

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0212

HOUSE ENGROSSED NO. **HB1038** - 2/22/99

Introduced by: The Committee on State Affairs at the request of the Department of Game,
Fish, and Parks

1 FOR AN ACT ENTITLED, An Act to revise the system of issuing and selling certain licenses,
2 permits, and stamps by agents of the Department of Game, Fish and Parks, to repeal the
3 reimbursement to counties for services rendered in such sales, and to provide additional
4 funds to the state animal damage control fund.

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

6 Section 1. That § 41-2-33 be amended to read as follows:

7 41-2-33. The Department of Game, Fish and Parks may appoint license issuing agents to
8 issue on behalf of the department any license, permit, or stamp permitted or provided for by this
9 title and § 32-20A-15.1. ~~The agents shall be bonded in such amounts and conditions as the~~
10 ~~department may deem proper.~~ No conservation officer may be appointed as a license issuing
11 agent. The licensing issuing agents, ~~however,~~ shall receive no compensation from the state for
12 ~~any services or expenses in connection with the issuance of such licenses, and shall remit all~~
13 license fees collected at the time and in the manner required by rules adopted pursuant to
14 ~~§ 41-2-18~~ chapter 1-26.

15 Section 2. That § 41-6-56 be repealed.

16 ~~—41-6-56. Licenses issued under §§ 41-6-11 to 41-6-48, inclusive, may be issued only as~~

1 provided by §§ 41-6-57 to 41-6-61, inclusive.

2 Section 3. That § 41-6-57 be repealed.

3 ~~41-6-57. Licenses under §§ 41-6-11 to 41-6-21, inclusive, under § 41-6-23, under~~
4 ~~§§ 41-6-35 to 41-6-37, inclusive, under § 41-17-13, and the permit provided by § 32-20A-15.1~~
5 ~~may be issued by the county treasurer of any county in this state or his duly authorized agents~~
6 ~~who, for such purpose, shall be deemed acting for the game, fish and parks commission as~~
7 ~~hereinafter provided.~~

8 Section 4. That § 41-6-59 be amended to read as follows:

9 41-6-59. ~~The county treasurer may appoint agents within the treasurer's county to sell the~~
10 ~~licenses and the permits provided for in § 41-6-57. No conservation officer may be appointed~~
11 ~~as an agent of the county treasurer. Any agent, who has been appointed by the county treasurer~~
12 ~~in any previous year and has provided either a bond or other security to the county treasurer in~~
13 ~~any previous year, is not required to furnish a bond or other security if the agent is not issued~~
14 ~~licenses and permits with a value of more than fifty thousand dollars at any one time. An agent,~~
15 ~~who has previously provided either a bond or other security and has licenses and permits of a~~
16 ~~value no greater than twenty thousand dollars issued at any one time, shall pay to the Department~~
17 ~~of Game, Fish and Parks an annual fee of twenty dollars. An agent, who has previously provided~~
18 ~~either a bond or other security and has licenses and permits of a value greater than twenty~~
19 ~~thousand dollars but less than fifty thousand dollars issued to them at any one time, shall pay the~~
20 ~~department an annual fee of fifty dollars. An agent, who has more than fifty thousand dollars of~~
21 ~~licenses and permits issued at any one time shall be bonded or shall furnish security equal to the~~
22 ~~total value of the licenses and permits issued to the agent at any one time less fifty thousand~~
23 ~~dollars. Any agent who has not previously been bonded or who has not previously provided~~
24 ~~other security to sell the licenses and permits shall be bonded or shall furnish security equal to~~
25 ~~the total value of the licenses issued to the agent at any one time. A certificate of deposit, money~~

1 order, or other negotiable instrument issued by a bank, savings and loan association, or a credit
2 union bearing the agent's social security number or employer identification number payable to
3 the ~~county treasurer~~ department is sufficient security. If an agent fails to timely pay the amount
4 owed to the ~~county treasurer~~ department, the ~~county treasurer~~ department may cash the
5 certificate and satisfy the amount owed to the ~~county treasurer~~ department and remit the balance
6 to the agent. If the agent has paid all the fees owed to the ~~county treasurer~~ and requests a return
7 of the certificate of deposit, money order, or other negotiable instrument, the ~~county treasurer~~
8 department shall endorse it payable to the agent and return it to the agent. ~~Any~~ No agent who
9 defaults on payment of the amount owed to the ~~county treasurer~~ department may ~~not~~ be
10 appointed an agent by the ~~county treasurer~~ until the unpaid amount, plus interest at the Category
11 B rate of interest as defined in § 54-3-16, is paid.

12 Section 5. That § 41-6-59.1 be amended to read as follows:

13 41-6-59.1. The Game, Fish and Parks Commission may promulgate rules ~~and regulations~~
14 pursuant to chapter 1-26 for the purpose of regulating the remittance to ~~county treasurers~~ the
15 department of fees collected by agents appointed by the ~~county treasurer~~ department for the sale
16 of licenses ~~as provided in § 41-6-67.~~

17 Section 6. That § 41-6-62 be amended to read as follows:

18 41-6-62. ~~Applications for licenses~~ Any application for any license under this ~~chapter title~~ shall
19 show that the applicant is legally eligible for the license for which ~~he~~ the applicant applies. Any
20 person authorized under §§ ~~41-6-56 to 41-2-33 and 41-6-61, inclusive,~~ to issue a license may
21 take the oath of the applicant thereto with the same force and effect as if the oath had been taken
22 by any other officer of this state authorized by law to administer an oath.

23 Section 7. That § 41-6-65 be repealed.

24 ~~41-6-65. The secretary of game, fish and parks shall each year furnish to the treasurer of each~~
25 ~~county a supply of hunting, fishing, and trapping licenses, for which the treasurer shall give his~~

1 receipt, to be filed in the department of game, fish and parks:

2 Section 8. That § 41-6-66 be amended to read as follows:

3 41-6-66. ~~The licenses~~ Any license permitted or provided for in §§ ~~41-6-11 to 41-6-21,~~
4 ~~inclusive, in § 41-6-23, in §§ 41-6-35 to 41-6-37, inclusive, and in § 41-17-13, this title and~~
5 § 32-20A-15.1 shall be in such form as the Game, Fish, and Parks Commission or department
6 ~~directs, and shall be furnished to the various county treasurers without charge, and upon receipt~~
7 ~~of the licenses, the county treasurer is liable under the treasurer's official bond for the license~~
8 ~~blanks delivered and for the proceeds derived from the sale thereof, and is responsible for all~~
9 ~~license blanks issued by the treasurer to, and license fees received by, an agent, except that the~~
10 ~~county treasurer is not liable for any amount an agent fails to pay the county treasurer up to the~~
11 ~~amount of licenses and permits the agent may obtain pursuant to § 41-6-59 without providing~~
12 ~~a bond or other security. The Department of Game, Fish, and Parks may collect any amount~~
13 ~~owed by the agent to the county treasurer for which the county treasurer is not liable.~~

14 Section 9. That § 41-6-67 be repealed.

15 ~~— 41-6-67. The treasurer of each county shall, on or before the fifteenth day of each month,~~
16 ~~submit to the department of game, fish and parks a report of all licenses issued by the treasurer~~
17 ~~and agents appointed by the treasurer under § 41-6-59 during the accounting period prescribed~~
18 ~~by the game, fish and parks commission pursuant to § 41-6-59.1 on forms prescribed and~~
19 ~~furnished by the department. The treasurer shall remit all money collected from the sale of these~~
20 ~~licenses as required by § 4-3-12.1 to be credited to a game, fish and parks fund.~~

21 Section 10. That § 41-6-68 be amended to read as follows:

22 41-6-68. ~~The county treasurer~~ Any agent appointed by the department shall promptly
23 transmit such reports as may be required by the Game, Fish and Parks Commission or the
24 department, together with ~~his county warrant for all license fees received by him and his agents~~
25 during the accounting period designated by the department to be deposited in the game, fish and

1 parks fund.

2 Section 11. That § 41-6-69 be amended to read as follows:

3 41-6-69. Not later than the last day of January of each year, ~~the treasurer of each county~~ each
4 agent shall return to the Department of Game, Fish and Parks all unused licenses, together with
5 the stubs or duplicate copies of all licenses issued. ~~Any county not remitting licenses and fees to~~
6 ~~the department of game, fish and parks by the last day of January each year shall be penalized~~
7 ~~one and one-half percent for each month or fraction thereof for the late return of fees and~~
8 ~~licenses. The penalty may not exceed ten percent of the total reimbursement a county receives~~
9 ~~from the department.~~ Following the expiration date of hunting, fishing, and trapping licenses,
10 stamps and permits issued by the department, the department may destroy the licenses, stamps,
11 and permits together with the stubs or duplicate copies upon completion of an audit thereof by
12 the Department of Legislative Audit and filing of a satisfactory report.

13 Section 12. That § 32-20A-15.1 be amended to read as follows:

14 32-20A-15.1. A nonresident owner of an unlicensed snowmobile shall purchase a temporary
15 permit to operate the snowmobile in this state. The fee for the permit is ten dollars. The permit
16 is valid for five consecutive days. All fees collected shall be deposited in the snowmobiles trails
17 fund established by § 32-5-9.2. ~~The Department of Game, Fish and Parks shall supply the county~~
18 ~~treasurers with the necessary permits to implement this section.~~

19 Section 13. That § 41-6-70 be repealed.

20 ~~41-6-70. The game, fish and parks commission shall, at the close of each license year,~~
21 ~~reimburse the various counties for services rendered in connection with the sale of licenses under~~
22 ~~this chapter in the amount of ten percent of all license fees for licenses sold by the county~~
23 ~~treasurer or his agents during such license year, and, in addition, the county treasurers shall also~~
24 ~~be reimbursed ten percent of the fees for the east river and west river prairie firearm deer licenses~~
25 ~~and the east river and west river firearm antelope licenses sold by the department of game, fish~~

1 ~~and parks for the respective counties. No reimbursement may be made for the sale of habitat~~
2 ~~stamps or waterfowl restoration stamps. All money received as such reimbursement shall be~~
3 ~~placed in the special highway fund of the county and shall be apportioned and used as provided~~
4 ~~in §§ 32-11-5 to 32-11-7, inclusive.~~

5 Section 14. That § 40-36-11 be amended to read as follows:

6 40-36-11. Each county shall annually appropriate a sum equal to an assessment on all cattle
7 and sheep based on the most current United States Department of Commerce census of
8 agriculture, and the money shall be remitted to the state treasurer for deposit in the state animal
9 damage control fund. Each county shall be assessed at a rate of twenty-five cents per head for
10 all sheep and six cents per head for all cattle. The Department of Game, Fish and Parks shall
11 certify, to each county auditor, the amount to be appropriated. The state animal damage control
12 fund shall be matched ~~dollar for dollar~~ two dollars for every one dollar of county appropriation
13 by funds of the Department of Game, Fish and Parks to carry out the provisions of this chapter.
14 ~~—The provisions of § 10-12B-16 do not apply to this section.~~

15 Section 15. A portion of the license fees collected by the Department of Game, Fish and
16 Parks that would previously have been paid to counties pursuant to § 41-6-70, in an amount
17 equal to one million thirty-three thousand two hundred sixty-nine dollars and ten cents per year,
18 shall be used only for the following purposes: administration of licensing services provided by
19 the department; increased contribution to the animal damage control fund as provided in section
20 14 of this Act; development of public access, other than fee-title purchase of land, for hunting
21 and fishing; wildlife habitat improvements; management of wildlife damage; or to be credited
22 toward a reduction of resident license fees. The Game, Fish and Parks Commission shall approve
23 amounts allocated to the specific purposes identified in this section.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to State Affairs. H.J. 39

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/29/99 Scheduled for Committee hearing on this date.

5 2/1/99 Scheduled for Committee hearing on this date.

6 2/3/99 Scheduled for Committee hearing on this date.

7 2/5/99 Scheduled for Committee hearing on this date.

8 2/8/99 Scheduled for Committee hearing on this date.

9 2/10/99 Scheduled for Committee hearing on this date.

10 2/17/99 Scheduled for Committee hearing on this date.

11 2/17/99 State Affairs Do Pass Amended, Failed, AYES 6, NAYS 6.

12 2/17/99 State Affairs Report Without Recommendation, AYES 8, NAYS 4.

13 2/18/99 House of Representatives Placed on Calendar, AYES 56, NAYS 14. H.J. 611

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

446C0312

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1106** - 2/25/99

Introduced by: Representatives Wetz, Brown (Jarvis), Cutler, Diedrich (Elmer), Duenwald, Eccarius, Garnos, Hanson, Jaspers, Klaudt, McCoy, McNenny, Monroe, Smidt, and Sutton (Duane) and Senators Vitter, Benson, Bogue, Everist, and Symens

1 FOR AN ACT ENTITLED, An Act to repeal certain tax benefits available to railroads, to revise
2 certain provisions regarding the right of eminent domain for railroads, and to revise the
3 formula for assigning assessed railroad valuation to counties.

