



# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

555D0500

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1074** - 2/3/00

Introduced by: Representatives Young, Chicoine, and Diedrich (Larry) and Senators Dunn (Jim) and Reedy

1 FOR AN ACT ENTITLED, An Act to revise municipal special assessment provisions.

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

3 Section 1. That § 9-47-19 be amended to read as follows:

4 9-47-19. The governing body of ~~every~~ each municipality at the time of making its annual tax  
5 levy for other purposes may levy a special assessment for the purpose of maintaining its system  
6 of waterworks. ~~Such~~ The special assessment shall be apportioned as provided in this chapter for  
7 the assessment of the cost of constructing such waterworks; and ~~be~~ certified to the county  
8 auditor and collected as municipal taxes for general purposes.

9 ~~Such~~ No special assessment ~~shall in no year~~ may exceed the sum of ~~four cents~~ one dollar per  
10 front foot against any lot or parcel of abutting property and ~~shall be~~ the special assessment is  
11 subject to review and equalization the same as assessments for general purposes.

12 Funds derived from ~~such~~ a special assessment shall be used only for the purpose for which  
13 it is levied. The State of South Dakota is exempt from the provisions of this section but may,  
14 pursuant to §§ 9-45-30 to 9-45-32, inclusive, be assessed for its apportioned share of the actual  
15 cost of any work under this section at the time the work is done.

16 Section 2. That § 9-48-23 be amended to read as follows:

1 9-48-23. The governing body prior to the assessment of real property pursuant to § 9-48-22  
2 may, by resolution, designate the lots against which ~~said the~~ the assessment is to be levied; and the  
3 amount of the assessment against each lot ~~for such purposes and~~. The resolution shall direct the  
4 director of equalization to add ~~such the~~ the assessment to the general assessment against ~~said the~~  
5 property and ~~to~~ certify ~~said the~~ the assessment together with the regular assessment to the county  
6 auditor to be collected as municipal taxes for general purposes, ~~which~~. The assessment shall be  
7 is subject to review and equalization the same as assessments or taxes for general purposes. ~~Such~~  
8 No assessment ~~shall in no year may~~ may exceed the sum of ~~four cents~~ one dollar per front foot against  
9 any lot or parcel of abutting property. The State of South Dakota is exempt from the provisions  
10 of this section but may, pursuant to §§ 9-45-30 to 9-45-32, inclusive, be assessed for its  
11 apportioned share of the actual cost of any work under this section at the time the work is done.

12 Section 3. That § 9-38-53 be amended to read as follows:

13 9-38-53. The governing body, upon recommendation of the board, may at the time of making  
14 its annual tax levy for other purposes levy for the purpose of maintaining, repairing, planting, and  
15 otherwise improving and caring for the parks, parkways, boulevards, and other public grounds  
16 and thoroughfares under the control of the board a special front foot assessment not to exceed  
17 ~~ten cents~~ one dollar per front foot upon the lots fronting and abutting thereon. The governing  
18 body, upon the recommendation of the board and with the consent of seventy-five percent of the  
19 owners of property fronting and abutting a boulevard, may at the time of making its annual tax  
20 levy for other purposes levy for the purpose of maintaining, repairing, planting, and otherwise  
21 improving and caring for any boulevard under the control of the board ~~a~~. No special front foot  
22 assessment ~~not to~~ may exceed ~~eighty-five cents~~ one dollar per front foot upon the lots fronting  
23 and abutting the boulevard. Any assessment shall be apportioned as the assessment for  
24 maintaining service sewers and shall be certified to the county auditor and shall be collected as  
25 municipal taxes for general purposes. The State of South Dakota is exempt from the provisions

1 of this section but may, pursuant to §§ 9-45-30 to 9-45-32, inclusive, be assessed for its  
2 apportioned share of the actual cost of any work under this section at the time the work is done.

3 Section 4. That § 9-45-38 be amended to read as follows:

4 9-45-38. The governing body prior to the assessment of real property within the municipality  
5 for the next fiscal year, may levy, annually, for the purpose of maintaining or repairing street  
6 surfacing or pavement a special front foot assessment not exceeding ~~forty cents~~ one dollar per  
7 front foot upon the lots fronting and abutting the street. The assessment shall be apportioned on  
8 a front foot basis ~~and levied in the following manner.~~

9 The governing body prior to the assessment of real property may, by resolution, designate  
10 the lot or portion of lots against which the assessment is to be levied and the amount of the  
11 assessment against each lot or ~~portions thereof for such purposes;~~ portion of lots. The resolution  
12 shall direct the director of equalization to add the assessment to the general assessment against  
13 the property; and certify the assessment together with the regular assessment to the county  
14 auditor to be collected as municipal taxes for general purposes. The assessment is subject to  
15 review and equalization the same as assessments or taxes for general purposes. Front foot, for  
16 the purposes of this section, means the actual front of the premises as established by the buildings  
17 thereon, record title, and use of the property regardless of the original plat. The State of South  
18 Dakota is exempt from the provisions of this section but may, pursuant to §§ 9-45-30 to 9-45-  
19 32, inclusive, be assessed for its apportioned share of the actual cost of any work under this  
20 section at the time the work is done.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to Local Government. H.J. 54

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/20/00 Local Government Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 172

5 1/25/00 Motion to Amend, Passed. H.J. 227

6 1/25/00 House of Representatives Do Pass Amended, Passed, AYES 53, NAYS 17. H.J. 228

7 1/26/00 First read in Senate and referred to Local Government. S.J. 210

8 2/2/00 Scheduled for Committee hearing on this date.

