

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

822D0133

SENATE BILL NO. 88

Introduced by: Senators Hutmacher, Dennert, Dunn (Rebecca), Duxbury, Flowers, Kloucek, Lange, Lawler, Moore, Olson, Reedy, Symens, and Valandra and Representatives Burg, Cerny, Chicoine, Fischer-Clemens, Haley, Hanson, Kazmerzak, Koetzle, Lockner, Lucas, McIntyre, Patterson, Sutton (Daniel), Volesky, and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for the establishment and operation of the South
2 Dakota Premium Livestock Board.

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

4 Section 1. Terms used in this Act mean:

- 5 (1) "Board," the South Dakota Premium Livestock Marketing Board;
6 (2) "Fund," the South Dakota premium livestock marketing fund.

7 Section 2. The South Dakota Premium Livestock Marketing Board is hereby established for
8 the purpose of promoting the production and processing of premium livestock in South Dakota
9 and marketing, or assisting in marketing, the products of such livestock as certified South
10 Dakota livestock and livestock products.

11 Section 3. The board of directors of the South Dakota Premium Livestock Marketing Board
12 consists of seven members appointed by the Governor. No more than four members may be of
13 the same political party. For the initial board, the Governor shall appoint four members to
14 four-year terms and three members to two-year terms. Thereafter, the term of each member is
15 four years. A member appointed to fill a vacancy occurring other than by expiration of a term

1 is appointed for the remainder of the unexpired term.

2 Section 4. The board shall administer the provisions of this Act and make annual
3 recommendations to the Legislature and Governor on programs to develop and promote
4 agricultural livestock production, processing, and marketing activity in South Dakota. The board
5 shall promote the development, production, and processing of premium South Dakota livestock
6 and livestock products and assist in the marketing of such livestock and livestock products.

7 Section 5. The board shall annually elect from its members any officers it deems advisable.
8 A majority of the members constitutes a quorum. The board shall meet at the call of the chair or
9 a majority of the members but shall meet at least four times annually.

10 Section 6. No member of the board may be compensated for board services but each may
11 receive an allowance per day for the time spent in attending and traveling to and from meetings
12 of the commission and expenses and travel allowance pursuant to § 3-9-2.

13 Section 7. There is hereby established in the state treasury the South Dakota premium
14 livestock marketing fund. Money may be deposited in the fund from all lawful sources and is
15 continuously appropriated to the board to carry out the purposes of this Act. Any interest earned
16 on money in the fund shall be deposited in the fund.

17 Section 8. The board may purchase or otherwise acquire premium livestock or premium
18 livestock products for processing and for marketing as certified premium South Dakota livestock
19 and livestock products. In selecting an establishment to slaughter or process the livestock, or
20 both, the board shall give preference to establishments located in South Dakota that are
21 federally-inspected under the Federal Meat Inspection Act as amended to January 1, 2000. The
22 board shall attempt to market such livestock products as certified premium South Dakota
23 livestock products and may use any lawful marketing plans, strategies, product names, and
24 advertising methods and campaigns as the board deems appropriate. The board may retain
25 ownership of the livestock or livestock products or may sell or dispose of the livestock or

1 livestock products at any point in the livestock production, processing, or marketing process.

2 Section 9. Any meat processing or slaughtering establishment or other entity subject to state
3 inspection pursuant to chapter 39-5 is eligible for a loan without interest from the revolving
4 economic development and initiative fund established pursuant to § 1-16G-3. The loan may only
5 be used for purposes of upgrading the entity's facilities and operations in an effort to qualify the
6 facility for federal inspection under the Federal Meat Inspection Act as amended to January 1,
7 2000.