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

5 Section 1. That § 10-46-7 be amended to read as follows:

6 10-46-7. Tangible personal property, the storage, use, or other consumption of which this
7 state is prohibited from taxing under the Constitution or laws of the United States of America
8 or under the Constitution of this state, or tangible personal property sold to the United States,
9 the State of South Dakota, or any public or municipal corporation of the state which is for the
10 use, storage, or consumption of such public corporations ~~or which is sold to, used, or to be used~~
11 ~~as or in operating or maintaining any type of railroad company property which is classified by~~
12 ~~§ 10-28-1 as operating property~~, is hereby specifically exempt from the tax imposed by this
13 chapter, ~~provided, however, the exemption as to railroad operating property shall be limited to~~
14 ~~one-half of such tax imposed by this chapter.~~

15 Section 2. That § 10-28-21.1 be repealed.

1 ~~10-28-21.1. Credit against railroad tax for replacement or repair of rail line -- Exceptions.~~
2 ~~Any publicly operated railroad or railway corporation operating over rail lines located within this~~
3 ~~state may claim a credit against the tax levied on such rail lines for amounts which the railroad~~
4 ~~or railway corporation has certified as having been expended in the replacement and repair of~~
5 ~~such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for~~
6 ~~a credit pursuant to this section. The certification required by this section shall be on forms~~
7 ~~provided by the Department of Revenue. The labor and material expenses certified pursuant to~~
8 ~~this section shall be itemized separately. The credit provided in this section shall be applied~~
9 ~~proportionally across the railroad's entire mainline within this state. The credit shall be applied~~
10 ~~to tax liability over a three-year period in an amount equal to thirty-three and one-third percent~~
11 ~~the first year following certification; thirty-three and one-third percent of such an amount shall~~
12 ~~carry forward into the second year following certification; and thirty-three and one-third percent~~
13 ~~shall carry forward into the third year following certification. Each year's carryover shall be~~
14 ~~accumulated as a tax credit with other years' annual tax credits. No credit may be given for the~~
15 ~~repair or replacement of railway line necessitated by washout, fire, or train derailment. No rail~~
16 ~~line carrying over ten million gross ton miles per mile annually may receive a credit pursuant to~~
17 ~~this section. Any rail line which carries between five million and ten million gross ton miles per~~
18 ~~mile annually shall receive a credit for only one-half of the expenses certified pursuant to this~~
19 ~~section. The provisions of this section do not affect credits certified prior to January 30, 1994.~~

20 Section 3. That § 49-16A-1 be amended to read as follows:

21 49-16A-1. Terms used in this chapter mean:

- 22 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
23 in the business of transporting freight in intrastate commerce which it is accustomed
24 to and is capable of transporting from place to place in this state, for hire;
- 25 (2) "Department," the Department of Transportation created by chapter 1-44;

- 1 (3) "For hire," the condition of receiving remuneration of any kind, paid or promised,
2 either directly or indirectly, for the transportation of freight;
- 3 (4) "Freight," all property tendered for transportation by a railroad;
- 4 (5) "Railroad," a any association or corporation, or other entity, other than a state agency
5 or authority, engaged in operating a common carrier by rail regardless of motive
6 power used, excluding street railroads;
- 7 (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks,
8 interchanges, and all other fixtures and real property owned or operated by a railroad
9 to discharge its obligations as a common carrier by rail;
- 10 (7) "Shipper," a consignor or consignee;
- 11 (8) "Commission," the Transportation Commission created by § 1-44-4;
- 12 (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as
13 compensation for the acquisition of property desired by the applicant for the
14 construction or reconstruction of a road, including the economic costs or diminution
15 associated with or caused by the construction or reconstruction if there is a partial
16 taking of property.

17 Section 4. That § 49-16A-75 be amended to read as follows:

18 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way
19 as provided by statute, but only upon obtaining authority from the Governor or the commission,
20 based upon a determination by the Governor or the commission that the railroad's exercise of the
21 right of eminent domain would be for a public use consistent with public necessity. The Governor
22 or the commission may, without limitation, consider the requirements of sections 5, 6, and 7 of
23 this Act when granting or denying an application for authority to use eminent domain. The
24 decision to grant or deny an application shall be made after reasonable notice and opportunity
25 to be heard, pursuant to chapter 1-26.

1 Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The commission shall in accordance with chapter 1-26, promulgate rules:

- 4 (1) Establishing a form upon which a railroad may apply for authority to exercise the right
5 of eminent domain;
- 6 (2) Specifying the information to be submitted by an applicant; and
- 7 (3) Administering applications for authority to exercise the right of eminent domain.

8 Section 6. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The applicant has the burden of proving by clear and convincing evidence that the exercise
11 of the right of eminent domain is a public use consistent with public necessity.

12 Section 7. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A railroad's exercise of the right of eminent domain is a public use consistent with public
15 necessity only if the use of eminent domain:

- 16 (1) Has as purpose providing railroad transportation to shippers in South Dakota, for
17 commodities produced, manufactured, mined, grown, used, or consumed in South
18 Dakota;
- 19 (2) Is proposed by an applicant with the financial resources necessary to complete the
20 proposed construction or reconstruction along with any related facilities, construction,
21 or mitigation which are necessary to protect against harm to the public safety,
22 convenience, or other adverse socioeconomic or environmental impact, as evidenced
23 by an irrevocable financing commitment from a lender with adequate capitalization to
24 fulfill its commitment;
- 25 (3) Is proposed by an applicant who has complied with chapter 34A-9;

- 1 (4) Is proposed by an applicant who has negotiated in good faith to privately acquire
2 sufficient property without the use of eminent domain;
- 3 (5) Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that
4 plat specifically sets forth the route of the road to be constructed or reconstructed,
5 identifies each affected landowner, and specifies the location, along with construction
6 methods and engineering specifications for all main lines, sidings, yards, bridges,
7 crossings, safety devices, switches, signals, and maintenance facilities; and
- 8 (6) Provides that electric utilities, public utilities, telecommunication companies, and rural
9 water systems have the right to the use of the right-of-way for the placement of
10 underground facilities, without fee, subject to reasonable regulation as to location and
11 placement.

12 Section 8. That § 10-28-16 be amended to read as follows:

13 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each
14 year, transmit to the county auditor of each county through which any railroad runs, a statement
15 showing the length of main track, of main line or lines, and the branches thereof and sidetracks
16 within such county, and the assessed value based on a statewide formula that weights traffic (ton
17 miles) ~~seventy-five~~ thirty-three and one-third percent and miles of track in the county by
18 ~~twenty-five~~ sixty-six and two-thirds percent. The county auditor shall then distribute the value
19 to each taxing district where the line runs on a per mile basis within the county.

1 **BILL HISTORY**

2 1/21/99 First read in House and referred to State Affairs. H.J. 110

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/1/99 State Affairs Do Pass, Passed, AYES 7, NAYS 5. H.J. 277

5 2/2/99 House of Representatives Do Pass, Failed, AYES 26, NAYS 43. H.J. 329

6 2/2/99 Intent to reconsider. H.J. 330

7 2/3/99 House of Representatives Reconsidered, AYES 40, NAYS 27. H.J. 346

8 2/3/99 House of Representatives Deferred to another day. H.J. 347

9 2/9/99 Motion to Amend, Passed. H.J. 440

10 2/9/99 House of Representatives Do Pass Amended, Passed, AYES 42, NAYS 26. H.J. 441

11 2/10/99 First read in Senate and referred to State Affairs. S.J. 422

12 2/19/99 Scheduled for Committee hearing on this date.

13 2/22/99 Scheduled for Committee hearing on this date.

14 2/24/99 Scheduled for Committee hearing on this date.

15 2/24/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 659

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

664C0575

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1164** - 2/19/99

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

Introduced by: Representatives Wetz, Klaudt, McNenny, and Young and Senators Brown (Arnold), Benson, and Bogue

1 FOR AN ACT ENTITLED, An Act to provide certain injunctive relief against unwarranted
2 emergency zoning ordinances, zoning maps, and other official controls.

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

4 Section 1. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person who is aggrieved by the adoption of an emergency temporary zoning ordinance
7 pursuant to § 11-2-10 or any other emergency ordinance, zoning map, or other official control
8 authorized pursuant to this chapter may seek an injunction against it in any court of appropriate
9 jurisdiction based on the grounds that the emergency temporary zoning ordinance or other
10 emergency ordinance, zoning map, or official control authorized pursuant to this chapter is not
11 necessary to protect the public health, safety, and public welfare. If the court finds that the
12 emergency temporary zoning ordinance or other emergency ordinance, zoning map, or official
13 control authorized pursuant to this chapter is not necessary to protect the public health, safety,
14 and general welfare, the court shall declare the ordinance or other emergency ordinance, zoning
15 map, or official control authorized pursuant to this chapter null and void.

1 **BILL HISTORY**

2 1/26/99 First read in House and referred to Local Government. H.J. 191

3 2/4/99 Scheduled for Committee hearing on this date.

4 2/9/99 Scheduled for Committee hearing on this date.

5 2/9/99 Local Government Tabled, AYES 9, NAYS 3. H.J. 430

6 2/16/99 Local Government Removed from Table, AYES 9, NAYS 4.

7 2/18/99 Local Government Hog Housed.

8 2/18/99 Scheduled for Committee hearing on this date.

9 2/18/99 Local Government Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 599

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

235C0610

HOUSE EDUCATION COMMITTEE
ENGROSSED NO. **HB1184** - 2/10/99

Introduced by: Representatives Chicoine and Broderick and Senator Albers

1 FOR AN ACT ENTITLED, An Act to allow for the transfer of money from a school district's
2 special education fund to its general fund under certain circumstances.

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

4 Section 1. That chapter 13-16 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a school district that contracts pursuant to § 13-15-11 transferred money out of its general
7 fund to its special education fund in the school years ending June 30, 1993, and June 30, 1994,
8 then the school district may at any time transfer from its special education fund to its general
9 fund an amount of money equal to those previous transfers from its general fund to its special
10 education fund.

11 Section 2. Section 1 of this Act is repealed on July 1, 2000.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to Education. H.J. 209

3 2/2/99 Scheduled for Committee hearing on this date.

4 2/4/99 Scheduled for Committee hearing on this date.

5 2/9/99 Scheduled for Committee hearing on this date.

6 2/9/99 Education Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 431

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

991C0850

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB1282 - 2/25/99

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

Introduced by: Representative Michels and Senator Everist

1 FOR AN ACT ENTITLED, An Act to revise the confidentiality related to certain patient
2 records.

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

4 Section 1. That § 36-4-26.2 be amended to read as follows:

5 36-4-26.2. Section 36-4-26.1 ~~applies neither to facts associated with a patient's treatment and~~
6 ~~care nor to patient records prepared in conjunction with~~ does not apply to observations made at
7 the time of treatment by a health care professional present during the patient's treatment or to
8 patient records prepared during the treatment and care rendered to a patient who is personally
9 or by personal representative a party to an action or proceeding, the subject matter of which is
10 the care and treatment of the patient. Furthermore, ~~after the notification of adverse parties as~~
11 ~~hereinafter provided, § 36-4-26.1 does not apply to the proceedings, records, reports,~~
12 ~~statements, minutes, or other data of any~~ no member of any committee, department, section,
13 board of directors, or group covered by § 36-4-26.1, in so far as they relate to the statements or
14 opinions of a member thereof made or rendered at its meeting, if the member is called as a
15 witness on behalf of any party in an action involving the quality, type, or necessity of such care
16 rendered. However:

1 ~~(1) Such information may only be used to impeach the testimony of such witness; and~~
2 ~~(2) Such witness may not testify unless the party calling the witness has notified all~~
3 ~~adverse parties to the action at least thirty days before trial of the person's intention~~
4 ~~to use such witness who has participated in deliberations under that section involving~~
5 ~~the subject matter of the action, may testify as an expert witness for any party in any~~
6 ~~action for personal injury or wrongful death, the subject matter of which is the care~~
7 ~~and treatment of the patient. Notwithstanding membership on a committee,~~
8 ~~department, section, board of directors, or group covered by § 36-4-26.1, a health~~
9 ~~care professional observing or participating in the patient's treatment and care may~~
10 ~~testify as a fact or expert witness concerning that treatment and care, but may not be~~
11 ~~required to testify as to anything protected by § 36-4-26.1.~~

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Health and Human Services. H.J. 318

4 2/10/99 Scheduled for Committee hearing on this date.

5 2/12/99 Scheduled for Committee hearing on this date.

6 2/12/99 Health and Human Services Do Pass Amended, Failed, AYES 6, NAYS 5.

7 2/17/99 Health and Human Services Hog Housed.

8 2/17/99 Scheduled for Committee hearing on this date.

9 2/17/99 Health and Human Services Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 563

10 2/19/99 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 12. H.J. 651

11 2/22/99 First read in Senate and referred to Judiciary. S.J. 620

12 2/24/99 Scheduled for Committee hearing on this date.

13 2/24/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 652

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

617C0817

HOUSE ENGROSSED NO. **HB1283** - 2/22/99

Introduced by: Representatives Michels and Peterson and Senator Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the licensing and
2 regulation of the practices of architecture, engineering, land surveying, landscape
3 architecture, petroleum release assessment, and petroleum release remediation and to the
4 certification of environmental technical services.