9 2/2/00 Local Government Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 286

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

484D0104

SENATE EDUCATION COMMITTEE

ENGROSSED NO. **SB2** - 2/2/00

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

Introduced by: Senators Olson, Lawler, and Moore and Representatives Kooistra, Brown (Jarvis), Garnos, Hagen, and Hennies at the request of the Interim Drug Sales and Use Committee

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions banning students from  
2 extracurricular activities in secondary schools for controlled substance violations.

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

4 Section 1. That § 13-32-9 be amended to read as follows:

5 13-32-9. Any person adjudicated, convicted, or the subject of a suspended imposition of  
6 sentence for possession, use, or distribution of controlled substances or marijuana as defined in  
7 chapter 22-42 is ineligible to participate in any extracurricular activity at any secondary school  
8 accredited by the Department of Education and Cultural Affairs for one year unless such person  
9 agrees to such counseling or drug testing as the school district may prescribe. Upon a subsequent  
10 adjudication, conviction, or suspended imposition of sentence for possession, use, or distribution  
11 of controlled substances or marijuana by a court of competent jurisdiction, that person is  
12 ineligible to participate for one year in any extracurricular activity accredited by the Department  
13 of Educational and Cultural Affairs. Upon a second subsequent adjudication, conviction, or  
14 suspended imposition of sentence for possession, use, or distribution of controlled substances  
15 or marijuana by a court of competent jurisdiction, that person is ineligible to participate in any

1 extracurricular activity while that person is attending any school accredited by the Department  
2 of Education and Cultural Affairs. Upon such a determination in any juvenile proceeding the  
3 Unified Judicial System shall give notice of that determination to the South Dakota High School  
4 Activities Association and the chief administrator of the school in which the person is enrolled.

5 As used in this section, the term, extracurricular activity, means any activity sanctioned by  
6 the South Dakota High School Activities Association.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Education. S.J. 14

3 1/30/00 Scheduled for Committee hearing on this date.

4 2/1/00 Education Hog Housed.

5 2/1/00 Scheduled for Committee hearing on this date.

6 2/1/00 Education Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 267

7 2/2/00 Education Hog Housed.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

770D0477

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB96** - 2/4/00

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

Introduced by: Senators Shoener, Hutmacher, Lawler, and Paisley and Representatives Roe and Fischer-Clemens

1 FOR AN ACT ENTITLED, An Act to regulate motor vehicle service contracts.

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

3 Section 1. That § 58-1-3 be amended to read as follows:

4 58-1-3. No provision of this title applies with respect to:

5 (1) Fraternal benefit societies, except as stated in chapter 58-37A;

6 (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in  
7 chapter 58-22;

8 (3) Motor vehicle service contracts, ~~extended service agreements, or other contracts by~~  
9 ~~which a motor vehicle dealer licensed under chapter 32-6B or manufacturer of motor~~  
10 ~~vehicles contracts to indemnify a motor vehicle owner or lessor against loss due to~~  
11 ~~mechanical breakdown, or freedom from defective or worn parts or equipment of~~  
12 ~~motor vehicles which are contracts or agreements to perform or indemnify for a~~  
13 ~~specific duration the repair, replacement, or maintenance of motor vehicles for~~  
14 ~~operational or structural failure due to a defect in materials, workmanship, or normal~~  
15 ~~wear and tear, with or without additional provisions for incidental payment of~~

1 indemnity under limited circumstances, including towing, rental, and emergency road  
2 service. Consideration for a motor vehicle service contract shall be stated separately  
3 from the price of the motor vehicle. The term does not include mechanical breakdown  
4 insurance or maintenance agreements;

5 (4) Service agreements or extended warranty plans for which the primary purpose is to  
6 provide service, repair, or replacement on consumer goods or products including  
7 appliances, merchandise, or equipment, or mechanical/electrical systems in single or  
8 multiple-family dwellings. Incidental indemnity payments under such plans where  
9 service, repair, or replacement is not feasible or economical does not void this  
10 exemption;

11 (5) Any person, trust, or other entity proven to be under the exclusive regulatory  
12 authority of the federal government or another state agency;

13 (6) Any agreement to provide liability protection entered into pursuant to chapter 1-24  
14 is exempt from the regulatory requirements of Title 58, except to forms of insurance  
15 coverage provided by an insurer otherwise subject to the insurance laws of this state.

16 Section 2. That § 58-1-2 be amended by adding thereto NEW SUBDIVISIONS to read as  
17 follows:

18 "Maintenance agreement," a contract of limited duration that provides for scheduled  
19 maintenance only;

20 "Mechanical breakdown insurance," any contract or agreement to perform or indemnify for  
21 a specific duration the repair, replacement, or maintenance of property for operational or  
22 structural failure due to a defect in materials, workmanship, or normal wear and tear.

1 **BILL HISTORY**

2 1/18/00 First read in Senate and referred to Commerce. S.J. 74

3 2/3/00 Commerce Hog Housed.

4 2/3/00 Scheduled for Committee hearing on this date.