8 Section 10. The board may:

- 9 (1) Have perpetual succession as a body politic and corporate exercising essential public
10 functions;
- 11 (2) Adopt, amend, and repeal bylaws and regulations not inconsistent with this Act to
12 regulate its internal affairs, carry into effect the powers and purposes of the board,
13 and conduct its business;
- 14 (3) Sue and be sued in its own name;
- 15 (4) Have an official seal and alter it at will;
- 16 (5) Maintain an office at such places within the state as it may designate;
- 17 (6) Make and execute contracts and all other instruments necessary or convenient for the
18 performance of its duties and the exercise of its powers and functions under this Act;
- 19 (7) Employ fiscal consultants, attorneys, and such other consultants and employees as
20 may be required and contract with the South Dakota Department of Agriculture or
21 any other federal, state, or local agency to provide staff and support services;
- 22 (8) Procure insurance against any loss in connection with any property and other assets
23 in such amounts and from such insurers as it may deem advisable;
- 24 (9) Borrow money and issue bonds as provided in this Act;
- 25 (10) Procure insurance, letters of credit, guarantees, or other credit enhancement

1 arrangements from any public or private entities, including any department, agency,
2 or instrumentality of the United States, for payment of all or any portion of any bonds
3 issued by the board, including the power to pay premiums, fees, or other charges on
4 any such insurance, letters of credit, guarantees, or credit arrangements;

5 (11) Receive and accept from any source aid or contributions of moneys, property, labor,
6 or other things of value to be held, used, and applied to carry out the purposes of this
7 Act subject to the conditions upon which the grants or contributions are made,
8 including gifts or grants from any department, agency, or instrumentality of the United
9 States for any purpose consistent with the provisions of this Act;

10 (12) Enter into agreements with any department, agency, or instrumentality of the United
11 States or this state and with lenders or others and enter into loan agreements, sales
12 contracts and leases, or other financing arrangements to promote the development,
13 production, processing, or marketing of premium South Dakota livestock and
14 livestock products;

15 (13) Enter into contracts or agreements with lenders for the servicing and processing of
16 loans or with any person or entity providing credit enhancement for the bonds of the
17 board;

18 (14) Provide technical assistance to local public bodies and to profit and nonprofit entities
19 in the production, processing, and marketing of South Dakota livestock and distribute
20 data and information concerning the production, processing, and marketing of South
21 Dakota livestock;

22 (15) To the extent permitted under its contract with the holders of bonds of the board,
23 consent to any modification with respect to the rate of interest, time, and payment of
24 any installment of principal or interest, or any other term of any contract, loan, loan
25 note, loan note commitment, contract, lease, or agreement of any kind to which the

- 1 board is a party;
- 2 (16) Invest proceeds of any bonds not needed for immediate disbursement in any
3 investment permitted under section 18 of this Act;
- 4 (17) Collect fees and charges, as the board determines to be reasonable, in connection with
5 its activities undertaken pursuant to this Act;
- 6 (18) Cooperate with and exchange services, personnel, and information with any federal,
7 state, or local governmental agency;
- 8 (19) Sell, at public or private sale, with or without public bidding, any livestock, livestock
9 products, or other property held by the board;
- 10 (20) Foreclose any mortgages, deeds of trust, notes, debentures, bonds, and other security
11 interests held by it, either by action or by exercise of a power of sale, and to sell the
12 equity of redemption in such security interests in accordance with the terms of the
13 instruments and applicable state law, and to take all other actions necessary to enforce
14 any obligation held by it;
- 15 (21) Purchase the equity of redemption in any such mortgage, deed of trust, debenture,
16 bond, or other security interest;
- 17 (22) Mortgage, pledge, assign, or grant security interests in any or all of its notes or other
18 instruments, contract rights, or other property, including any receipts from insurance
19 on or guarantees of any of its notes or other instruments, as security for the payment
20 of the principal of, premium, if any, and interest on any bonds issued by the board, or
21 as security for any credit enhancement or other agreements made in connection
22 therewith, whether then owned or thereafter acquired, and to pledge the revenues
23 from which the bonds are payable and any other available revenues or assets as
24 security for the payment of the principal of, premium, if any, and interest on the bonds
25 and any agreements made in connection therewith;

- 1 (23) Enter into agreements for management on behalf of the board of any of its properties
2 upon such terms and conditions as may be mutually agreeable;
- 3 (24) Sell, exchange, donate, and convey any or all of its properties if the board finds such
4 action to be in furtherance of the purposes of this Act;
- 5 (25) Do any act and execute any instrument which in the board's judgment is necessary or
6 convenient to the exercise of the powers granted by this Act or reasonably implied
7 from it;
- 8 (26) Assign the loans or security documents or other instruments to bondholders as
9 security without recourse; and
- 10 (27) Acquire, hold, and dispose of real and personal property for its purposes.