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

6 Section 1. Terms used in this Act mean:

- 7 (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation,
8 or reconstruction to a building which changes the use, occupancy classification, or
9 occupant load, or the exiting, structural, mechanical, or electrical systems of a
10 building as defined by the building code;
- 11 (2) "Architect," any person licensed in good standing and legally authorized to practice
12 architecture in this state;
- 13 (3) "Architectural intern," any person who has successfully completed an accredited
14 education program in architecture acceptable to the board and is enrolled in the intern
15 development program administered by the National Council of Architectural
16 Registration Boards;
- 17 (4) "Board," the Board of Technical Professions;

- 1 (5) "Building," any structure used or intended to support or shelter any occupancy;
- 2 (6) "Building or floor area," the sum of the areas of all of the floors of a building,
3 including basements, mezzanine, and intermediate tiers, and penthouses of headroom
4 height, measured from the exterior faces of exterior walls or from the center line of
5 the wall separating buildings. The building area does not include such features as pipe
6 trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof overhangs.
7 The floor area of enlargements shall be added to the existing building area. A fire or
8 area separation wall is not an exterior wall for the purposes of this definition;
- 9 (7) "Building official," the officer or other designated authority charged with the
10 administration and enforcement of the adopted code;
- 11 (8) "Business entity," any corporation, partnership, limited liability corporation, limited
12 liability partnership, or sole proprietorship that practices or offers to practice
13 engineering, architecture, land surveying, landscape architecture, petroleum release
14 assessment, or petroleum release remediation services to the public through its
15 licensed personnel who are either employees, officers, directors, partners, members,
16 managers, or owners and that have been issued a certificate of authorization by the
17 board;
- 18 (9) "Construction administration," the interpretation of drawings and specifications, the
19 establishment of standards of acceptable workmanship, and the site observation of
20 construction, by a licensed professional, for the purpose of determining whether the
21 work is in general accordance with the construction contract documents. Shop
22 drawing review, coordination of a construction project among the owner, architect,
23 engineer, contractor, and subcontractors, and inspection of construction by
24 contractors, subcontractors, owner's agents, building officials, or other unlicensed
25 professionals does not constitute construction administration;

- 1 (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate,
2 mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of
3 less than one thousand one hundred gallons;
- 4 (11) "Design-build," a delivery approach in which a project team of design professionals
5 and builders perform design and construction services under contract with a client;
- 6 (12) "Engineer," a person who is qualified to practice engineering by reason of special
7 knowledge and use of the mathematical, physical, and engineering sciences and the
8 principles and methods of engineering analysis and design, acquired by engineering
9 education and engineering experience;
- 10 (13) "Engineering intern" or "engineer-in-training" or "EIT" or "EI," a person enrolled by
11 the board as an engineering intern and who has successfully passed the fundamentals
12 of engineering examination;
- 13 (14) "Enlargement," for the purpose of determining exemptions, is any addition to a
14 building which changes the use, occupancy classification, or occupant load, or the
15 exiting, structural, mechanical, or electrical systems of a building as defined by the
16 building code adopted by the board;
- 17 (15) "Land surveyor," a person licensed in good standing and legally authorized to practice
18 land surveying in this state;
- 19 (16) "Land surveying intern" or "land surveyor-in-training" or "LSIT" or "LSI," a person
20 enrolled by the board as a land surveying intern who has successfully passed the
21 fundamentals of land surveying examination;
- 22 (17) "Landscape architect," a person licensed in good standing and legally authorized to
23 practice landscape architecture in this state;
- 24 (18) "Landscape architectural intern," a person who has successfully completed an
25 accredited education program in landscape architecture adopted by the board;

- 1 (19) "License," a certificate indicating authority to practice and use titles within a
2 profession;
- 3 (20) "Licensee," a person or business entity whose license is in good standing;
- 4 (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel,
5 fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic
6 transmission fluid, waste oil, or alcohols that have been denatured with gasoline and
7 stored to be used as blended fuel-grade ethanol;
- 8 (22) "Petroleum release assessor," a person licensed in good standing and legally
9 authorized to practice petroleum release assessment in this state;
- 10 (23) "Petroleum release remediator," a person licensed in good standing and legally
11 authorized to practice petroleum release remediation in this state;
- 12 (24) "Professional engineer," a person licensed in good standing and legally authorized to
13 practice engineering in this state;
- 14 (25) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or disposing
15 of a reportable quantity of petroleum;
- 16 (26) "Remedial investigation," an action to identify the corrective action to be taken to
17 protect the public health, safety, and environment and to contain a release of
18 petroleum into the environment;
- 19 (27) "Responsible charge," the immediate and responsible direction by a licensed
20 professional who has exercised personal direction, guidance, and control over the
21 design, preparation of documents, construction administration, and other professional
22 services and has exercised professional judgment in all matters relating to those
23 services;
- 24 (28) "Retired licensee," a person who is retired and is no longer licensed to practice that
25 person's profession may use the appropriate honorific title or combination of titles of

1 Architect, Retired; Professional Engineer, Retired; Land Surveyor, Retired; or
2 Landscape Architect, Retired;

3 (29) "Site assessment," an action to identify the existence, source, nature, and extent of a
4 release and the extent of any danger to public health, safety, and welfare of the public
5 or environment;

6 (30) "Site observation," the visual observation of a construction project for general
7 compliance with submitted plans and specifications at significant stages and at project
8 completion.

9 Section 2. For the purposes of this Act, the term, practice of architecture, means the practice
10 or offering to practice any service in connection with the design, evaluation, construction,
11 enlargement, or alteration of a building or group of buildings and the space within and
12 surrounding such buildings, which have as their principal purpose human occupancy or
13 habitation. Such service includes consultation; evaluation; expert technical testimony; planning;
14 providing preliminary studies; designs; overall interior and exterior building design; preparation
15 of drawings, specifications, and related documents and other technical submissions; construction
16 administration services which include the review or observation of construction for the purpose
17 of determining whether the work is in general accordance with the design, drawings,
18 specifications, codes, and other technical submissions; and coordination of services furnished
19 by the architect, licensed professional engineers, and other consultants as they relate to
20 architectural work in connection with the design and construction of any private or public
21 building, building project, or integral part or parts of buildings, or any addition or alteration
22 thereto. The term also includes representation of clients in connection with the construction
23 administration services entered into between clients and contractor and others.

24 Section 3. For the purposes of this Act, the term, practice of engineering, means the practice
25 or offering to practice of any service or creative work, the adequate performance of which

1 requires engineering education, training, and experience in the application of special knowledge
2 of the mathematical, physical, and engineering sciences to such services or creative work. Such
3 service or work includes consultation; investigation; expert technical testimony; evaluation;
4 planning; design; and design coordination of engineering works and systems; planning the use
5 of land and water; land-use studies; teaching of advanced engineering subjects; performing
6 engineering studies; and the review or observation of construction for the purpose to determine
7 whether the work is in general accordance with drawings, specifications, and other technical
8 submissions. Any such service or work, either public or private, may be in connection with any
9 utilities, structures, buildings, machines, equipment, processes, work systems, projects, and
10 industrial or consumer products, or equipment of a mechanical, electrical, hydraulic, pneumatic,
11 or thermal nature, insofar as they involve safeguarding life, health, or property, and including
12 such other professional services as are necessary to the planning, progress, and completion of
13 any engineering services.

14 For the purposes of this section, the term, design coordination, includes the review and
15 coordination of those technical submissions prepared by others, including consulting engineers,
16 architects, landscape architects, land surveyors, and other professionals working under the
17 direction of the engineer. The term, engineering studies, includes all activities required to support
18 the sound conception, planning, design, construction, maintenance, and operation of engineered
19 projects, but excludes the surveying of real property for the establishment of land boundaries,
20 rights-of-way, easement exhibits relating to land boundaries, and the dependent or independent
21 surveys or resurveys of the public land survey system.

22 A person is construed to practice or offer to practice engineering if the person practices any
23 branch of the profession of engineering, if the person, by verbal claim, sign, advertisement,
24 letterhead, card, or in any other way represents himself or herself to be a professional engineer,
25 or if the person through the use of some other title implies that the person is a professional

1 engineer or that the person is licensed under these provisions, or if the person holds himself or
2 herself out as able to perform or does perform any engineering service or work or any other
3 service designated by the practitioner which is recognized as engineering.

4 Section 4. For the purposes of this Act, the term, practice of land surveying, means the
5 practice or offering to practice professional services such as consultation, investigation,
6 testimony evaluation, expert technical testimony, land-use studies, planning, mapping,
7 assembling, interpreting reliable scientific measurements and information relative to the location,
8 size, shape, or physical features of the earth, improvements on the earth, the space above the
9 earth, or any part of the earth, and utilization and development of these facts and interpretation
10 into an orderly survey map, plan, report, description, or project.

11 The practice of land surveying includes any of the following:

- 12 (1) Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or
13 boundary of any tract of land or any road, right-of-way, easement, alignment, or
14 elevation of any of the fixed works embraced within the practice of land surveying;
- 15 (2) Makes any survey for the subdivision of any tract of land;
- 16 (3) Determines, by the use of principles of land surveying, the position for any survey
17 monument or reference point; or sets, resets, or replaces any such monument or
18 reference point;
- 19 (4) Determines the configuration or contour of the earth's surface or the position of fixed
20 objects on the earth's surface by measuring lines and angles and applying the principles
21 of mathematics;
- 22 (5) Geodetic surveying which includes surveying for determination of the size and shape
23 of the earth utilizing angular and linear measurements through spatially oriented
24 spherical geometry;
- 25 (6) Creates, prepares, or modifies electronic or computerized data, including land

1 formation systems and geographic information systems, relative to the performance
2 of the activities in subdivisions (1) to (5), inclusive, of this section.

3 Section 5. For the purposes of this Act, the term, practice of landscape architecture, means
4 the practice or offering to practice landscape architecture projects, including preparing
5 preliminary studies, providing land-use studies, developing design concepts, giving expert
6 technical testimony, planning for the relationships of physical improvements and intended uses
7 of the site, establishing form and aesthetic elements, analyzing and providing for life safety
8 requirements, developing those construction details on the site which are exclusive of any
9 building or structure and do not require the seal of an engineer or architect, preparing and
10 coordinating technical submissions, and conducting site observation of landscape architecture
11 projects.

12 Landscape architecture, for the purposes of landscape preservation, development, and
13 enhancement, includes: investigation, selection, and allocation of land and water resources for
14 appropriate use; feasibility studies; formulation of graphic and written criteria to govern the
15 planning and design of land construction programs; preparation, review, and analysis of master
16 plans for land use and development; production of overall site plans, landscape grading and
17 landscape drainage plans, irrigation plans, planting plans, and construction details; specifications;
18 cost estimates and reports for land development; collaboration in design of roads, bridges, and
19 structures with respect to the functional and aesthetic requirements of the areas on which they
20 are to be placed; negotiation and arrangement for execution of land area projects; field
21 observation and inspection of land area construction, restoration, and maintenance.

22 Section 6. For the purposes of this Act, the term, practice of petroleum release assessment,
23 means the practice of directing or supervising the field crew performing activities related to
24 assessments and environmental monitoring; developing assessment plans; directing the placement
25 of soil borings and determining where to collect samples for analytical data; determining the

1 location of representative soil samples for contaminant analysis; identifying and classifying soil
2 types and soil conditions; preparing soil boring logs or supervising preparation of logs; testing
3 and reporting on the physical and chemical properties of soils; identifying and reporting on
4 geological conditions; developing and implementing groundwater evaluation activities; directing
5 the placement of monitoring or observation wells; evaluating aquifer characteristics; formulating
6 input data for groundwater flow models; operating groundwater models and interpreting results;
7 directing the performance of pump tests or dye tests and other aquifer tests; interpreting the
8 results of aquifer testing; determining capture zones for groundwater removal systems;
9 evaluating and reporting on physical and chemical groundwater data; or offering to provide any
10 services pursuant to this section.

11 Section 7. For the purposes of this Act, the term, practice of petroleum release remediation,
12 means the practice of interpreting assessment results; formulating input data for contaminant
13 models; operating contaminant models and interpreting results; identifying the potential fate of
14 contaminants and environmental transport mechanisms; identifying the environmental risks and
15 health hazards of contaminants and contaminated media; directing or supervising the disposal of
16 contaminated soil and groundwater; evaluating and recommending remediation alternatives;
17 preparing a cost estimate or cost-effective analysis for remedial alternatives; developing soil and
18 groundwater remediation systems; preparing the plans and specifications for remedial systems;
19 directing or supervising the installation, operation, and maintenance of remedial systems;
20 overseeing and directing assessment and remedial activities; signing assessment plans, assessment
21 reports, and remedial action plans; or offering to provide any of the services pursuant to this
22 section. A petroleum release remediator may perform all the functions of a petroleum release
23 assessor.