5 2/3/00 Commerce Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 302

6 2/3/00 Commerce Place on Consent Calendar.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

593D0629      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. SB150 - 2/3/00**

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

Introduced by: Senators Frederick and Symens and Representatives Wetz, Apa, Diedrich (Larry), Diedrich (Elmer), Kazmerzak, McNenny, and Putnam

- 1    FOR AN ACT ENTITLED, An Act to authorize additional nonresident waterfowl licenses.
- 2    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3        Section 1. That § 41-6-10 be amended to read as follows:
- 4        41-6-10. Licenses, permits, and stamps issued under this title are classified as follows:
- 5        (1)    Disabled hunter permit;
- 6        (2)    Export bait dealer license;
- 7        (2A)   Fall three-day temporary nonresident waterfowl license;
- 8        (3)    Fur dealer's license;
- 9        (4)    Hoop net, trap or setline license;
- 10       (5)    License for breeding and domesticating animals and birds;
- 11       (6)    License to take fur-bearing animals;
- 12       (7)    Nonresident big game license;
- 13       (8)    Nonresident fishing license;
- 14       (9)    Nonresident predator/varmint license;
- 15       (10)   Repealed by SL 1999, ch 213, § 3.

- 1 (11) Nonresident retail bait dealer license;
- 2 (12) Nonresident shooting preserve license;
- 3 (13) Nonresident small game license;
- 4 (14) Nonresident and resident migratory bird certification permit;
- 5 (15) Nonresident wholesale bait dealer license;
- 6 (16) Nonresident wild turkey license;
- 7 (17) Nursing facility group fishing license;
- 8 (18) Park user's license;
- 9 (19) Permit for transportation of big game animal;
- 10 (20) Private fish hatchery license;
- 11 (21) Resident big game license;
- 12 (22) Resident elk license;
- 13 (23) Resident fishing license and resident senior fishing license;
- 14 (24) Repealed by SL 1999, ch 213, § 3.
- 15 (25) Resident retail bait dealer license;
- 16 (26) Resident small game license and resident youth small game license;
- 17 (27) Resident predator/varmint license;
- 18 (28) Resident wholesale bait dealer license;
- 19 (29) Resident wild turkey license;
- 20 (30) Scientific collector's license;
- 21 (31) Special nonresident waterfowl license;
- 22 (32) Repealed by SL 1999, ch 213, § 3.
- 23 (33) Taxidermist's license;
- 24 (33A) Spring ~~five-day~~ snow goose temporary nonresident ~~waterfowl~~ license;
- 25 (33B) Early fall Canada goose temporary nonresident license;

1 (34) Temporary fishing and hunting licenses.

2 The rights and privileges of such licensees are set forth in §§ 41-6-12 to 41-6-45.1, inclusive,  
3 and in § 41-17-13. The Game, Fish and Parks Commission shall promulgate rules pursuant to  
4 chapter 1-26 to set the fees, eligibility, and duration for such licenses.

5 Section 2. That § 41-6-18.1 be amended to read as follows:

6 41-6-18.1. It is a Class 2 misdemeanor for a nonresident to hunt, take, or kill migratory  
7 waterfowl without a special nonresident waterfowl license, a fall three-day temporary  
8 nonresident waterfowl license, early fall Canada goose temporary nonresident license, or a spring  
9 ~~five-day~~ snow goose temporary nonresident ~~waterfowl~~ license, a migratory bird certification  
10 permit, and a federal migratory bird stamp, or in violation of the conditions of the licenses or the  
11 rules of the Game, Fish and Parks Commission.

12 A special nonresident waterfowl license, except as otherwise provided in this title, entitles  
13 the licensee to hunt migratory waterfowl for ten consecutive days. Four dollars received from  
14 the sale of each special nonresident waterfowl license shall be placed in the land acquisition and  
15 development fund. The moneys from this fund shall be used to acquire by purchase or lease real  
16 property to be used primarily for game production. This license shall be in such form as the  
17 Game, Fish and Parks Commission shall prescribe.

18 The provision in this section limiting the validity of a special nonresident waterfowl license  
19 to ten consecutive days does not apply in Union, Clay, Bon Homme, Yankton, and Charles Mix  
20 counties; and in such counties, the special nonresident waterfowl license is valid during the same  
21 period as is a resident waterfowl license.

22 The Game, Fish and Parks Commission may issue no more than four thousand nonresident  
23 waterfowl licenses in a calendar year.

24 Section 3. That § 41-6-18.4 be amended to read as follows:

25 41-6-18.4. The Game, Fish and Parks Commission may promulgate rules in accordance with

1 chapter 1-26 to authorize the department to issue up to two thousand fall three-day temporary  
2 nonresident waterfowl licenses, up to two thousand early fall Canada goose temporary  
3 nonresident licenses, and a number of spring ~~five-day~~ snow goose temporary nonresident  
4 ~~waterfowl~~ licenses to be determined by the department, and to establish the fee therefor, validity  
5 of the licenses issued, types of waterfowl to be hunted, and areas in which hunting is permitted.  
6 The fall three-day temporary nonresident waterfowl licenses are valid only on private property,  
7 but are not valid on private property leased by the department for public hunting or on highways  
8 or other public rights-of-way within this state that otherwise meet the requirements of  
9 § 41-9-1.3. Revenue from the sale of fall three-day temporary nonresident waterfowl licenses  
10 shall be deposited in the department's land acquisition and development fund to be used to  
11 acquire, by lease, permit, or otherwise, interests in real property to be used for providing  
12 waterfowl hunting public access in the counties adjacent to the Missouri River. Revenue from  
13 the sale of early fall Canada goose temporary nonresident licenses shall be deposited in the  
14 department's land acquisition and development fund to be used to acquire by lease, permit, or  
15 otherwise, interests in real property to be used for providing waterfowl hunting public access.  
16 Before promulgating rules which permit the issuance of fall three-day temporary nonresident  
17 waterfowl licenses, the commission shall determine that adequate waterfowl hunting public  
18 access has been provided through the department's land acquisition and development fund or  
19 through other means.