11 Section 11. The board may:

- 12 (1) Borrow funds and issue its bonds from time to time and in such principal amounts as
13 the board deems necessary to carry out its purposes under this Act, the payment of
14 interest on its bonds, the establishment of reserves to secure the bonds, and payment
15 of other expenses necessary, convenient and incident to fulfillment of its purposes;
- 16 (2) Issue from time to time bonds to renew or to pay bonds, including the interest or
17 premium thereon, and whenever it deems refunding expedient, to refund any bonds
18 and to pay costs of issuance of such refunding bonds by the issuance of new bonds,
19 whether the bonds to be refunded have or have not matured, and to issue bonds partly
20 to refund outstanding bonds and partly for any other of its corporate purposes. The
21 refunding bonds may be sold and the proceeds applied to the purchase, redemption,
22 or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

23 Section 12. Bonds issued pursuant to this Act are special obligations of the board, payable
24 solely out of, and secured by a pledge of, the assets, revenues, and other receipts designated in
25 the resolution of the board or instrument under which the bonds are issued. The bonds may be

1 additionally secured by a pledge of any grant, contribution, or guarantee from the federal
2 government or agency thereof or any corporation, association, institution, or person or a pledge
3 of any money, income, or revenue of the board from any source.

4 Section 13. Obligations issued under the provisions of this Act do not constitute a debt,
5 liability, or obligation of the state or of any other political subdivision of the state, nor a pledge
6 of the full faith and credit of the state or any other political subdivision, but are payable solely
7 as provided in section 12 of this Act. Each obligation issued under this Act shall contain on its
8 face a statement to the effect that neither the full faith and credit, nor the taxing power of the
9 state or of any political subdivision of the state is pledged to the payment of the principal of or
10 the interest on such obligation. All obligations of the board issued under the provisions of this
11 Act are board bonds or notes and are not general obligations of the State of South Dakota.

12 Section 14. The bonds shall be authorized by a resolution of the board, shall bear such date
13 and shall mature at such time as the resolution or the instrument providing for the issuance of
14 such bonds may provide, ~~except that.~~ However, no bond may mature more than fifty years from
15 the date of its issue. The bonds shall bear interest at such rate, be in such denominations, be in
16 such form, either coupon or registered, be evidenced by physical certificates or uncertificated,
17 carry such registration privileges, be executed in such manner, be payable in such medium of
18 payment, at such place, and be subject to such terms of redemption, including redemption prior
19 to maturity, as the resolution or the instrument providing for the issuance of such bonds may
20 provide. No other state laws relating to the offer, sale, or issuance of revenue bonds or any other
21 security apply to bonds issued by the board. Bonds of the board may be sold by the board at
22 public or private sale, and at such price as the board determines.

23 The bonds of the board may bear interest at a fixed, variable, or adjustable rate and are
24 convertible from one method of calculating interest to another. The interest rate may be based
25 upon any formula or contractual arrangement for the periodic determination of interest rates, all

1 as may be established in the resolution or instrument providing for the issuance of such bonds.
2 Any such formula or contractual arrangement may authorize the delegation of the interest rate
3 setting function to a third party subject only to such standards or criteria as are set forth in the
4 resolution or instrument providing for the issuance of the bonds. In no event may the setting or
5 resetting of the rate of interest on the board's bonds or the conversion from one method of
6 determining interest to another constitute a reissuance or refunding of bonds issued by the board
7 if such action is taken in accordance with the resolution or instrument providing for the initial
8 issuance of the bonds.

9 The board may issue noninterest bearing bonds or bonds bearing interest at a rate of zero
10 percent and sell the bonds at a price as may be determined by the board.

11 Section 15. Any pledge made by the board is valid and binding from the time the pledge is
12 made. The revenue, money, or properties so pledged and thereafter received by or on behalf of
13 the board are immediately subject to the lien of the pledge without any physical delivery thereof
14 or further act. The lien of any such pledge is valid and binding as against all parties having claims
15 of any kind in tort, contract, or otherwise against the board, irrespective of whether the parties
16 have notice. Neither the resolution nor the trust indenture, if any, nor any other instrument by
17 which a pledge is created need be recorded.