24 Section 8. Any person practicing or offering to practice architecture, engineering, land
25 surveying, landscape architecture, or petroleum release assessment or remediation shall submit

1 evidence of qualifications to the board and be licensed in accordance with the provisions of this
2 Act. No person may practice or offer to practice any of these professions, or to use in connection
3 with that person's name or otherwise assume, use, or advertise any title or description that may
4 falsely convey the impression that the person is duly licensed under the provisions of this Act
5 unless the person is so licensed.

6 Section 9. This chapter does not apply to:

- 7 (1) Any person engaged in military engineering while rendering service exclusively for any
8 of the armed forces of the United States or this state;
- 9 (2) Any person engaged in the practice of professional engineer or architecture in the
10 employ of the United States government but only while exclusively engaged as a
11 United States government employee on such government project or projects which
12 lie within federally-owned land;
- 13 (3) Any person engaged in the practice of professional engineering, architecture, or land
14 surveying in the employ of the state and any of its political subdivisions but only while
15 rendering service exclusively to such employer. Any building resulting from the
16 practice of professional engineering, architecture, or land surveying under this
17 subdivision is subject to the size limitation imposed under the exemptions in
18 subdivision (8) of this section;
- 19 (4) Any employee who prepares technical submissions or administers construction
20 contracts for a person or organization lawfully engaged in the practice of engineering,
21 architecture, or land surveying, if the employee is under the direct supervision of a
22 registered professional engineer, architect, or land surveyor;
- 23 (5) Any full-time employee of a corporation, partnership, firm, business entity, or public
24 utility while exclusively doing work for the corporation, partnership, firm, business
25 entity, or public utility, if the work performed is in connection with the property,

1 products, and services utilized by the employer and not for any corporation,
2 partnership, firm, or business entity practicing or offering to practice architectural,
3 engineering, or land surveying services to the public. The provisions of this
4 subdivision do not apply to any building or structure if the primary use is occupancy
5 by the public;

6 (6) Any person engaged in the preparation of plans and specifications for the erection,
7 enlargement, or alteration of any of the following buildings:

8 (a) Any dwelling for a single family, and any outbuilding in connection therewith,
9 such as a barn or private garage;

10 (b) Any two, three, or four family dwelling;

11 (c) Any five to sixteen family dwelling, inclusive, located in a governmental
12 subdivision of this state which provides a detailed building code review of
13 building projects by a building inspection department which is a Class A
14 member of the International Conference of Building Officials;

15 (d) Any farm or ranch building or accessory thereto except any building regularly
16 used for public purposes;

17 (e) Any temporary building or shed used exclusively for construction purposes, not
18 exceeding two stories in height, and not used for living quarters;

19 (7) Any person who prepares detailed or shop plans required to be furnished by a
20 contractor to a registered professional engineer or architect, and any construction
21 superintendent supervising the execution of work designed by an architect or
22 professional engineer registered in accordance with this Act;

23 (8) Any person engaged in the preparation of plans and specifications for the new
24 construction, the enlargement or the alteration of any of the following buildings:

25 (a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical

1 office, nursing facility, assisted living facility, jail, retirement home, or
2 mortuary, if the gross square footage of the new construction, the enlargement,
3 or the alteration is four thousand square feet or less;

4 (b) Any building occupied as an auditorium, church, school, or theater if the gross
5 square footage of the new construction, the enlargement, or the alteration is
6 five thousand square feet or less;

7 (c) Any building occupied as a bowling alley, office, shopping center, bank, fire
8 station, service station, or store if the gross square footage of the new
9 construction, the enlargement, or the alteration is seven thousand square feet
10 of less;

11 (d) Any building occupied as an industrial plant or public garage if the gross square
12 footage of the new construction, the enlargement, or the alteration is eleven
13 thousand square feet or less;

14 (e) Any building occupied as a warehouse if the gross square footage of the new
15 construction, the enlargement, or the alteration is twenty thousand square feet
16 or less;

17 (f) Any building with an occupancy other than those listed in subsection (a) to (e),
18 inclusive, of this subdivision if the gross square footage of the new
19 construction, the enlargement, or the alteration is four thousand square feet of
20 less;

21 (g) Any preengineered or predesigned building, or any preengineered or
22 predesigned building with a predesigned system, designed for the intended use
23 of that building, including building structure, electrical, plumbing, and
24 mechanical systems, if the buildings and systems are supplied directly, or
25 indirectly, by a company engaged in the business of designing and supply such

1 buildings and systems and if the company has in it employ one or more
2 engineers or architects licensed in South Dakota, who prepare all designs for
3 such buildings and systems.

4 No person exempted may use the title of professional engineer, architect, or land surveyor,
5 or any other word, words, letters, or signs in connection with the person's name that may falsely
6 convey the impression that the person is a licensed professional engineer, architect, or land
7 surveyor.

8 Section 10. For the purposes of subdivision (8) of section 9 of this Act, if a building consists
9 of more than one type of occupancy, each portion of the building shall conform to the limitations
10 established by that subdivision for each type of occupancy. The area of the building shall be such
11 that the sum of the ratios of the actual area for each separate occupancy divided by the total
12 allowable area allowed by that subdivision for each separate occupancy does not exceed one.

13 Section 11. This Act does not prohibit a contractor from offering to provide or from
14 providing design-build services if the architectural and engineering services offered or provided
15 in connection with the design-build services are rendered by an architect or professional engineer
16 licensed in accordance with this Act.

17 Section 12. This Act does not apply to providers of services such as drilling or monitoring
18 well installation, analytical testing, monitoring, electrical, plumbing, excavation, or construction
19 if the service provided is part of a site assessment, remedial investigation, or corrective action
20 to remediate water or soil contaminated from a petroleum release performed or executed by an
21 authorized petroleum release business entity with a certificate of authorization.

22 Section 13. An architect may engage in the practice of professional engineering, or a
23 professional engineer may engage in the practice of architecture, but only to the extent that such
24 practice is incidental or of minor importance to a project or service being legally performed under
25 this Act.

1 Section 14. The Board of Technical Professions is hereby created to administer the
2 provisions of this Act. Each member of the board shall receive a certificate of appointment from
3 the Governor, each member and shall file with the secretary of state a written oath for the faithful
4 discharge of the member's official duties. The board shall consist of seven members to be
5 appointed by the Governor for a term of four years. In implementing the four-year terms, the
6 Governor shall vary the terms to enable the board to have no more than two terms expire in any
7 one year. The board shall be composed of two professional engineers, two architects, two land
8 surveyors, and one member from the public. Members may be reappointed to succeed
9 themselves. A member shall hold over the expiration of a term until a successor is duly appointed
10 and qualified.

11 Section 15. Each member of the board shall be a citizen of the United States and a resident
12 of this state. The public member may not be or have been engaged in any activity subject to
13 licensure under this Act. The members may not all be of the same political party.

14 Section 16. The members of the board, or any committee of the board, and the executive
15 director of the board are immune from liability in damages, and no cause of action for damages
16 may arise against them for any act or proceeding undertaken or performed by them within their
17 official capacity if they acted in good faith. These persons, while acting upon disciplinary matters
18 and in carrying out civil remedies, are deemed to be acting as officers of the state. The attorney
19 general shall represent and appear for them in any action or proceeding brought by or against
20 them because of such acts.

21 Section 17. The Governor may remove any member of the board for misconduct, incapacity,
22 or neglect of duty. Any member appointed to fill a vacancy arising from other than the natural
23 expiration of a term shall serve for only the unexpired portion of the term.

24 Section 18. The board shall annually elect from its members a chair, a vice chair, and a
25 secretary. The board shall hold at least six regular meetings in each year. Special meetings may

1 be called and notice of all meetings shall be given in such manner as the public meetings laws
2 may provide. At all meetings, a majority of the board constitutes a quorum. The board and its
3 employees may be included in the state blanket bond purchased pursuant to § 3-5-5.1.

4 Section 19. The executive director of the board shall receive and account for all money
5 derived under the provisions of this Act. All money shall be used by the board to administer the
6 duties set forth under this Act. The board may determine the manner of disbursing the money and
7 purposes for which disbursements shall be made. Warrants for the payment of disbursements
8 shall be issued by the state auditor and paid by the state treasurer upon presentation of itemized
9 vouchers approved by the board. The total of the warrants may not exceed the total balance.

10 Section 20. The board may employ counsel and other necessary assistance to aid in the
11 enforcement of this Act or for the assistance of any proceeding commenced by the attorney
12 general or by a state's attorney, the compensation and expenses of whom shall be paid from the
13 technical professions fund.

14 Section 21. The board shall employ an executive director who shall work under the direction
15 of the board and shall be delegated the duties necessary to conduct board business. The board
16 may employ staff and rent offices as necessary for the proper performance of its duties as
17 prescribed in this Act. The compensation and expenses shall be paid from the technical
18 professions fund.

19 Section 22. The board shall, pursuant to chapter 1-26, promulgate rules which may be
20 reasonably necessary for the performance of its duties, the regulation of proceedings before it,
21 and the licensure of the professions it regulates. The existing rules promulgated under the
22 previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules,
23 pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors,
24 landscape architects, and petroleum release assessors and remediators in the following areas:

25 (1) Forms such as applications, renewals, licenses or certificates, receipts, and wallet

- 1 cards for applicants, licensed professionals, and business entities;
- 2 (2) Fees for applications, examinations, renewals, late penalties, lists and labels of
- 3 licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to
- 4 collect fees for examinations, waiver of fees;
- 5 (3) Criteria for types of education degrees, approval of accredited programs, intern
- 6 programs, type of experience, length of experience, national and state specific
- 7 examinations, use of computer examinations, criteria from other countries, procedure
- 8 to evaluate foreign degrees, eligibility of applicants, dual licenses;
- 9 (4) Continuing professional education and development content, hours, carryovers, and
- 10 requirements;
- 11 (5) How, when, and where to seal plans and documents; type of seal; required services
- 12 to be provided; and criteria to define complete plans, minimum standards of practice,
- 13 and guidelines;
- 14 (6) Description of and criteria for construction administration, including a designation of
- 15 who is to perform construction administration and criteria for a prime professional or
- 16 a coordinating professional;
- 17 (7) Requirements for compliance with local building code;
- 18 (8) The adoption of a code of professional conduct;
- 19 (9) Procedures for disciplinary proceedings; and
- 20 (10) Procedures for contested cases pursuant to chapter 1-26.

21 Section 23. The Board of Technical Professions shall continue within the Department of
22 Commerce and Regulation and shall retain all the prescribed functions, including administrative
23 functions, of the previous State Commission of Engineering, Architectural and Land Surveying
24 Examiners.

25 Section 24. The board shall maintain the following record and report policy:

- 1 (1) A record of its proceedings and all current applications of licensure shall be retained;
- 2 (2) The record of the board shall be prima facie evidence of the proceedings of the board,
3 and a transcript thereof, duly certified by the executive director of the board, shall be
4 admissible as evidence with the same force and effect as if the original were produced;
5 and
- 6 (3) The following are of a confidential nature and are not public records: examination
7 scores, examination material, examination problem solutions, letters of inquiry and
8 references concerning applicants, board inquiry forms concerning applicants and
9 licensees, and investigation files if any investigation is still pending.

10 Section 25. Any applicant for enrollment as an engineering intern shall provide evidence
11 satisfactory to the board that the applicant has graduated from or is admitted in an accredited
12 engineering curriculum and has passed an examination. The examination may be taken during the
13 applicant's senior year of study or at such time as may be determined by the board. The board
14 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and
15 examination criteria.

16 Section 26. Any applicant for licensure as a professional engineer shall provide the following
17 evidence satisfactory to the board:

- 18 (1) Graduation from an accredited engineering college, university, or technical program;
- 19 (2) Completion of the minimum number of years of diversified engineering experience
20 under the supervision of a licensed professional engineer; and
- 21 (3) Successful completion of examinations.

22 A person who has begun the requirement for licensure without minimum education and has
23 qualifying experience as of July 1, 1999, shall apply to the board before July 1, 2004, for
24 approval to take the examination under the qualifications that previously existed under § 36-18-
25 17.4. The board shall promulgate rules, pursuant to chapter 1-26, to establish education,

1 experience, and examination criteria.

2 Section 27. Any applicant for licensure as an architect shall provide the following evidence
3 satisfactory to the board:

- 4 (1) Graduation with an accredited professional degree in architecture;
- 5 (2) Completion of the national architectural intern development program; and
- 6 (3) Successful completion of examinations.

7 The board may qualify an applicant who holds a certification issued by the National Council
8 of Architectural Registration Boards in lieu of the qualifications listed in this section. The board
9 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and
10 examination criteria.

11 Section 28. Any applicant for enrollment as a land surveying intern shall provide evidence
12 satisfactory to the board that the applicant has graduated from an accredited surveying or
13 engineering curriculum, or substantially similar experience acceptable to the board and has
14 passed an examination. The examination may be taken during the applicant's senior year of study
15 or at such time as may be determined by the board. The board shall promulgate rules pursuant
16 to chapter 1-26 to establish education, experience, and examination criteria.