20 Section 4. That § 41-6-72 be amended to read as follows:

21 41-6-72. Licenses issued under this title ~~shall expire on~~ at the end of the last day of December  
22 of the calendar year for which they were issued unless specified otherwise in this chapter or as  
23 limited or provided by the applicable license and rules promulgated by the Game, Fish and Parks  
24 Commission in accordance with chapter 1-26. Waterfowl hunting licenses expire at the end of  
25 the last day of the hunting season for which the license was issued.

1 Section 5. That § 41-6-15 be repealed.

2 ~~—41-6-15. Any hunting or fishing license shall expire on the last day of December in the year~~  
3 ~~in which it was purchased or as limited and provided by the applicable license.~~

4 Section 6. The issuance, licensure, and revenue dedication requirements relating to early fall  
5 Canada goose temporary nonresident licenses contained in sections 1 to 3, inclusive, of this Act  
6 are repealed on June 30, 2003.

1 **BILL HISTORY**

2 1/20/00 First read in Senate and referred to Agriculture and Natural Resources. S.J. 127

3 2/1/00 Scheduled for Committee hearing on this date.

4 2/1/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 0.

5 S.J. 281

6 2/1/00 Agriculture and Natural Resources Place on Consent Calendar.

7 2/2/00 Agriculture and Natural Resources Hog Housed.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

682D0744

## SENATE TAXATION COMMITTEE ENGROSSED NO. **SB170** - 2/3/00

Introduced by: Senators Flowers, Brown (Arnold), Moore, Paisley, Symens, and Vitter and  
Representatives McNenny, Sutton (Duane), and Volesky

1 FOR AN ACT ENTITLED, An Act to revise the provisions relating to the establishment of  
2 separate market values in neighborhoods.

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

4 Section 1. That § 10-6-33.6 be amended to read as follows:

5 10-6-33.6. If the median market value per acre in an identifiable region within a county  
6 deviates by more than ten percent from the county ~~average~~ median market value per acre, the  
7 county director of equalization may establish a separate market value per acre for the land  
8 defined by the director of equalization within that identifiable region. Such separate market value  
9 shall be based upon the requirements for property assessments pursuant to this chapter. For  
10 purposes of calculating whether a ten percent deviation exists, there shall be a minimum of five  
11 sales of agricultural land within such identifiable region during the assessment year immediately  
12 preceding the current assessment year. If there are less than five sales in the identifiable region,  
13 the director of equalization shall use sales of agricultural land within the identifiable region from  
14 the previous three years.

1 **BILL HISTORY**

2 1/21/00 First read in Senate and referred to Taxation. S.J. 140

3 2/2/00 Scheduled for Committee hearing on this date.

4 2/2/00 Taxation Do Pass Amended, Passed, AYES 5, NAYS 3. S.J. 285

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

347D0743

## SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB193** - 2/3/00

Introduced by: Senators Everist and Olson and Representatives Duenwald, Michels, and Wilson

1 FOR AN ACT ENTITLED, An Act to establish certain requirements and procedures regarding  
2 electronic transactions.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Agreement," the bargain of the parties in fact, as found in their language or inferred  
6 from other circumstances and from rules and procedures given the effect of  
7 agreements under laws otherwise applicable to a particular transaction;

8 (2) "Automated transaction," a transaction conducted or performed, in whole or in part,  
9 by electronic means or electronic records, in which the acts or records of one or both  
10 parties are not reviewed by an individual in the ordinary course in forming a contract,  
11 performing under an existing contract, or fulfilling an obligation required by the  
12 transaction;

13 (3) "Computer program," a set of statements or instructions to be used directly or  
14 indirectly in an information processing system in order to bring about a certain result;

15 (4) "Contract," the total legal obligation resulting from the parties' agreement as affected  
16 by this Act and other applicable law;

- 1 (5) "Electronic," any technology using electrical, digital, magnetic, wireless, optical,  
2 electromagnetic, or similar capabilities;
- 3 (6) "Electronic agent," a computer program or an electronic or other automated means  
4 used independently to initiate an action or respond to electronic records or  
5 performances in whole or in part, without review or action by an individual;
- 6 (7) "Electronic record," a record created, generated, sent, communicated, received, or  
7 stored by electronic means;
- 8 (8) "Electronic signature," an electronic sound, symbol, or process attached to or  
9 logically associated with a record and executed or adopted by a person with the intent  
10 to sign the record;
- 11 (9) "Governmental agency," an executive, legislative, or judicial agency, department,  
12 board, commission, authority, institution, or instrumentality of the federal government  
13 or of a state or of a county, municipality, or other political subdivision of a state;
- 14 (10) "Information," data, text, images, sounds, codes, computer programs, software,  
15 databases, or the like;
- 16 (11) "Information processing system," an electronic system for creating, generating,  
17 sending, receiving, storing, displaying, or processing information;
- 18 (12) "Person," an individual, corporation, business trust, estate, trust, partnership, limited  
19 liability company, association, joint venture, governmental agency, public corporation,  
20 or any other legal or commercial entity;
- 21 (13) "Record," information that is inscribed on a tangible medium or that is stored in an  
22 electronic or other medium and is retrievable in perceivable form;
- 23 (14) "Security procedure," a procedure employed for the purpose of verifying that an  
24 electronic signature, record, or performance is that of a specific person or for  
25 detecting changes or errors in the information in an electronic record. The term