18 Section 16. The board, subject to such agreements with bondholders as may then exist, may
19 purchase and cancel its bonds out of any funds available therefor, at any reasonable price which,
20 if the bonds are then redeemable, may not exceed the redemption price then applicable plus
21 accrued interest to the next interest payment thereon.

22 Section 17. The bonds may be secured by a trust indenture by and between the board and a
23 corporate trustee which may be any bank having the power of a trust company or any trust
24 company within or without the state. The trust indenture may contain such provisions for
25 protecting and enforcing the rights and remedies of the bondholders as may be reasonable and

1 proper and not in violation of law, including covenants setting forth the duties of the board in
2 relation to the exercise of its powers and the custody, safekeeping, and application of all money.
3 The board may provide by the trust indenture for the payment of the proceeds of the bonds and
4 the revenue to the trustee under the trust indenture or other depository, and for the method of
5 disbursement thereof, with such safeguards and restrictions as the board may determine. All
6 expenses incurred in carrying out the trust indenture may be treated as a part of the operating
7 expenses of the board.

8 Section 18. Any proceeds of bonds not needed for immediate disbursement may be held
9 uninvested or invested in any one or more of the following:

- 10 (1) Obligations issued or guaranteed by the United States of America;
- 11 (2) Obligations issued or guaranteed by any person controlled or supervised by and acting
12 as an instrumentality of the United States of America pursuant to board granted by
13 the Congress of the United States of America;
- 14 (3) Obligations issued or guaranteed by any state of the United States of America, or the
15 District of Columbia, or any political subdivision of any such state or district;
- 16 (4) Commercial paper or corporate debt obligations having a rating by Standard & Poor's
17 Corporation or Moody's Investors Service equal to an "A" or higher rating assigned
18 by such organization;
- 19 (5) Banker's acceptances drawn on and accepted by any bank, trust company, or national
20 banking association organized under the laws of any state or of the United States of
21 America;
- 22 (6) Repurchase agreements fully secured by obligations issued or guaranteed by the
23 United States of America or by any person controlled or supervised by and acting as
24 an instrumentality of the United States of America pursuant to board granted by the
25 Congress of the United States of America;

1 (7) Certificates of deposit or time deposits issued by any bank, trust company, or national
2 banking association organized under the laws of any state or of the United States of
3 America;

4 (8) United States dollar-denominated certificates of deposits issued by, or time deposits
5 with, the European subsidiaries of any bank, trust company, or national banking
6 association incorporated or doing business under the laws of the United States of
7 America or one of the states thereof;

8 (9) Certificates or units issued by any mutual fund, unit investment trust, or similar entity
9 evidencing interest in obligations described above.

10 Section 19. Whether or not the bonds are in the form and character of negotiable
11 instruments, such bonds are hereby made negotiable instruments, subject only to provisions of
12 the bonds relating to registration.

13 Section 20. Bonds of the board may be executed by the manual or facsimile signatures of the
14 board members or officers of the board authorized by the resolution of the board to execute such
15 bonds. If the resolution authorizes or directs the affixing of the seal of the board on bonds of the
16 board, the seal or a facsimile may be impressed or imprinted on the bonds. If any board members
17 or officers of the board cease to be members or officers of the board before the delivery of any
18 bonds or coupons signed by them, their signatures or facsimiles are nevertheless valid and
19 sufficient for all purposes, the same as if the members or officers had remained in office until the
20 delivery.

21 Section 21. Neither the members of the board nor any other person executing the bonds
22 issued under this Act is subject to personal liability or accountability by reason of the issuance
23 thereof.

24 Section 22. The state hereby pledges to and agrees with the holder of any bonds issued under
25 this Act that the state will not limit or alter the rights vested in the board to fulfill the terms of

1 any agreements made with the holders or in any way impair the rights or remedies of the holders
2 until the bonds, together with the interest, with interest on any unpaid installments of interest,
3 and all costs and expenses in connection with any action or proceeding by or on behalf of the
4 holders, are fully met and discharged. The board may include this pledge and agreement of the
5 state in any agreement with the holders of the bonds.