17 Section 29. Any applicant for licensure as a land surveyor shall provide the following
18 evidence satisfactory to the board:

- 19 (1) Graduation from an accredited engineering or land surveying college, university, or
20 technical program with a minimum of twenty credit hours of surveying curriculum,
21 or substituted experience, in whole or part, acceptable to the board;
- 22 (2) Completion of the minimum number of years of diversified surveying experience
23 under the supervision of a licensed land surveyor; and
- 24 (3) Successful completion of examinations.

25 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,

1 and examination criteria.

2 Section 30. Any applicant for licensure as a landscape architect shall provide the following
3 evidence satisfactory to the board:

- 4 (1) Graduation from an accredited program of landscape architecture;
- 5 (2) Completion of a council record from the Council of Landscape Architectural
6 Registration Boards; and
- 7 (3) Successful completion of examinations.

8 The board may qualify an applicant who holds a certification issued by the Council of
9 Landscape Architectural Registration Boards in lieu of the qualifications listed in this section.
10 The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience,
11 and examination criteria.

12 Section 31. Any applicant for licensure as a petroleum release assessor or remediator shall
13 provide the following evidence satisfactory to the board:

- 14 (1) Completion of education and experience requirements; and
- 15 (2) Successful completion of examinations.

16 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,
17 and examination criteria.

18 Section 32. The board may require the applicant to appear for an oral interview if there are
19 questions as to the depth, extent, and quality of any experience. Failure to supply additional
20 evidence or information within thirty days from the date of a written request from the board, or
21 failure to appear before the board if an appearance is requested, may be considered cause for
22 disciplinary action or disapproval of an application. The board shall interpret qualifying
23 experience and education according to the following:

- 24 (1) Qualifying experience is diversified, general practice experience of a progressive
25 degree of difficulty, magnitude, and responsibility under proper professional guidance

1 and supervision of licensed persons;

2 (2) For partially completed work in accredited or approved degree granting curriculums,
3 education credit of three-fourths of a year may be allowed for each thirty semester
4 hours of study. For work in vocational or trade schools, education credit of one-half
5 of a year may be allowed for each thirty semester hours of study;

6 (3) Education from foreign schools shall be evaluated with accredited programs in the
7 United States, and experience in foreign employment under licensed persons shall be
8 evaluated by the board;

9 (4) Qualifying experience under proper professional guidance and supervision of licensed
10 persons gained in work experience with governmental agencies, the military,
11 construction, sales, and industry requiring the application of skills normally taught in
12 the schools of engineering, science, architecture, or land surveying may be evaluated
13 by the board. The board shall give credit for experience as warranted;

14 (5) Teaching at the junior year level and above of engineering, science, architectural,
15 landscape architectural, and land surveying courses in accredited or approved
16 curriculums is acceptable experience for a maximum of one year.

17 Section 33. The board shall admit to examination any candidate who pays a fee established
18 by the board and submits an application with evidence satisfactory to the board that the applicant
19 satisfies the necessary education and experience requirements. The board may require an
20 applicant for licensure or a current licensee to take an examination as it deems necessary to
21 determine that person's professional minimum competency. Upon approval of examination
22 applications, examination fees may be paid by the applicant directly to a national vendor or third
23 party. The board may hold membership in and be represented at national councils or
24 organizations of professional practices licensed under this Act and may pay the appropriate
25 membership fees. The board may allow proctoring of examinations for approved candidates at

1 out-of-state or overseas sites by administrators of national council member boards. The board
2 may accept candidates to be proctored in this state from other national council member boards.
3 A take-home questionnaire based on statutes and rules and related to professionalism and ethics
4 may also be required. The board shall promulgate rules, pursuant to chapter 1-26, to establish
5 application, examination, and proctor fees for all examinations.

6 Section 34. The board shall notify each applicant of the results of the examination and those
7 entitled to licensure or enrollment. If an applicant fails the examination and the applicant's
8 application is still current, subsequent reexaminations may be granted upon payment of a fee to
9 be fixed by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish
10 reexamination fees for all licensure and enrollment applicants.

11 Section 35. The board may give comity consideration to any person who holds a current and
12 valid license issued to that person for active practice by the proper authority in any state or
13 territory of the United States, the District of Columbia, or any foreign country, based on
14 requirements that do not conflict with the provisions of this Act and were of a standard not lower
15 than that specified in the applicable licensure act in effect in this state at the time such license was
16 issued. An applicant may be required to take examinations as the board deems necessary to
17 determine the applicant's competency. A comity applicant for landscape architecture shall hold
18 a current and valid certification from the Council of Landscape Architectural Registration Boards
19 to be eligible for comity licensure. The board shall promulgate rules, pursuant to chapter 1-26,
20 relating to the application fee for licensure by comity.

21 Section 36. The board shall grant a license to any applicant as a professional engineer,
22 architect, land surveyor, landscape architect, petroleum release assessor or remediator, or for any
23 two or more of these titles who has met the requirements of this Act.

24 Section 37. The license shall be displayed in a conspicuous place in the licensee's principal
25 office, place of business, or place of employment within the state. A new license to replace a lost,

1 destroyed, or mutilated license shall be issued upon payment of a fee established by the board
2 pursuant to chapter 1-26.

3 Section 38. The recipient of a license issued under this Act may practice engineering,
4 architecture, land surveying, landscape architecture, petroleum release assessment, or petroleum
5 release remediation and use the appropriate title professional engineer, architect, land surveyor,
6 landscape architect, petroleum release assessor, or petroleum release remediator. A licensee may
7 use a title either with or without prefixing the word, licensed or registered. No licensee may
8 practice a profession or use a title unless the license specifically permits such practice and usage.
9 An unrevoked and unexpired license issued as provided in this Act is presumptive evidence in
10 all courts and places that the person named is legally licensed.

11 Section 39. A license expires two years after the date of issuance and becomes invalid on that
12 date unless renewed by that date. Any professional engineer, architect, land surveyor, landscape
13 architect, or petroleum release assessor or remediator licensed under this Act who desires to
14 continue to practice or offer to practice the licensee's profession shall:

- 15 (1) Pay the renewal fee established by the board in rules promulgated pursuant to chapter
16 1-26; and
- 17 (2) Successfully complete all continuing professional development requirements
18 established by the board or make a showing of good cause why the licensee was
19 unable to comply with such requirements.

20 The board shall promulgate rules, pursuant to chapter 1-26, to establish continuing
21 professional education and development criteria.

22 Section 40. The board may decline to renew a license if an applicant has not completed
23 continuing professional development requirements. A license for a two-year period shall be
24 issued upon completion of the requirements. The board may provide, by rules promulgated
25 pursuant to chapter 1-26, for the inactive or retired status of a person who has been duly licensed

1 under this Act and who chooses to relinquish or not to renew a license.

2 Section 41. The board shall notify by mail any person licensed under this Act of the date of
3 expiration of the license, the requirement of professional development hours, and the amount of
4 the fee required for renewal. The notice shall be mailed to the last known address of the licensee
5 at least one month in advance of the date of expiration of the license. A licensee shall notify the
6 board of any address changes.

7 Section 42. A person may reinstate an expired license or request inactive status within three
8 years after a license's date of expiration if the person is otherwise qualified. The fee for the
9 reinstatement of the license or requesting inactive status after it has expired shall be increased
10 by an amount to be determined by the board in rules promulgated pursuant to chapter 1-26. A
11 person requesting reinstatement of an expired or inactive license shall complete the requirements
12 for continuing professional development and any reexaminations and pay any penalty fees. If a
13 person fails to reinstate an expired license or request inactive status within the three years after
14 the date of expiration, all relevant files shall be deleted. A person requesting licensure after three
15 years shall submit an application for a new license.

16 Section 43. Any licensed person may request that the person's license be placed on inactive
17 or retired status. A fee to place files on inactive or retired status shall be determined by the board
18 in rules promulgated pursuant to chapter 1-26. Failure to render any fees required for inactive
19 or retired status shall result in the automatic termination of inactive or retired status. The request
20 for files to be placed on inactive or retired status may be denied by the board. No person may
21 practice or offer to practice while that person's files are inactive or retired.

22 Section 44. Any licensed professional engineer, architect, land surveyor, and landscape
23 architect shall procure and use an appropriate seal. The seal shall contain the following
24 information:

25 (1) The name, South Dakota;

- 1 (2) Licensee's name;
- 2 (3) License number; and
- 3 (4) The appropriate title or combination of titles: Professional Engineer, Architect, Land
- 4 Surveyor, Landscape Architect.

5 The seal shall have an outer circle with a two-inch diameter and an inner circle with a one
6 and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered.
7 The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile
8 found acceptable to the board. The licensee's original written signature and the date shall be
9 adjacent to or across the seal. Computer-generated or other facsimile signatures and dates may
10 not be used. Petroleum release assessors and remediators, or interns, may not obtain or use any
11 seal.

12 Section 45. The application of the licensee's seal and signature and the date constitutes
13 certification that the work on which it was applied was done by the licensee or under the
14 licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that
15 can be legibly reproduced on the following:

- 16 (1) All originals, copies, tracings, or other reproducibles of all final drawings,
17 specifications, reports, plats, plans, land surveys, design information, and calculations
18 prepared by the licensee or under the licensee's responsible charge when presented
19 to a client or any public or governmental agency. A licensee may not review or check
20 technical submissions of another licensed professional or unlicensed person and seal
21 the documents as the licensee's own work;
- 22 (2) Preliminary work shall contain a note that the submittal is Not for Construction,
23 Preliminary, or other such explanation that it is not final;
- 24 (3) In the case of multiple seals, the title or index sheet may be sealed, signed, and dated
25 by all involved. In addition, each sheet shall be sealed, signed, and dated by the

1 licensee or licensees responsible for that sheet;

2 (4) Drawings that are transmitted electronically to a client or governmental agency shall
3 have the computer-generated seal removed from the original file. The electronic media
4 shall have the following inserted in lieu of the seal, signature, and date: This document
5 originally issued and sealed by (name of licensee/sealer), (title), (license number), on
6 (date of sealing). This media should not be considered a certified document.

7 Section 46. No person other than an architect or professional engineer may provide
8 architectural and engineering services which include construction administration services on
9 projects that are not exempt pursuant to sections 2 and 3 of this Act. The architect or
10 professional engineer of record, or another designated architect or professional engineer without
11 conflict of interest, shall provide a written report of observed deficiencies or variations from the
12 submitted plans and specifications to the building official, owner, and builder before project
13 completion. The board may promulgate rules pursuant to chapter 1-26 to establish construction
14 administration services criteria including coordinating and prime professional criteria for persons
15 licensed by the board.

16 Section 47. Any office physically located and maintained in this state to offer engineering,
17 architectural, land surveying, landscape architectural, petroleum release assessment, or petroleum
18 release remediation services shall have an appropriately licensed person who is regularly
19 employed in that office and who has responsible charge and direct supervision and control of all
20 professional services. A licensee who renders occasional, part-time, or consulting services to or
21 for a firm or office may not be designated as the person in responsible charge for the professional
22 activities of the firm or office unless a schedule is posted at the office for the public's knowledge
23 and filed with and approved by the board stating when the licensee is physically in the office.

24 Section 48. Any business entity that desires to practice engineering, architecture, land
25 surveying, landscape architecture, or petroleum release assessment or remediation in this state

1 shall register with the board by making application for a certificate of authorization. A business
2 entity is responsible for the conduct or acts of its agents, employees, officers, partners, members,
3 or managers in respect to any engineering, architecture, land surveying, landscape architecture,
4 petroleum release assessment, or petroleum release remediation services performed or to be
5 executed in this state. No person is relieved of the responsibility for that person's conduct or acts
6 performed by reason of that person's employment by or relationship with a business entity. A
7 licensee who renders occasional, part-time, or consulting services to or for a business entity may
8 not be designated as the person in responsible charge for the professional activities of the
9 business entity.

10 Section 49. A business entity desiring a certificate of authorization or renewal shall file a
11 written application with the board which shall contain the following:

- 12 (1) Names and addresses of the sole proprietorship and all general and limited partners,
13 officers, and directors of any business entity;
- 14 (2) Names and addresses of all general and limited partners, officers, directors, and
15 employees or sole proprietors of such business entity who are duly licensed to practice
16 engineering, architecture, land surveying, landscape architecture, petroleum release
17 assessment, or petroleum release remediation in this state and who are or will be in
18 responsible charge of any professional services in this state by the business entity;
- 19 (3) A statement by a partner, officer, or owner that the business entity will not permit the
20 performance of any professional service, as defined in this Act, by any person of the
21 business entity unless the person is licensed under this Act; and
- 22 (4) All other information the board may deem necessary as promulgated by rule pursuant
23 to chapter 1-26.

24 Section 50. The board shall issue a certificate of authorization or a renewal to a business
25 entity upon receipt of an application for a certificate of authorization and a fee as set by the

1 board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts
2 exist which would entitle the board to suspend or revoke the certificate if issued to the applicant.
3 The certificate of authorization is not transferable.

4 Section 51. The business entity shall file with the board a written report of any change in the
5 information submitted on the application that occurs during the term of the certificate of
6 authorization. The business entity shall report the change within thirty days after the effective
7 date of the change. Failure to provide the report constitutes grounds for the board to suspend
8 or revoke the certificate of authorization.