1 includes a procedure that requires the use of algorithms or other codes, identifying  
2 words or numbers, encryption, or callback or other acknowledgment procedures;

3 (15) "State," a state of the United States, the District of Columbia, Puerto Rico, the United  
4 States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
5 of the United States. The term includes an Indian tribe or band, or Alaskan native  
6 village, which is recognized by federal law or formally acknowledged by a state;

7 (16) "Transaction," an action or set of actions occurring between two or more persons  
8 relating to the conduct of business, commercial, or governmental affairs.

9 Section 2. Except as otherwise provided in section 3 of this Act, this Act applies to electronic  
10 records and electronic signatures relating to a transaction.

11 Section 3. This Act does not apply to a transaction to the extent it is governed by:

12 (1) The Uniform Probate Code or other law governing the creation and execution of  
13 wills, codicils, or testamentary trusts;

14 (2) The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2,  
15 Article 2A, and Article 9; and

16 (3) Transactions under chapter 15-6 or other transactions involving the Unified Judicial  
17 System.

18 Section 4. This Act applies to an electronic record or electronic signature otherwise excluded  
19 from the application of this Act under section 3 of this Act to the extent it is governed by a law  
20 other than those specified in section 3 of this Act.

21 Section 5. A transaction subject to this Act is also subject to other applicable substantive law.

22 Section 6. This Act applies to any electronic record or electronic signature created,  
23 generated, sent, communicated, received, or stored on or after the effective date of this Act.

24 Section 7. This Act does not require a record or signature to be created, generated, sent,  
25 communicated, received, stored, or otherwise processed or used by electronic means or in

1 electronic form.

2 Section 8. This Act applies only to transactions between parties each of which has agreed to  
3 conduct transactions by electronic means. Whether the parties agree to conduct a transaction by  
4 electronic means is determined from the context and surrounding circumstances, including the  
5 parties' conduct.

6 Section 9. A party that agrees to conduct a transaction by electronic means may refuse to  
7 conduct other transactions by electronic means. The right granted by this section may not be  
8 waived by agreement.

9 Section 10. Except as otherwise provided in this Act, the effect of any of its provisions may  
10 be varied by agreement. The presence in certain provisions of this Act of the words "unless  
11 otherwise agreed," or words of similar import, does not imply that the effect of other provisions  
12 may not be varied by agreement.

13 Section 11. Whether an electronic record or electronic signature has legal consequences is  
14 determined by this Act and other applicable law.

15 Section 12. This Act shall be construed and applied:

- 16 (1) To facilitate electronic transactions consistent with other applicable law;  
17 (2) To be consistent with reasonable practices concerning electronic transactions and with  
18 the continued expansion of those practices; and  
19 (3) To effectuate its general purpose to make uniform the law with respect to the subject  
20 of this Act among states enacting it.

21 Section 13. No record or signature may be denied legal effect or enforceability solely because  
22 it is in electronic form.

23 Section 14. No contract may be denied legal effect or enforceability solely because an  
24 electronic record was used in its formation.

25 Section 15. If a law requires a record to be in writing, an electronic record satisfies the law.

1 Section 16. If a law requires a signature, an electronic signature satisfies the law.

2 Section 17. If parties have agreed to conduct a transaction by electronic means and a law  
3 requires a person to provide, send, or deliver information in writing to another person, the  
4 requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in  
5 an electronic record capable of retention by the recipient at the time of receipt. An electronic  
6 record is not capable of retention by the recipient if the sender or its information processing  
7 system inhibits the ability of the recipient to print or store the electronic record.

8 Section 18. If a law other than this Act requires a record to be posted or displayed in a  
9 certain manner; to be sent, communicated, or transmitted by a specified method; or to contain  
10 information that is formatted in a certain manner; the following rules apply:

- 11 (1) The record shall be posted or displayed in the manner specified in the other law;
- 12 (2) Except as otherwise provided in section 20 of this Act, the record shall be sent,  
13 communicated, or transmitted by the method specified in the other law;
- 14 (3) The record shall contain the information formatted in the manner specified in the other  
15 law.

16 Section 19. If a sender inhibits the ability of a recipient to store or print an electronic record,  
17 the electronic record is not enforceable against the recipient.

18 Section 20. No requirement of sections 17 to 19, inclusive, of this Act may be varied by  
19 agreement, but:

- 20 (1) To the extent a law other than this Act requires information to be provided, sent, or  
21 delivered in writing but permits that requirement to be varied by agreement, the  
22 requirement under section 17 of this Act that the information be in the form of an  
23 electronic record capable of retention may also be varied by agreement; and
- 24 (2) A requirement under a law other than this Act to send, communicate, or transmit a  
25 record by first-class mail, may be varied by agreement to the extent permitted by the

1 other law.