6 Section 23. Any member or employee of the board who has, will have, or later acquires a
7 personal interest, direct or indirect, in any transaction with the board shall immediately disclose
8 the nature and extent of such interest in writing to the board as soon as the member or employee
9 has knowledge of such actual or prospective interest. The disclosure shall be entered upon the
10 minutes of the board. Upon such disclosure the member or employee may not participate in any
11 action by the board authorizing the transaction. Actions taken if the member or employee
12 reasonably believed that the member or employee had and would not have any conflict are not
13 invalidated because of such conflict. The fact that a member is also an officer or owner of an
14 organization is not a direct or indirect interest unless:

- 15 (1) The member has an ownership interest of greater than five percent in the organization;
- 16 or
- 17 (2) The transaction in question does not involve all similar organizations, but rather
- 18 involves only the board and the organization.

19 Section 24. The exercise of the powers granted by this Act is in all respects for the benefit
20 of the people of the state, and the board is not required to pay any tax or assessment on any
21 property owned by the board under the provisions of this Act or upon the income therefrom; nor
22 is the board required to pay any transfer tax of any kind on account of instruments recorded by
23 it or on its behalf. Any obligations issued by the board pursuant to this Act, their transfer, and
24 the income therefrom (including any profit made on the sale thereof), is free from taxation by the
25 state or any local unit or political subdivision or other instrumentality of the state.

1 Section 25. The bonds and notes of the board are hereby made securities in which all public
2 officers and bodies of this state and all municipal subdivisions, all insurance companies and
3 associations and other persons carrying on insurance business, all banks, bankers, trust
4 companies, including savings and loan associations, building and loan associations, investment
5 banking companies and other persons carrying on an investment banking business, all
6 administrators, conservators, executors, trustees and other fiduciaries, and all other persons who
7 are now or may hereafter be authorized to invest in bonds or obligations of the state, may
8 properly and legally invest in the bonds and notes of the board funds including capital in their
9 own control or belonging to them. The bonds and notes are also hereby made securities which
10 may be deposited with and may be received by all public officers and bodies of this state and all
11 municipalities and municipal subdivisions for any purpose for which the deposit of bonds or notes
12 or other obligations of this state is now or may hereafter be authorized.

13 Section 26. If, after all indebtedness and other obligations of the board are discharged, the
14 board is dissolved, its remaining assets shall inure to the benefit of the state.

15 Section 27. The board shall submit to the Governor and the Legislature within ninety days
16 of the close of its fiscal year a complete and detailed report setting forth:

- 17 (1) Its operations and accomplishments;
- 18 (2) Its receipts and expenditures during the fiscal year in accordance with the categories
19 or classifications established by the board for its operating and capital outlay
20 purposes;
- 21 (3) Its assets and liabilities at the end of its fiscal year, including a schedule of its loans
22 and commitments and the status of reserve, special, or other funds; and
- 23 (4) A schedule of its notes and bonds outstanding at the end of its fiscal year, together
24 with a statement of the amounts redeemed and incurred during the fiscal year.

25 Section 28. Notwithstanding any provision under the laws of the State of South Dakota, the

1 board in order to accomplish the purposes provided in this Act may perform all acts necessary
2 to comply with the requirements of § 103 of the Internal Revenue Code of 1986, as amended to
3 January 1, 2000, and any regulation promulgated pursuant to § 103 to insure that all interest
4 from bonds issued under this Act are tax exempt. All hearings or acts necessary to comply with
5 § 147(f) of the Internal Revenue Code of 1986, as amended to January 1, 2000, and any
6 regulations promulgated pursuant to § 147(f) are exempt from the requirements and procedures
7 of chapter 1-26.

8 The Governor is the approving representative for the state for the purpose of complying with
9 the applicable provisions of § 147(f) and any regulations promulgated pursuant to § 147(f)
10 necessary to insure that all interest from bonds issued are tax exempt.

11 Section 29. The South Dakota Premium Livestock Marketing Board shall promulgate rules
12 pursuant to chapter 1-26 to provide for the purchase, acquisition, processing, and marketing of
13 premium South Dakota livestock in accordance with the provisions of this Act. The rules shall
14 include the following:

- 15 (1) A definition of premium livestock, including cattle, hogs, and other livestock animals,
16 and criteria to determine whether an animal may be classified as premium livestock;
- 17 (2) The criteria to be met for an animal to be designated as a certified premium South
18 Dakota livestock animal.