9 Section 52. The provisions with respect to issuance, expiration, renewal, and reissuance of
10 the certificate of licensure of persons contained in this Act apply to certificates of authorization
11 issued to business entities under the provisions of this Act. A business entity is subject to
12 disciplinary proceedings and penalties, and certificates of authorization are subject to suspension
13 or revocation for cause, in the same manner and to the same extent as is provided with respect
14 to individuals and their certificates of licensure in this Act. The terms, licensee and certificate
15 of licensure, as used in this Act, apply to any business entity holding a certificate of authorization
16 issued under this Act and to such certificate of authorization.

17 Section 53. A violation of any of the provisions of this Act by a business entity is not grounds
18 for the revocation, suspension, or refusal to renew a license of an individual employee of the
19 business entity unless the board finds that the employee was a party to the violation.

20 Section 54. The board shall inquire into the identity of any person alleged to be engaging in
21 the unlawful practice of engineering, architecture, land surveying, landscape architecture,
22 petroleum release assessment, or petroleum release remediation. The board shall investigate
23 alleged violations of the provisions of this Act, and report to the proper state's attorney or the
24 attorney general any person or case that in the judgment of the board warrants prosecution. The
25 attorney general or the several state's attorneys may prosecute violations of this Act in the name

1 or on behalf of the board.

2 Section 55. When investigating alleged violations, the board may administer oaths to
3 witnesses appearing before the board, subpoena licensees as witnesses and compel their
4 attendance, and require the submittal of plans, specifications, books, records, papers, and other
5 documents. If a licensee refuses to obey any subpoena, or refuses to testify or produce any
6 materials required, the board may take disciplinary action or present its petition to the court of
7 the county in which the licensee resides, and the court may enter a suitable order compelling
8 compliance with the provisions of this Act and imposing such other terms and conditions as the
9 court may deem suitable. The board may also summon nonlicensees as witnesses and request
10 their attendance, and request the submittal of plans, specifications, books, records, papers, and
11 other documents. If a nonlicensee refuses to cooperate, testify, or produce any materials
12 requested, the board may petition the court of the county in which the nonlicensee resides, and
13 the court may enter a suitable order compelling compliance with the provisions of this Act and
14 imposing such other terms and conditions as the court may deem suitable.

15 Section 56. The board may take action without proof of actual injury on the following
16 violations:

- 17 (1) Has violated any statute, rule, or order that the board has issued or is empowered to
18 enforce;
- 19 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether
20 or not the conduct or acts relate to professional practice;
- 21 (3) Has engaged in conduct or acts that are grossly negligent, incompetent, reckless, or
22 otherwise in violation of established standards related to that person's professional
23 practice;
- 24 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether
25 or not the person admits guilt, or has been shown to have engaged in acts or practices

1 tending to show that the applicant or licensee is incompetent or has engaged in
2 conduct reflecting adversely on the person's ability or fitness to engage in that
3 person's professional practice. A copy of the record of conviction or plea of guilty or
4 nolo contendere is conclusive evidence;

5 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in
6 passing all or a portion of the examination;

7 (6) Has had that person's professional license, registration, certificate, right to
8 examination, or other similar rights to practice revoked, suspended, canceled, given
9 probation, limited, censured, reprimanded, or not renewed for cause in any state or
10 territory of the United States, the District of Columbia, or in any foreign country;

11 (7) Failed to meet any requirement for issuance or renewal of the person's license or
12 certificate;

13 (8) Has used or attempted to use as that person's own the certificate or seal of another;

14 (9) Has used or attempted to use an expired, suspended, or revoked license;

15 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or
16 other technical submission or document not prepared by that person or under that
17 person's responsible charge;

18 (11) Aided or assisted another person in violating any provision of this Act or the rules
19 pertaining to this Act;

20 (12) Failed to promptly and appropriately provide information requested by the board as
21 a result of a formal or informal complaint to the board which would indicate a
22 violation of this Act;

23 (13) Has provided false testimony or information to the board;

24 (14) Failed to report known violations of this Act;

25 (15) Has engaged in the use of untruthful or improbable statements in advertisements;

- 1 (16) Failed to complete continuing professional development requirements set by the
2 board;
- 3 (17) Made misleading or untruthful representations in advertisements or published
4 materials;
- 5 (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- 6 (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- 7 (20) Has committed an act, engaged in conduct, or committed practices that may result in
8 an immediate threat to the public; or
- 9 (21) Has provided professional services in technical areas not covered by that person's
10 license or competency.

11 Section 57. If the board determines that a person or business entity is in violation of this Act,
12 the board may take the following actions:

- 13 (1) Deny an application;
- 14 (2) Suspend, temporarily suspend, revoke, or refuse to renew an enrollment or license;
- 15 (3) Place on probation, condition, or limit a licensee's practice;
- 16 (4) Reimburse the board for expenses, fine, censure, or reprimand a person or business
17 entity;
- 18 (5) Refuse to permit a person to sit for examination or refuse to release a person's
19 examination scores;
- 20 (6) Require a person to sit for a reexamination; and
- 21 (7) Pursue legal actions against a person or business entity that is not licensed to offer or
22 render practices covered by this Act.

23 Section 58. In lieu of or in addition to any disciplinary remedy provided in section 57 of this
24 Act or civil remedy provided in section 61 of this Act, the board may require, as a condition of
25 continued licensure, termination of suspension, reinstatement of license, examination, or release

1 of examination grades, that the person:

- 2 (1) Submit to a qualifying review of the person's ability, skills, or quality of work. The
3 person may be required to attend remedial education courses; and
- 4 (2) Complete to the satisfaction of the board continuing professional education courses
5 as the board may specify by rule or order, pursuant to chapter 1-26.

6 Section 59. Proceedings for the revocation or suspension of a license shall be conducted
7 pursuant to chapter 1-26 and rules promulgated pursuant to this Act.

8 Section 60. The findings and actions of the board on disciplinary matters shall be subject to
9 appeal as provided by chapter 1-26 and rules promulgated pursuant to this Act.

10 Section 61. Any person who has violated any provision of this Act or any rule promulgated
11 pursuant to this Act, is subject to the following penalties:

- 12 (1) Administrative fine:
 - 13 (a) Licensed person: Any person licensed by the board who violates any provision
14 of this Act is liable for an administrative fine not to exceed two thousand
15 dollars for each offense;
 - 16 (b) Licensed business entity: Any business entity permitted to practice by the board
17 that violates any provision of this Act is liable for an administrative fine not to
18 exceed five thousand dollars for each offense.

19 An administrative fine not paid within sixty days from the date of the order imposing
20 the fine may be enforced by an action in the appropriate county circuit court. Any
21 person aggrieved by an order under this subdivision may make an appeal pursuant to
22 chapter 1-26;

- 23 (2) Injunction: If the board deems it necessary for the public safety, it may bring an action
24 in the name of the state in the circuit court in any county in which jurisdiction is
25 proper to enjoin the act, practice, or violation and to enforce compliance with this Act

1 or any rule promulgated pursuant to this Act. Upon showing that a person has
2 engaged in an otherwise unauthorized act or practice, a permanent or temporary
3 injunction, or restraining order, or other appropriate relief shall be obtained against
4 the person to prohibit the continuation of the unauthorized act or practice. If a person
5 has caused a structure to be designed, constructed, or built by engaging in an
6 unauthorized act or practice, a permanent or temporary injunction or restraining
7 order, or other appropriate relief, shall be obtained against the project prohibiting the
8 use and occupancy of any structure. For purposes of injunctive relief under this
9 subdivision, irreparable harm exists if the board shows that a person has engaged in
10 an act or practice constituting the unauthorized use of a title, words, figures, or sign
11 implying licensure, or a violation of a statute, rule, or order that the board has issued
12 or is empowered to enforce;

13 (3) Cease and desist order: The board may issue and have served upon a person an order
14 requiring the person to cease and desist from any unauthorized practice or act which
15 is in violation of this Act or any rule promulgated pursuant to this Act. The cease and
16 desist order shall give reasonable notice of the rights of the person to request a
17 hearing pursuant to chapter 1-26 and shall state the reasons for the entry of the order.

18 Section 62. Service of the order is effective if the order is served on the person or counsel
19 of record personally or by certified mail to the most recent address provided to the board for the
20 person or counsel of record. Unless otherwise agreed by the board and the person requesting the
21 hearing, the hearing shall be held no later than ninety days after the request for the hearing is
22 received by the board.

23 Section 63. The board or administrative law judge shall issue a report within thirty days of
24 the close of the contested case hearing record. Within thirty days after the report and any
25 exceptions to it, the board shall issue a further order vacating, modifying, or making permanent

1 the cease and desist orders as the facts require.

2 Section 64. If no hearing is requested within the thirty days of service of the order, the order
3 becomes final and remains in effect until it is modified or vacated by the board. If the person to
4 whom a cease and desist order is issued fails to appear at the hearing after being duly notified,
5 the person is in default and the proceeding may be determined against that person upon
6 consideration of the cease and desist order, the allegations of which may be considered to be
7 true. Action taken pursuant to this section does not relieve a person from criminal prosecution
8 by a competent authority or from disciplinary action by the board with respect to the person's
9 license, registration, certification, application for examination, or renewal.

10 Section 65. No person may:

11 (1) Practice, or offer to practice, the professions of engineering, architecture, land
12 surveying, landscape architecture, petroleum release assessment, or petroleum release
13 remediation in this state without being licensed or exempt in accordance with the
14 provisions of this Act;

15 (2) Use or employ the title of architect, landscape architect, land surveyor, professional
16 engineer, petroleum release assessor, or petroleum release remediator with or without
17 qualifying adjectives without being licensed in accordance with the provisions of this
18 Act;

19 (3) Use any other words, letters, or figures indicating or intending to imply that the
20 person is a professional engineer, architect, land surveyor, landscape architect,
21 petroleum release assessor, or petroleum release remediator without being licensed
22 in accordance with the provision of this Act;

23 (4) Present or attempt to use the certificate of licensure or seal of another, or affix a
24 professional engineer's, architect's, land surveyor's, or landscape architect's seal on
25 any plans, specifications, drawings, or other technical submittals which have not been

1 prepared by that person or under that person's responsible charge and direct personal
2 supervision;

3 (5) Present any false or forged evidence of any kind to the board in obtaining a certificate
4 of licensure;

5 (6) Falsely impersonate any other licensee;

6 (7) Attempt to use an expired, suspended, or revoked license;

7 (8) Knowingly allow person's name or seal to be used upon plans or work not actually
8 performed by that person or under that person's responsible charge and direct
9 supervision; or

10 (9) By act of commission or omission, violates any of the provisions of this Act.

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

12 Section 66. No person may:

13 (1) Accept or contract to receive, directly or indirectly, any commission, percentage, gift,
14 or other item of value for that person's influence in securing a contract or approving
15 the performance of a contract, from any manufacturer, agent, or vendor of any
16 material of any sort used or recommended to be used in the construction of any
17 project for the plans or construction of which any person is employed; or

18 (2) Give or offer to give to any person any commission, percentage, gift, or other item
19 of value for that person's influence in securing a contract or approving the
20 performance of a contract or supplying any material of any sort which may be for
21 consideration in the construction of any project. A violation of this section is a Class
22 2 misdemeanor for the first offense and a Class 1 misdemeanor for the second or any
23 subsequent offense.

24 Section 67. The board may impose a fee to reimburse the board for all or part of the cost of
25 proceedings resulting in disciplinary action authorized by this Act, the imposition of civil

1 penalties, or the issuance of a cease and desist order. The fee may be imposed if the board shows
2 a person has committed an act or engaged in unauthorized practice, including the unauthorized
3 use of a title, words, figures, or signs implying licensure, or has violated a statute, rule or order
4 of the board. The costs include the amount paid by the board for services from attorney fees,
5 investigators, court reporters, witnesses, expert witnesses, reproduction of records, board
6 members' per diem compensation, board staff time, and expense incurred by board members and
7 staff.

8 Section 68. A professional engineer, architect, land surveyor, landscape architect, petroleum
9 release assessor, or petroleum release remediator is not liable for the safety of persons or
10 property on or about a construction project site, or for the construction techniques, procedures,
11 sequences, and schedules, or for the conduct, action, errors, or omissions of any construction
12 contractor, subcontractor, construction manager, or material supplier, their agents or employees,
13 unless that person assumes responsibility therefor by contract or by that person's actual conduct.
14 This section does not relieve a professional engineer, architect, land surveyor, landscape
15 architect, petroleum release assessor, or petroleum release remediator from liability for that
16 person's negligence in design work.

17 Section 69. Any contract, written or oral, for engineering, architectural, land surveying,
18 landscape architectural, petroleum release assessment, or petroleum release remediation services
19 made by any person in violation of any provision of this Act is unenforceable as to such services.
20 It is a complete defense to any action to enforce payment for any services, if the party
21 contracting for services proves that the person rendering or offering to render services was not
22 at the time such services were offered or rendered, legally authorized to contract for such
23 services.

