

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0109 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB 1073 -
02/22/2001

Introduced by: Representative Duenwald and Senator Diedrich (Larry)

1 FOR AN ACT ENTITLED, An Act to revise certain procedures related to livestock brands,
2 proof of livestock ownership, and livestock ownership inspection.

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

4 Section 1. That § 40-18-1.2 be amended to read as follows:

5 40-18-1.2. Terms used in chapters 40-18 to 40-22, inclusive, and 40-29 mean:

- 6 (1) "Agency," any private or nonprofit corporation, or its employees, incorporated under
7 state law, designated by the board as its authorized agent to carry out the functions
8 contracted for by the board to inspect livestock for ownership identification purposes;
- 9 (2) "Approved brand," any brand accepted for registration by the board;
- 10 (3) "Authorized bill of sale," any limited use form approved by the board to transfer
11 ownership of livestock;
- 12 (4) "Board," the South Dakota State Brand Board;
- 13 (5) "Brand ownership period," the five-year time period during which brands are valid if
14 the fees are paid;

- 1 (6) "Carrier," any person in charge of a conveyance which transports livestock;
- 2 (7) "Conflicting brand," any brand which is a duplicate of, or is similar to, or may be
3 altered to resemble, a registered brand;
- 4 (8) "Conveyance," any vehicle used to transport livestock;
- 5 (9) "Estray," any unclaimed cattle, horse, mule, sheep, or buffalo the ownership of which
6 is in question;
- 7 (10) "Evidence of ownership," any authorized bill of sale, market clearance, local
8 inspection, health certificate, current registration papers, court order, or other official
9 document or in lieu thereof an affidavit of ownership;
- 10 (11) "Healed brand," a brand that has shed the scab and for which the healing process is
11 complete;
- 12 (12) "Hold," the possession of livestock or the possession of the proceeds from the sale of
13 livestock for purposes of establishing ownership;
- 14 (13) "Hot iron," a metal instrument heated and used to brand livestock;
- 15 (14) "Inspect," to examine livestock for the purpose of determining ownership;
- 16 (15) "Inspector," any person who is authorized by the board to perform ownership
17 inspection of livestock;
- 18 (16) "Investigator," any person employed by the board to enforce the ownership inspection
19 laws;
- 20 (17) "Livestock," cattle, horses, ~~and~~ mules, sheep, and buffalo;
- 21 (18) "Local ownership inspection certificate," an ownership inspection certificate of
22 livestock ownership issued by a brand inspector at any point outside the auction
23 market;
- 24 (19) "Market clearance," an inspection certificate of ownership for livestock issued by a

- 1 brand inspector at a South Dakota livestock auction market;
- 2 (20) "Open market," any livestock market or shipping point where ownership inspection
3 is conducted by written agreement with the board;
- 4 (21) "Owner," the person to whom a recorded brand is registered or who owns cattle,
5 horses, mules, sheep, or buffalo;
- 6 (22) "Producer," any person engaged in the raising of livestock;
- 7 (23) "Recordable brand," any brand acceptable for registration;
- 8 (24) "Recorded brand," any brand registered with the board;
- 9 (25) "Registered brand," any recorded brand for which the fees are currently paid;
- 10 (26) "Seller," any person offering for sale or selling livestock;
- 11 (27) "Selling agent," any person engaged in livestock commerce;
- 12 (28) "Shipper," any person making delivery of livestock to a market or shipping point;
- 13 (29) "Shipper's permit," any permit to transport livestock to a market or point approved
14 by the board;
- 15 (30) "Slaughter," the killing of livestock for processing for human consumption;
- 16 (31) "Split brands," any brand parts of which are applied on more than one location of an
17 animal;
- 18 (32) "Tally," any board-approved form used by inspectors to list and describe livestock;
- 19 (33) "Trail," to herd or drive livestock from place to place without conveyance; ~~and~~
- 20 (34) "Transport," to carry by conveyance; and
- 21 (35) "Process," to cut and wrap a livestock carcass for human consumption.

