27. Any school ~~board~~ district may enter into lease-purchase agreements ~~with or other~~  
2 financing arrangement with or issue capital outlay certificates to the Health and Educational  
3 Facilities Authority for capital improvements, the acquisition of equipment, or improvement of  
4 school facilities that the school board considers necessary or appropriate or as a result of a  
5 consolidation or proposed consolidation of one school district with another school district. All  
6 such leases, capital outlay certificates, or other arrangements shall be in accordance with the  
7 provisions of §§ 13-8-39, 13-20-1, and 13-24-10.

8 Section 6. That § 13-19-28 be amended to read as follows:

9 13-19-28. The terms of the lease-purchase agreement, resolution, certificate, or other  
10 arrangement, or any bond, note, or certificate issued to or in connection with a program  
11 sponsored by the Health and Educational Facilities Authority for school districts and shall  
12 contain such terms as the health and educational facilities authority considers necessary, including  
13 without limitation, terms of default, remedies, representations and covenants of the ~~lessee~~ school  
14 district.

15 Section 7. That § 13-19-29 be amended to read as follows:

16 13-19-29. If capital outlay certificates are issued to, or a lease-purchase agreement, or other  
17 financing arrangement is entered into with the Health and Educational Facilities Authority as  
18 authorized by §§ 13-13-39, 13-16-6.4, 13-16-7, 13-16-29, 13-19-27, and 13-19-28 ~~has been~~  
19 ~~entered into or, and~~ a school district has pledged foundation program funds or other state aid  
20 provided under Title 13 to secure its obligations under or pursuant to a lease, resolution,  
21 certificate, or other arrangement with the Health and Educational Facilities Authority and there  
22 are amounts due but not yet paid by a school district, no cash receipts from the collection of any  
23 taxes, from foundation program aid or state aid under chapter 13-13 or from the collection of  
24 tuition charges may be expended for any purpose except paying the amounts due under the lease,  
25 resolution, certificate, or other arrangement as specified by written notice by or on behalf of the

1 Health and Educational Facilities Authority. In the event of a failure to pay amounts due the  
2 Health and Educational Facilities Authority, moneys from foundation program aid or state aid  
3 under Title 13 shall first be applied to pay the amounts which are due but not yet paid to the  
4 authority, any trustee acting as a fiduciary on behalf of any holders of bonds, notes, or other  
5 certificates in connection with any such arrangement and any such holders. If this application is  
6 insufficient, cash receipts from the collection of any pledged taxes and tuition charges shall be  
7 applied to pay the amounts which are due but not yet paid to the authority, any such trustee, and  
8 any such holders.

9 Section 8. That § 13-19-30 be amended to read as follows:

10 13-19-30. Any school district may enter into an agreement with the Health and Educational  
11 Facilities Authority and any financial institution acting as trustee or paying agent for bonds,  
12 leases, certificates, or other obligations ~~of the authority,~~ issued for the purpose of implementing  
13 § 13-19-29. The agreement may contain such provisions as the authority deems necessary and  
14 may provide that the financial institution may act as trustee for the benefit of and on behalf of the  
15 authority and be held accountable as the trustee of an express trust for the application and  
16 disposition of the foundation program aid and state aid under Title 13 and other funds or  
17 amounts pledged by any school district, including the income and proceeds therefrom, solely for  
18 the uses and purposes as provided in the agreement. A copy of the agreement and any revisions  
19 or supplements to it, shall be filed with the secretary of the Department of Education and  
20 Cultural Affairs to perfect the lien and security interest of the authority in the foundation  
21 program aid and state aid under Title 13 and other funds or amounts pledged by any school  
22 district. No filing, recording, possession, or other action under the uniform commercial code or  
23 any other law of this state may be required to perfect the lien and security interest of the  
24 authority. The lien and security interest of the authority is deemed perfected, and the trust for  
25 the benefit of the authority so created is binding ~~on and after~~ as of the date when the school

1 district makes such pledge, notwithstanding the time of the filing with the secretary of the  
2 Department of Education and Cultural Affairs, against all parties having prior ~~unperfected~~ or  
3 subsequent liens, security interests, or claims of any kind in tort, in contract or otherwise.

1 **BILL HISTORY**

2 1/25/99 First read in Senate and referred to Education. S.J. 179

3 1/28/99 Scheduled for Committee hearing on this date.

4 1/28/99 Education Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 227