24 Section 70. No public officer or employee, as defined in subdivisions 22-1-2(37) and (39),
25 charged with the authority or responsibility of approving or accepting plans, specifications, plats,

1 or any other technical submissions, may accept or approve such plans, specifications, plats, or
2 technical submissions which have been prepared in violation of this Act.

3 The building official shall require the owner to engage and designate an architect or
4 professional engineer who shall act as the architect or professional engineer of record on projects
5 that are not exempt. If the circumstances require, the owner may designate a substitute architect
6 or professional engineer of record who shall perform all of the duties required of the original
7 architect or professional engineer of record. The building official shall be notified in writing by
8 the owner if the architect or professional engineer of record is changed or is unable to continue
9 to perform the duties. The architect or professional engineer of record is responsible for
10 reviewing and coordinating all submittal documents prepared by others, including deferred
11 submittal items, for compatibility with the design of the building. A building permit issued with
12 respect to technical submissions which do not conform with the requirements of this Act are
13 invalid.

14 Section 71. No register of deeds of any county may file or record any map, plat, survey, or
15 other technical submissions within the definition of land surveying which does not have
16 impressed thereon and affixed thereto the personal signature, seal, and date of a land surveyor
17 by whom or under whose responsible charge and direct personal supervision the map, plat,
18 survey, or other technical submissions were prepared.

19 Section 72. The board may promulgate rules, pursuant to chapter 1-26, regarding procedures
20 and standards for certifying those who perform environmental technical services relative to site
21 assessment, remedial investigations, and corrective actions necessary to remediate water or soil
22 contaminated with a regulated substance and to establish fees to support this activity. Procedures
23 and requirements may be promulgated by rule for determining eligibility, denial, suspension, and
24 revocation of certification. Standards may include more than one level of certification for persons
25 and business entities, any combination of academic background, professional experience, testing,

1 or other technical professional licenses. Any person or business entity who practices without
2 certification pursuant to this section is guilty of a Class 1 misdemeanor.

3 Section 73. No person or business entity may perform environmental technical services
4 without certification. A violation of this section is a Class 1 misdemeanor.

5 Section 74. That §§ 36-18-4.1 to 36-18-73, inclusive, be repealed.

6 Section 75. All licenses and enrollments in effect on July 1, 1999, and issued pursuant to
7 chapter 36-18, are continued for the balance of the term for which last issued.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Commerce. H.J. 318

4 2/9/99 Scheduled for Committee hearing on this date.

5 2/16/99 Scheduled for Committee hearing on this date.

6 2/16/99 Commerce Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 527

7 2/18/99 Motion to Amend, Passed, AYES 37, NAYS 29. H.J. 623

8 2/18/99 House of Representatives Do Pass Amended, Failed, AYES 39, NAYS 27. H.J. 624

9 2/18/99 Intent to reconsider. H.J. 625

10 2/19/99 House of Representatives Reconsidered, AYES 64, NAYS 5. H.J. 637

11 2/19/99 House of Representatives Placed on Calendar. H.J. 637

12 2/19/99 Motion to Amend, Passed. H.J. 646

13 2/19/99 House of Representatives Do Pass Amended, Passed, AYES 58, NAYS 9. H.J. 648

14 2/19/99 House of Representatives Title Amended Passed. H.J. 648

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0223

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB49** - 2/22/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to repeal the subsequent injury fund.

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

3 Section 1. That chapter 62-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Administration of the subsequent injury fund by the Division of Insurance and reimbursement
6 of complete and valid claims shall continue until approved, denied, or settled. Any claim for
7 reimbursement from the subsequent injury fund shall be filed by June 30, 1999. Only those claims
8 timely filed with the division by June 30, 1999, pursuant to the requirements of § 62-4-34.1 in
9 effect prior to July 1, 1999, and completed by October 1, 1999, pursuant to the requirements set
10 forth in § 62-4-34.4 in effect prior to July 1, 1999, shall be eligible for reimbursement from the
11 subsequent injury fund. Any claim timely filed by June 30, 1999, and completed by October 1,
12 1999, as set forth in this section, shall be approved or denied by the division pursuant to the
13 requirements of §§ 62-4-34 to 62-4-36.3, inclusive, in effect prior to July 1, 1999. The division
14 shall continue to make any necessary assessments pursuant to the requirements set forth in § 62-
15 4-35 in effect prior to July 1, 1999, until all eligible claims completed as set forth in this section
16 that are approved by the division or determined by the court to be eligible for reimbursement are

1 paid, and until all matters in litigation concerning the subsequent injury fund are resolved. Any
2 claim in matters being litigated concerning the subsequent injury fund is not eligible for interest
3 or costs. Any remaining balance in the fund after all obligations of the fund have been satisfied
4 shall be deposited in the general fund. Priority of payment shall be determined as of the date and
5 time they are determined by the division to be complete and valid. No claim against the
6 subsequent injury fund is vested until it is complete as set forth in this section. Any completed
7 claim regardless of the date of injury or the date of notice of claim is subject to the two-thirds
8 method of reimbursement pursuant to § 62-4-34 in effect prior to July 1, 1999.

9 Section 2. That § 62-4-34 be repealed.

10 ~~—62-4-34. If an employee who has previously sustained an injury, or suffers from a preexisting~~
11 ~~condition, receives a subsequent compensable injury resulting in additional permanent partial or~~
12 ~~permanent total disability so that the degree or percentage of disability caused by the~~
13 ~~combination of the subsequent injury and the preexisting injury or condition is substantially~~
14 ~~greater than that which resulted from the last injury, considered alone, and if the employee is~~
15 ~~entitled to receive compensation on the basis of the combined disabilities, the employer shall pay~~
16 ~~all medical and hospital expenses and compensation provided by this title. The employer shall be~~
17 ~~reimbursed from the "subsequent injury fund" for two-thirds of all compensation, medical and~~
18 ~~hospital expenses paid to or on behalf of the injured employee due to the subsequent injury. If~~
19 ~~the subsequent compensable injury of the employee results in the death of the employee and it~~
20 ~~has been determined that the death would not have occurred except for the preexisting disability,~~
21 ~~the employer shall pay all compensation provided by this title.~~

22 Section 3. That § 62-4-34.1 be repealed.

23 ~~—62-4-34.1. Any claim against the subsequent injury fund shall be filed with the division of~~
24 ~~insurance within ninety days from the date of the final decision by the department that a~~
25 ~~compensable injury exists resulting in additional permanent partial or permanent total disability,~~

1 or approval by the department of settlement between the parties. No claim may be filed prior to
2 a decision or approval of settlement from the department. The division shall conduct an
3 investigation and make a decision on the claim within thirty days of the filing of a complete claim
4 as set forth in § 62-4-34.4 or within a time agreed upon between the claimant and the
5 department.

6 Section 4. That § 62-4-34.2 be repealed.

7 ~~62-4-34.2. If the division denies a claim made against the subsequent injury fund, the~~
8 ~~employer may request a hearing. The hearing shall be conducted by a hearing examiner appointed~~
9 ~~by the secretary of labor. The attorney general shall represent the subsequent injury fund. The~~
10 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

11 Section 5. That § 62-4-34.4 be repealed.

12 ~~62-4-34.4. A claim is considered complete if it contains records, reports, or any other~~
13 ~~evidence which shows the following:~~

14 ~~(1) The claim was filed with the appropriate agency within ninety days from the date a~~
15 ~~decision or approval of an agreement is obtained from the department;~~

16 ~~(2) The final decision or approved agreement from the department finding that the injury~~
17 ~~is a subsequent injury and is a compensable injury resulting in additional permanent~~
18 ~~partial or permanent total disability;~~

19 ~~(3) The total amount of compensation, medical and hospital expenses, paid to or on~~
20 ~~behalf of the employee by the employer if self insured, or the insurance carrier of an~~
21 ~~employer;~~

22 ~~(4) Reimbursement requested by specific amount, and the calculations which justify the~~
23 ~~amount requested;~~

24 ~~(5) Medical documentation specifically setting forth that the employee incurred any prior~~
25 ~~injury, compensable or noncompensable, which caused disability;~~

1 ~~— (6) — Medical documentation specifically setting forth the degree or percentage of disability~~
2 ~~attributable to any prior injury, and the reasons for arriving at those determinations;~~

3 ~~— (7) — Medical documentation specifically setting forth that the employee incurred a~~
4 ~~compensable subsequent injury which caused additional permanent partial or~~
5 ~~permanent total disability;~~

6 ~~— (8) — Medical documentation specifically setting forth the degree or percentage of disability~~
7 ~~reasonably attributable to the subsequent injury standing alone, as if no other injury~~
8 ~~had occurred, and the reasons for arriving at those determinations;~~

9 ~~— (9) — Medical documentation specifically setting forth the degree or percentage of disability~~
10 ~~attributable to the combined injuries that also establishes that the disability attributable~~
11 ~~to the combined injuries is substantially greater than the disability attributable to the~~
12 ~~subsequent injury standing alone, as if no other injury had occurred, and the reasons~~
13 ~~for arriving at those determinations;~~

14 ~~— (10) — If the degree or percentage of disability attributable to the combined injuries is greater~~
15 ~~than the sum total of the degree or percentage of disability attributable to any prior~~
16 ~~injury standing alone and the subsequent injury standing alone, supporting medical~~
17 ~~documentation, including vocational rehabilitative evaluations and reports, if~~
18 ~~applicable; and~~

19 ~~— (11) — Any other information deemed pertinent by the Division of Insurance during the~~
20 ~~course of its continuing investigation of the merits of a claim.~~

21 ~~— An incomplete claim is considered filed if filed within the ninety-day statute of limitations~~
22 ~~established in § 62-4-34.1, but the thirty days for completion of the investigation of the claim~~
23 ~~does not begin to run until the claim is complete.~~

24 Section 6. That § 62-4-34.5 be repealed.

25 ~~— 62-4-34.5. All claim reimbursements, costs and expenses, including attorney fees and~~

1 ~~employee salaries incurred exclusively for defending and administering the subsequent injury~~
2 ~~fund, shall be paid from the fund. All claim reimbursements from the subsequent injury fund are~~
3 ~~continuously appropriated.~~

4 Section 7. That § 62-4-34.6 be repealed.

5 ~~— 62-4-34.6. No governmental entity located within the state which elects to exercise the~~
6 ~~exemption from the insurance or security requirements specified in § 62-5-6 is eligible for~~
7 ~~participation in the subsequent injury fund for the purpose of assessment and reimbursement.~~

8 Section 8. That § 62-4-35 be repealed.

9 ~~— 62-4-35. In case of the death of an employee covered by this title, if no person is entitled to~~
10 ~~compensation, the employer, or if insured, the employer's insurance carrier, shall pay to the~~
11 ~~Division of Insurance the sum of five hundred dollars to be deposited in the subsequent injury~~
12 ~~fund. The Division of Insurance shall assess each insurance carrier of every employer, or every~~
13 ~~employer, if self-insured, an amount equal to four percent of all workers' compensation, including~~
14 ~~medical, hospital, and indemnity expenses, paid to or on behalf of an injured employee during~~
15 ~~the calendar year next preceding the due date of the payments, which shall be deposited in the~~
16 ~~subsequent injury fund. The assessment shall be made at any time the fund falls below two~~
17 ~~hundred thousand dollars. The payment shall be made immediately upon notification to the~~
18 ~~carrier or self-insured by the division. Each insurance carrier of every employer, or every~~
19 ~~employer, if self-insured, shall be required to participate in the subsequent injury fund and pay~~
20 ~~assessments except as provided in § 62-4-34.6. Failure of an insurance carrier of an employer,~~
21 ~~or an employer, if self-insured, to respond within twenty days of receipt to a notice of assessment~~
22 ~~from the Division of Insurance shall, unless good cause is shown, have the effect of making that~~
23 ~~insurance carrier of an employer or a self-insured employer ineligible for reimbursement from the~~
24 ~~subsequent injury fund for any subsequent injury incurred or claim made from the date the~~
25 ~~assessment is made for a period of one year subsequent to the date the assessment is actually~~

1 ~~paid. Failure of an insurance carrier of an employer, or an employer, if self-insured, to pay an~~
2 ~~assessment other than for good cause shown, shall also be grounds for administrative action to~~
3 ~~be taken by the division or department against an insurance carrier of an employer or an~~
4 ~~employer, if self-insured, concerning their status and authority to continue being authorized~~
5 ~~insurance carriers or self-insured employers in the State of South Dakota.~~

6 Section 9. That § 62-4-36.1 be repealed.

7 ~~—62-4-36.1. The Division of Insurance shall serve as administrator of the subsequent injury~~
8 ~~fund.~~

9 Section 10. That § 62-4-36.2 be repealed.

10 ~~—62-4-36.2. If the Division of Insurance determines that administrative action is necessary~~
11 ~~against the continued authorization of the status and authority of an insurance carrier of an~~
12 ~~employer for failure to pay an assessment other than for good cause shown, the division shall~~
13 ~~commence administrative action pursuant to the provisions of Title 58 and chapter 1-26.~~

14 Section 11. That § 62-4-36.3 be repealed.

15 ~~—62-4-36.3. If the Division of Insurance determines that administrative action is necessary~~
16 ~~against the continued authorization of the status and authority of a self-insured employer for~~
17 ~~failure to pay an assessment other than for good cause shown, and that self-insured employer has~~
18 ~~been issued a certificate of exemption by the Department of Labor pursuant to § 62-5-5, the~~
19 ~~division shall commence administrative action by petitioning the department for a hearing. The~~
20 ~~hearing shall be conducted by a hearing examiner appointed by the secretary of labor. The~~
21 ~~attorney general or counsel for the division shall represent the subsequent injury fund. The~~
22 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

23 Section 12. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 An employer is civilly liable for wrongful discharge if it terminates an employee in retaliation

1 for filing a lawful workers' compensation claim. The burden of proof is on the employee to prove
2 the dismissal was in retaliation for filing a workers' compensation claim.