2 Section 21. An electronic record or electronic signature is attributable to a person if it was  
3 the act of the person. The act of the person may be shown in any manner, including a showing  
4 of the efficacy of any security procedure applied to determine the person to which the electronic  
5 record or electronic signature was attributable.

6 Section 22. The effect of an electronic record or electronic signature attributed to a person  
7 under section 21 of this Act is determined from the context and surrounding circumstances at  
8 the time of its creation, execution, or adoption, including the parties' agreement, if any, and  
9 otherwise as provided by law.

10 Section 23. If a change or error in an electronic record occurs in a transmission between  
11 parties to a transaction, the following rules apply:

12 (1) If the parties have agreed to use a security procedure to detect changes or errors and  
13 one party has conformed to the procedure, but the other party has not, and the  
14 nonconforming party would have detected the change or error had that party also  
15 conformed, the conforming party may avoid the effect of the changed or erroneous  
16 electronic record;

17 (2) In an automated transaction involving an individual, the individual may avoid the  
18 effect of an electronic record that resulted from an error made by the individual in  
19 dealing with the electronic agent of another person if the electronic agent did not  
20 provide an opportunity for the prevention or correction of the error and, at the time  
21 the individual learns of the error, the individual:

22 (a) Promptly notifies the other person of the error and that the individual did not  
23 intend to be bound by the electronic record received by the other person;

24 (b) Takes reasonable steps, including steps that conform to the other person's  
25 reasonable instructions, to return to the other person or, if instructed by the

1 other person, to destroy the consideration received, if any, as a result of the  
2 erroneous electronic record; and

3 (c) Has not used or received any benefit or value from the consideration, if any,  
4 received from the other person;

5 (3) If neither subdivision (1) nor (2) of this section applies, the change or error has the  
6 effect provided by other law, including the law of mistake, and the parties' contract,  
7 if any;

8 (4) Subdivisions (2) and (3) of this section may not be varied by agreement.

9 Section 24. If a law requires a signature or record to be notarized, acknowledged, verified,  
10 or made under oath, the requirement is satisfied if the electronic signature of the person  
11 authorized to perform those acts, together with all other information required to be included by  
12 other applicable law, is attached to or logically associated with the signature or record.

13 Section 25. If a law requires that a record be retained, the requirement is satisfied by  
14 retaining an electronic record of the information in the record which:

15 (1) Accurately reflects the information set forth in the record after it was first generated  
16 in its final form as an electronic record or otherwise; and

17 (2) Remains accessible for later reference.

18 Section 26. A requirement to retain a record in accordance with section 25 of this Act does  
19 not apply to any information the sole purpose of which is to enable the record to be sent,  
20 communicated, or received.

21 Section 27. A person may satisfy section 25 of this Act by using the services of another  
22 person if the requirements of that subsection are satisfied.

23 Section 28. If a law requires a record to be presented or retained in its original form, or  
24 provides consequences if the record is not presented or retained in its original form, that law is  
25 satisfied by an electronic record retained in accordance with section 25 of this Act.

1 Section 29. If a law requires retention of a check, that requirement is satisfied by retention  
2 of an electronic record of the information on the front and back of the check in accordance with  
3 section 25 of this Act.

4 Section 30. A record retained as an electronic record in accordance with section 25 of this  
5 Act satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes,  
6 unless a law enacted after the effective date of this Act specifically prohibits the use of an  
7 electronic record for the specified purpose. This section does not preclude a governmental  
8 agency of this state from specifying additional requirements for the retention of a record subject  
9 to the agency's jurisdiction.

10 Section 31. In a proceeding, no evidence of a record or signature may be excluded solely  
11 because it is in electronic form.

12 Section 32. In an automated transaction, the following rules apply:

- 13 (1) A contract may be formed by the interaction of electronic agents of the parties, even  
14 if no individual was aware of or reviewed the electronic agents' actions or the  
15 resulting terms and agreements;
- 16 (2) A contract may be formed by the interaction of an electronic agent and an individual,  
17 acting on the individual's own behalf or for another person, including by an  
18 interaction in which the individual performs actions that the individual is free to refuse  
19 to perform and which the individual knows or has reason to know will cause the  
20 electronic agent to complete the transaction or performance;
- 21 (3) The terms of the contract are determined by the substantive law applicable to it.

22 Section 33. Unless otherwise agreed between the sender and the recipient, an electronic  
23 record is sent when it:

- 24 (1) Is addressed properly or otherwise directed properly to an information processing  
25 system that the recipient has designated or uses for the purpose of receiving electronic

1 records or information of the type sent and from which the recipient is able to retrieve  
2 the electronic record;

3 (2) Is in a form capable of being processed by that system; and

4 (3) Enters an information processing system outside the control of the sender or of a  
5 person that sent the electronic record on behalf of the sender or enters a region of the  
6 information processing system designated or used by the recipient which is under the  
7 control of the recipient.

8 Section 34. Unless otherwise agreed between a sender and the recipient, an electronic record  
9 is received when:

10 (1) It enters an information processing system that the recipient has designated or uses  
11 for the purpose of receiving electronic records or information of the type sent and  
12 from which the recipient is able to retrieve the electronic record; and

13 (2) It is in a form capable of being processed by that system.