22 Section 2. That § 40-19-1 be amended to read as follows:

23 40-19-1. It is a Class 1 misdemeanor to ~~hot iron~~ brand any domestic animal or other livestock
24 or to otherwise use any recordable brand for the purpose of establishing ownership, unless the

1 brand is valid as provided by law and is registered in the name of the user with the Office of the
2 State Brand Board. The use of number freeze brands for herd identification is specifically exempt
3 from this section.

4 Section 3. That § 40-19-3 be amended to read as follows:

5 40-19-3. The branding of cattle, horses, mules, and buffalo shall be done by use of either a
6 hot iron. ~~A freeze brand may, however, be applied to horses and mules~~ or freeze brand. A single
7 letter, number, figure, bar, quarter circle, half circle, or complete circle, or a half diamond, or
8 complete diamond placed on livestock are unrecordable brands under this chapter, including new
9 split-brands. However, presently recorded brands are valid as long as fees are paid and there is
10 no conflict with board policy.

11 A single letter or figure brand is recordable for sheep. A sheep brand shall be either a hot iron
12 brand or shall be applied with branding paint. No more than two colors or one color and a hot
13 iron brand may be recorded for sheep under one application fee. Authorized paint colors are
14 yellow, blue, green, black, red, or purple. No dot, bar, slash, quarter circle, circle, or the letter
15 "Q" may be registered as a sheep brand. A brand may be recorded for the side, hip, nose, or jaw
16 on either the left or right side of sheep. No brand may be recorded as "across the back" of a
17 sheep. A brand, regardless of position, is only recordable in a different color on the same
18 location.

19 Section 4. That § 40-20-26.2 be amended to read as follows:

20 40-20-26.2. The provisions of § 40-20-26.1 notwithstanding, ownership of livestock with
21 the seller's South Dakota recorded and healed brand or the owner's unbranded livestock may be
22 transferred by means of an authorized bill of sale without a brand inspection. The bill of sale shall
23 be on a form prescribed by the board. ~~A copy of an authorized bill of sale shall be forwarded to~~
24 ~~the board or its authorized inspecting agency and shall be postmarked within ten days of such~~

1 ~~ownership transfer. A violation of the forwarding requirement is a Class 2 misdemeanor. An~~
2 authorized bill of sale does not substitute for inspection of livestock being removed from the
3 ownership inspection area of South Dakota.

4 An authorized bill of sale may transfer no more than five head of livestock to any one buyer.
5 Multiple authorized bills of sale may not be executed to subdivide numbers of livestock greater
6 than five to any one buyer. The transfer of livestock without an authorized bill of sale under this
7 section or in violation of the requirements relating to the number of livestock that may be
8 transferred to a single buyer is a Class 1 misdemeanor.

9 Section 5. That § 40-20-29 be amended to read as follows:

10 40-20-29. It is a Class 1 misdemeanor for any person ~~slaughtering or processing~~ slaughter
11 or process livestock commercially within the livestock ownership inspection area ~~to kill any~~
12 ~~livestock~~, until the livestock have received an ownership inspection and the certificate of such
13 inspection is filed and is made a part of that person's permanent records. An ownership brand
14 inspection certificate on livestock is valid for no longer than four days from the date of issue.
15 Livestock arriving at slaughter destination later than four days from the date indicated on the
16 inspection certificate shall be inspected and the fee collected. All certificates of ownership
17 inspection shall, at any time upon demand, be displayed to any law enforcement officer or to the
18 board.

19 Section 6. That § 40-22-6 be amended to read as follows:

20 40-22-6. Any person who slaughters or processes livestock within the ownership inspection
21 area shall possess an ownership inspection certificate ~~for each carcass slaughtered or have the~~
22 ~~hides available for inspection with ears and tails attached, including all brands, tattoos, ear marks~~
23 ~~and other marks of identification of each carcass~~ or an authorized bill of sale. A violation of this
24 section is a Class 1 misdemeanor.