3 Section 13. No employer may discriminate in hiring any prospective employee due to a
4 preexisting injury if the preexisting injury does not affect the prospective employee's ability to
5 perform the work for which the prospective employee is being hired.

6 Section 14. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If an employee who has previously sustained an injury, or suffers from a preexisting
9 condition, receives a subsequent compensable injury, the current employer shall pay all medical
10 and hospital expenses and compensation provided by this title.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Commerce. S.J. 24

3 1/14/99 Scheduled for Committee hearing on this date.

4 1/19/99 Scheduled for Committee hearing on this date.

5 1/19/99 Commerce Deferred to another day.

6 1/21/99 Scheduled for Committee hearing on this date.

7 1/26/99 Scheduled for Committee hearing on this date.

8 1/26/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

9 1/27/99 Referred to Commerce. S.J. 212

10 1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1.

11 2/2/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 302

12 2/3/99 First read in House and referred to Judiciary. H.J. 356

13 2/19/99 Scheduled for Committee hearing on this date.

14 2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 634

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

883C0365

HOUSE ENGROSSED NO. **SB65** - 2/25/99

Introduced by: Senator Everist and Representative Putnam

1 FOR AN ACT ENTITLED, An Act to codify the legislation passed in 1998.

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

3 Section 1. That § 2-16-13 be amended to read as follows:

4 2-16-13. The official code of laws of the State of South Dakota, which may be referred to
5 as the code, consists of all the statutes of a general and permanent nature contained in:

6 (1) The 1978 revision of volume 1;

7 (2A) The 1992 revision of volume 2A;

8 (2B) The 1994 revision of volume 2B;

9 (3A) The 1993 revision of volume 3A;

10 (3B) The 1995 revision of volume 3B;

11 (4A) The 1996 revision of volume 4A;

12 (4B) The 1995 revision of volume 4B;

13 (5) The 1991 revision of volume 5;

14 (6) The 1984 revision of volume 6;

15 (7A) The 1995 revision of volume 7A;

16 (7B) The 1987 revision of volume 7B;

17 (8A) The ~~1988~~ 1998 revision of volume 8A;

- 1 (8B) The ~~1988~~ 1998 revision of volume 8B;
- 2 (9A) The 1992 revision of volume 9A;
- 3 (9B) The 1997 revision of volume 9B;
- 4 (10A) The 1984 revision of volume 10A;
- 5 (10B) The ~~1989~~ 1998 revision of volume 10B;
- 6 (11A) The 1994 revision of volume 11A;
- 7 (11B) The 1992 revision of volume 11B;
- 8 (11C) The 1994 revision of volume 11C;
- 9 (12A) The 1996 revision of volume 12A;
- 10 (12B) The 1991 revision of volume 12B;
- 11 (13A) The 1997 revision of volume 13A;
- 12 (13B) The 1987 revision of volume 13B;
- 13 (14A) The 1991 revision of volume 14A;
- 14 (14B) The 1993 revision of volume 14B;
- 15 (15A) The 1990 revision of volume 15A;
- 16 (15B) The 1997 revision of volume 15B;
- 17 (16A) The 1996 revision of volume 16A;
- 18 (16B) The 1993 revision of volume 16B;
- 19 (17) The 1989 revision of the Parallel Tables volume;
- 20 (18) The 1997 pocket supplements; and
- 21 (19) The ~~November 1997~~ February 1999 Advance Code Service of the South Dakota
- 22 Codified Laws beginning with Title 1, chapter 1-1 and ending with Title 62, chapter
- 23 62-9.

24 Section 2. That § 2-16-15 be amended to read as follows:

25 2-16-15. No provision of the code enacted by § 2-16-13, as to which any action or

1 proceeding, civil or criminal, has been commenced prior to July 1, ~~1998~~ 1999, to determine
2 whether or not such provision was constitutionally enacted, is validated by the enactment of this
3 code.

4 The enactment of the code:

- 5 (1) Does not affect the validity of any transaction;
- 6 (2) Does not impair the curative or legalizing effect of any statute; and
- 7 (3) Does not release or extinguish any penalty, confiscation, forfeiture, or liability;
- 8 which accrued, occurred, or took effect prior to the time the code took effect.

9 Section 3. That § 2-16-16 be amended to read as follows:

10 2-16-16. All statutes, other than this code, enacted at the ~~1998~~ 1999 session of the
11 Legislature shall be deemed to have been enacted subsequently to the enactment of this code. If
12 any such statute repeals, amends, contravenes, or is inconsistent with the provisions of this code,
13 the provisions of the statute shall prevail. Any enactment in the ~~1998~~ 1999 session of the
14 Legislature which cites South Dakota Codified Laws for the purpose of amendment or repeal,
15 shall be construed as having reference to the code enacted by § 2-16-13.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Judiciary. S.J. 27

3 1/20/99 Scheduled for Committee hearing on this date.

4 1/20/99 Judiciary Do Pass, Passed, AYES 7, NAYS 0. S.J. 125

5 1/20/99 Judiciary Place on Consent Calendar.

6 1/21/99 Senate Do Pass, Passed, AYES 35, NAYS 0. S.J. 147

7 1/22/99 First read in House and referred to State Affairs. H.J. 131

8 2/22/99 Scheduled for Committee hearing on this date.

9 2/22/99 State Affairs Do Pass, Passed, AYES 13, NAYS 0. H.J. 659

10 2/23/99 House of Representatives Deferred to another day. H.J. 725

11 2/24/99 Motion to Amend, Passed. H.J. 757

12 2/24/99 House of Representatives Do Pass Amended, Passed, AYES 68, NAYS 0. H.J. 758

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

880C0473

HOUSE ENGROSSED NO. **SB128** - 2/25/99

Introduced by: Senators Vitter, Albers, Ham, and Madden and Representatives Hennies,
Duniphan, Jaspers, and Lintz

1 FOR AN ACT ENTITLED, An Act to criminalize the possession of certain contraband in
2 juvenile correctional facilities and the delivery of certain contraband to juvenile correctional
3 facilities.

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

5 Section 1. No alcoholic beverages, controlled substances as defined by chapter 34-20B,
6 hallucinogens, marijuana, or weapons as defined in subdivision 22-1-2(10), may be possessed by
7 any juvenile in or on the grounds of a juvenile correctional facility or jail. No prescription or
8 nonprescription drugs may be possessed by any juvenile in or on the grounds of a juvenile
9 correctional facility or jail except by order of a physician. Such order shall be in writing and for
10 a definite period. A violation of this section is an act of delinquency.

11 Section 2. No employee or other person may deliver or procure to be delivered, or have in
12 such person's possession with intent to deliver, to any juvenile in or on the grounds of any
13 juvenile correctional facility or jail, or deposit or conceal in or on the grounds of a juvenile
14 correctional facility or jail, or in any mode of transport entering the grounds of a juvenile
15 correctional facility and its ancillary facilities used to house juveniles, any article or thing contrary
16 to § 24-11-47 with intent that any juvenile obtain or receive the same. A violation of this section

1 is a Class 6 felony.

2 Section 3. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as

3 follows:

4 A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined

5 in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections

6 under § 1-15-1.4.

1 **BILL HISTORY**

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

3 1/27/99 Scheduled for Committee hearing on this date.

4 1/27/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 209

5 1/29/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 264

6 2/1/99 First read in House and referred to committee assignment waived. H.J. 300

7 2/2/99 Referred to Judiciary. H.J. 332

8 2/17/99 Scheduled for Committee hearing on this date.

9 2/17/99 Judiciary Deferred to another day.

10 2/19/99 Scheduled for Committee hearing on this date.

11 2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 633

12 2/23/99 House of Representatives Deferred to another day. H.J. 725

13 2/24/99 Motion to Amend, Passed. H.J. 759

14 2/24/99 House of Representatives Do Pass Amended, Passed, AYES 65, NAYS 3. H.J. 760

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

574C0747

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB171** - 2/22/99

Introduced by: Senators Dunn (Rebecca), Duxbury, Hutmacher, Kloucek, Lange, Lawler, Reedy, and Symens and Representatives Volesky, Apa, Brown (Jarvis), Diedtrich (Elmer), Duniphan, Engbrecht, Hennies, Koskan, McIntyre, Patterson, Richter, and Sutton (Daniel)

1 FOR AN ACT ENTITLED, An Act to require the suspension of driving privileges in connection
2 with certain acts of vandalism.

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

4 Section 1. That chapter 22-34 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to any other penalty imposed by law, if any person is convicted of violating, or
7 any person under the age of eighteen is adjudicated to have violated, the provisions of § 22-34-1
8 or 22-34-27, and if the crime occurred while driving a motor vehicle or while being a passenger
9 in a motor vehicle, the court shall order the driving privileges of such person suspended for:

- 10 (1) Thirty days, if the damage is two hundred dollars or less;
- 11 (2) Ninety days, if the damage is over two hundred dollars but less than one thousand
12 dollars; and
- 13 (3) One hundred eighty days, if the damage is one thousand dollars or more.

14 For the purposes of this Act, all acts of vandalism that are part of a course of conduct shall
15 be considered one violation for the purposes of determining damage. For the purposes of this

1 Act, all acts of vandalism that are part of a course of conduct involving driving a motor vehicle
2 or being a passenger in a motor vehicle shall be deemed to have occurred while driving a motor
3 vehicle or being a passenger in a motor vehicle.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to Transportation. S.J. 215

3 2/2/99 Scheduled for Committee hearing on this date.

4 2/4/99 Scheduled for Committee hearing on this date.

5 2/4/99 Transportation Do Pass, Passed, AYES 6, NAYS 1. S.J. 333

6 2/5/99 Senate Deferred to another day. S.J. 358

7 2/8/99 Senate Do Pass, Passed, AYES 21, NAYS 12. S.J. 376

8 2/9/99 First read in House and referred to Judiciary. H.J. 449

9 2/17/99 Scheduled for Committee hearing on this date.

10 2/17/99 Judiciary Deferred to another day.

11 2/19/99 Scheduled for Committee hearing on this date.

12 2/19/99 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 633

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

804C0836

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SCR8** - 2/23/99

Introduced by: Senators Dennert, Benson, Bogue, Daugaard, Flowers, Hutmacher, Kloucek, Lange, Lawler, Reedy, Symens, and Valandra and Representatives Burg, Apa, Cutler, Duenwald, Hagen, Haley, Jaspers, Kazmerzak, Lucas, Nachtigal, Sutton (Daniel), Waltman, and Weber

1 A CONCURRENT RESOLUTION, Expressing opposition to the proposed merger between
2 Cargill, Incorporated and Continental Grain Corporation.

3 WHEREAS, American livestock and grain producers currently face unprecedented
4 challenges to their ability to earn their livelihood; and

5 WHEREAS, many of the problems that livestock producers face are the result of anti-
6 competitive pricing and marketing practices; and

7 WHEREAS, it is extremely important that independent producers have confidence that there
8 is real competition when they begin to make production and marketing decisions for their
9 livestock; and

10 WHEREAS, a merger has been proposed between Cargill, Incorporated, an international
11 farm and food processor, and Continental Grain Corporation, a worldwide grains company; and

12 WHEREAS, the proposed merger between Cargill and Continental continues the trend of
13 small producers and family farmers being adversely affected by the operations of giant
14 corporations and exacerbates problems caused by diminishing levels of competition in the
15 agriculture:

1 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-fourth Legislature
2 of the State of South Dakota, the House of Representatives concurring therein, that the South
3 Dakota Legislature strongly urges the United States Congress, the United States Department of
4 Justice, and the United States Department of Agriculture to investigate the proposed merger
5 between Cargill, Incorporated, and Continental Grain Corporation for possible antitrust
6 violations and other adverse impacts on the agricultural economy.

1 **BILL HISTORY**

2 2/11/99 Scheduled for Committee hearing on this date.

3 2/11/99 Agriculture and Natural Resources Adopt Resolution, AYES 9, NAYS 0. S.J. 444

4 2/12/99 Senate Adopt Resolution, AYES 31, NAYS 1. S.J. 478

5 2/22/99 Scheduled for Committee hearing on this date.

6 2/22/99 Concurred in resolution as amended, AYES 13, NAYS 0. H.J. 660