14 Section 35. Section 34 of this Act applies even if the place the information processing system  
15 is located is different from the place the electronic record is deemed to be received under section  
16 36 of this Act.

17 Section 36. Unless otherwise expressly provided in the electronic record or agreed between  
18 the sender and the recipient, an electronic record is deemed to be sent from the sender's place  
19 of business and to be received at the recipient's place of business. For purposes of this section,  
20 the following rules apply:

21 (1) If the sender or recipient has more than one place of business, the place of business  
22 of that person is the place having the closest relationship to the underlying transaction;

23 (2) If the sender or the recipient does not have a place of business, the place of business  
24 is the sender's or recipient's residence, as the case may be.

25 Section 37. An electronic record is received under section 34 of this Act even if no individual

1 is aware of its receipt.

2 Section 38. Receipt of an electronic acknowledgment from an information processing system  
3 described in section 34 of this Act establishes that a record was received but, by itself, does not  
4 establish that the content sent corresponds to the content received.

5 Section 39. If a person is aware that an electronic record purportedly sent under section 33  
6 of this Act, or purportedly received under section 34 of this Act, was not actually sent or  
7 received, the legal effect of the sending or receipt is determined by other applicable law. Except  
8 to the extent permitted by the other law, the requirements of this section may not be varied by  
9 agreement.

10 Section 40. For purposes of this Act, the term, transferable record, means an electronic  
11 record that:

12 (1) Would be a note under Article 3 of the Uniform Commercial Code or a document  
13 under Article 7 of the Uniform Commercial Code if the electronic record were in  
14 writing; and

15 (2) The issuer of the electronic record expressly has agreed is a transferable record.

16 Section 41. A person has control of a transferable record if a system employed for evidencing  
17 the transfer of interests in the transferable record reliably establishes that person as the person  
18 to which the transferable record was issued or transferred.

19 Section 42. A system satisfies section 41 of this Act, and a person is deemed to have control  
20 of a transferable record, if the transferable record is created, stored, and assigned in such a  
21 manner that:

22 (1) A single authoritative copy of the transferable record exists that is unique, identifiable,  
23 and, except as otherwise provided in subdivisions (4), (5), and (6) of this section,  
24 unalterable;

25 (2) The authoritative copy identifies the person asserting control as:

- 1 (a) The person to which the transferable record was issued; or
- 2 (b) If the authoritative copy indicates that the transferable record has been
- 3 transferred, the person to which the transferable record was most recently
- 4 transferred;
- 5 (3) The authoritative copy is communicated to and maintained by the person asserting
- 6 control or its designated custodian;
- 7 (4) Copies or revisions that add or change an identified assignee of the authoritative copy
- 8 can be made only with the consent of the person asserting control;
- 9 (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as
- 10 a copy that is not the authoritative copy; and
- 11 (6) Any revision of the authoritative copy is readily identifiable as authorized or
- 12 unauthorized.

13 Section 43. Except as otherwise agreed, a person having control of a transferable record is  
14 the holder, as defined in Section 1-201(20) of the Uniform Commercial Code, of the transferable  
15 record and has the same rights and defenses as a holder of an equivalent record or writing under  
16 the Uniform Commercial Code, including, if the applicable statutory requirements under Section  
17 3-302(a), 7-501, or 9-308 of the Uniform Commercial Code are satisfied, the rights and defenses  
18 of a holder in due course, a holder to which a negotiable document of title has been duly  
19 negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required  
20 to obtain or exercise any of the rights under this section.

21 Section 44. Except as otherwise agreed, an obligor under a transferable record has the same  
22 rights and defenses as an equivalent obligor under equivalent records or writings under the  
23 Uniform Commercial Code.

24 Section 45. If requested by a person against which enforcement is sought, the person seeking  
25 to enforce the transferable record shall provide reasonable proof that the person is in control of

1 the transferable record. Proof may include access to the authoritative copy of the transferable  
2 record and related business records sufficient to review the terms of the transferable record and  
3 to establish the identity of the person having control of the transferable record.

4 Section 46. Each governmental agency shall determine whether, and the extent to which, it  
5 will create and retain electronic records and convert written records to electronic records.

6 Section 47. To the extent that a governmental agency uses electronic records and electronic  
7 signatures under this Act, the commissioner of the Bureau of Information and  
8 Telecommunications shall promulgate rules pursuant to chapter 1-26 to specify for state  
9 agencies:

10 (1) The manner and format in which the electronic records shall be created, generated,  
11 sent, communicated, received, and stored and the systems established for those  
12 purposes;

13 (2) If electronic records must be signed by electronic means, the type of electronic  
14 signature required, the manner and format in which the electronic signature must be  
15 affixed to the electronic record, and the identity of, or criteria that must be met by,  
16 any third party used by a person filing a document to facilitate the process;

17 (3) Control processes and procedures as appropriate to ensure adequate preservation,  
18 disposition, integrity, security, confidentiality, and auditability of electronic records;  
19 and

20 (4) Any other required attributes for electronic records which are specified for  
21 corresponding nonelectronic records or reasonably necessary under the circumstances.

22 Section 48. With respect to records under its control, and except as otherwise provided in  
23 section 30 of this Act, the Board of Regents shall determine whether, and the extent to which,  
24 the board and the institutions under the board's control shall send and accept electronic records  
25 and electronic signatures to and from other persons and otherwise create, generate,

1 communicate, store, process, use, and rely upon electronic records and electronic signatures. In  
2 administering such records, the board may exercise those powers specified in sections 47 and 50  
3 of this Act. However, any public records as defined in § 13-49-31 that the board elects to  
4 maintain in electronic form shall be accessible to the public in conformity with the rules the  
5 commissioner of the Bureau of Information and Telecommunications promulgates pursuant to  
6 sections 47 and 50 of this Act.

7 Section 49. Except as otherwise provided in section 30 of this Act, this Act does not require  
8 a governmental agency to use or permit the use of electronic records or electronic signatures.

9 Section 50. The commissioner of the Bureau of Information and Telecommunications may  
10 encourage and promote consistency and interoperability with similar requirements adopted by  
11 other governmental agencies of this and other states and the federal government and  
12 nongovernmental persons interacting with governmental agencies of this state. If appropriate,  
13 those standards may specify differing levels of standards from which governmental agencies of  
14 this state may choose in implementing the most appropriate standard for a particular application.

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to State Affairs. S.J. 168

3 1/28/00 Scheduled for Committee hearing on this date.

4 1/31/00 Scheduled for Committee hearing on this date.

5 2/2/00 Scheduled for Committee hearing on this date.

6 2/2/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 278

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

400D0787

## SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB197** - 2/3/00

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a statewide underground tank cleanup program.

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

3 Section 1. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 There is hereby created within the petroleum release compensation fund, a new program to  
6 be known as the abandoned tank removal program. Under this program, the director may  
7 provide payments for tank pulling and corrective action at abandoned sites where the owner or  
8 the person having legal custody of an abandoned site has voluntarily requested such action in the  
9 manner and time established by the secretaries of the departments of transportation and  
10 environment and natural resources and if the following criteria are met:

11 (1) The owner or person having legal custody of the abandoned site has submitted to the  
12 director a written request to have the tank removed. The request shall be made in the  
13 manner established by the secretary of the Department of Transportation to include  
14 documentation of eligibility for the site to participate in the abandoned tank removal  
15 program, proof of ownership, and legal description;

16 (2) The owner or person having legal custody of the abandoned site has, in writing,

1 waived all claims against the state, its officers, agents, and employees for damages  
2 resulting directly or indirectly from the tank pulling or corrective action;

3 (3) If the abandoned site is on private property, all property taxes are current; and

4 (4) The owner or person having legal custody of the abandoned site has agreed to transfer  
5 ownership of the removed tank and its contents to the state.

6 No tank is eligible for coverage under this program if the tank is located at the site of a  
7 commercially operational motor fuel vendor in service on or after April 1, 1988.

8 Section 2. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 Payments made from the director for tank pulling and corrective action under the abandoned  
11 tank removal program may include:

12 (1) Tank pulling, as defined in this chapter, including the disposal of tank contents and  
13 specifically excluding the replacement of surface above the backfill area; and

14 (2) Removal of abandoned waste oil tanks and corrective action of a waste oil release  
15 located on an abandoned site.

16 Section 3. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 The owner or person having legal custody of the abandoned site shall, as a condition of  
19 approval for participation in the abandoned tank removal program, execute a legally binding five-  
20 year lien running with the affected property providing that any compensation received by the  
21 owner, the owner's heirs, successors in interest, or assigns, for transfer of any interest in or part  
22 of the site, shall be paid to the secretary of the Department of Transportation and deposited in  
23 the fund. No lien may be for an amount more than ten thousand dollars or the cost of tank pulling  
24 and corrective action identified in the lien by the director, whichever is less. Any lien provided  
25 by this section is valid for five years from the date of recordation and the priority of the lien is

1 established as of the date it is recorded in the office of the register of deeds of the county in  
2 which the site is located.

3 Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 The Department of Environment and Natural Resources shall be responsible for the tank  
6 removal and corrective actions subject to this Act. The department may contract directly with  
7 consultants, contractors, other service providers, state agencies, subdivisions of government,  
8 counties, cities, townships, and tribes to carry out the provisions of this Act. After receiving  
9 itemized documentation of all actual costs from the department, the director of the petroleum  
10 release compensation fund shall make payment within thirty days of receipt. All tank removals,  
11 pollution assessments, and corrective actions taken under this Act shall comply with chapters  
12 34A-2 and 34A-12 and the rules promulgated thereunder.

13 Section 5. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The secretaries of the departments of transportation and environment and natural resources  
16 may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary  
17 to carry out the provisions of the abandoned tank removal program including the form and  
18 procedure for application for qualifying for tank pulling and corrective action.

19 Section 6. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 Except at sites determined to be high risk by the secretary of the Department of Environment  
22 and Natural Resources using risk-based corrective action criteria, the director shall suspend  
23 payments for tank pulling and corrective action at abandoned sites eligible for the abandoned  
24 tank removal program if the balance of the fund is five million dollars or below. The director  
25 shall resume payments for tank pulling and corrective action at abandoned sites eligible for the

1 abandoned tank removal program if the fund balance exceeds five million dollars. Except as  
2 provided in this Act, all other limits of coverage, conditions, and criteria in this chapter apply to  
3 tank pulling and corrective action taken at abandoned sites.

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to State Affairs. S.J. 169

3 1/31/00 Scheduled for Committee hearing on this date.

4 2/2/00 Scheduled for Committee hearing on this date.

5 2/2/00 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 279