1 Section 7. That § 40-22-12 be amended to read as follows:

2 40-22-12. Any person slaughtering or processing livestock outside the ownership inspection
3 area which came from inside the ownership inspection area shall, ~~upon demand of any law~~
4 ~~enforcement officer or brand inspector, within a reasonable period of time produce a hide or~~
5 possess proof of ownership of the slaughtered livestock. A violation of this section is a Class 1
6 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0343

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 22 - 02/24/2001

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

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to allow for the placement of sex offenders under the age
2 of fifteen on a registry of sex offenders.

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

4 Section 1. That § 22-22-31 be amended to read as follows:

5 22-22-31. Any person residing in this state who has been convicted whether upon a verdict
6 or plea of guilty or a plea of nolo contendere, or who has received a suspended imposition of
7 sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995, for
8 commission of a sex crime, as defined in § 22-22-30, or any person who is a juvenile fifteen years
9 of age or older adjudicated of a sex crime, as defined in subdivision 22-22-30(1) or (9), or of
10 felony sexual contact, as defined in § 22-22-7.2, or upon order of the court any juvenile under
11 fifteen years of age adjudicated of a sex crime, as defined in subdivision 22-22-30(1) or (9), shall,
12 within ten days of coming into any county to reside or temporarily domicile for more than thirty
13 days, register with the chief of police of the municipality in which the person resides, or, if no
14 chief of police exists, then with the sheriff of the county in which the person resides. A violation

1 of this section is a Class 1 misdemeanor. However, any subsequent violation is a Class 6 felony.
2 Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward
3 a certified copy of such formal discharge by certified mail to the Division of Criminal
4 Investigation and to local law enforcement where the person is then registered under this section.
5 Upon receipt of such notice, the person shall be removed from the sex offender registry open to
6 public inspection and shall be relieved of further registration requirements under this section.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0222

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 27** - 02/24/2001

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

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to transfer funds to the state fair fund and to revise the
2 budgetary procedure for the state fair.

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

4 Section 1. That § 1-21-1.1 be amended to read as follows:

5 1-21-1.1. The State Fair Commission shall be administered under the direction and
6 supervision of the secretary of the Department of Agriculture ~~and the secretary thereof~~, but shall
7 retain the quasi-judicial, quasi-legislative, advisory, and other nonadministrative ~~and special~~
8 ~~budgetary~~ functions (as defined in § 1-32-1) otherwise vested in it and shall exercise those
9 functions independently of the secretary of agriculture.

10 Section 2. That § 1-21-13 be repealed.

11 ~~—1-21-13. The State Fair Commission shall account strictly for all money received in conduct~~
12 ~~of the state fair.~~

13 Section 3. That § 1-21-14 be amended to read as follows:

14 1-21-14. All sums received for admissions, concessions, and privileges, or for any purpose,

1 by ~~such~~ the State Fair Commission, shall be placed in the ~~custody of its secretary-treasurer and~~
2 ~~made a matter of record by him, and shall be paid out only upon vouchers approved by the~~
3 ~~commission or, at its discretion, the commission may authorize the secretary-treasurer to pay~~
4 ~~regular or routine claims. Disbursements of moneys shall be made by check signed by the~~
5 ~~president or vice-president, or commission member so authorized, and secretary-treasurer. Any~~
6 ~~surplus over three hundred thousand dollars remaining in the hands of the fair commission, after~~
7 ~~the payment of all reasonable and necessary claims, shall be deposited with the state treasurer~~
8 ~~by the State Fair Commission. Any other surplus remaining in the hands of the state fair shall be~~
9 ~~invested in securities authorized by § 4-5-6, in such bank or banks as may be designated by the~~
10 ~~State Fair Commission and all interest received on same shall be a part of the receipts of such~~
11 ~~State Fair Commission~~ state fair fund and shall be budgeted and expended in accordance with
12 Title 4 on warrants drawn by the state auditor upon vouchers approved by the secretary of
13 agriculture.

14 Section 4. That § 1-21-15 be repealed.

15 ~~— 1-21-15. All funds appropriated by the state for maintenance of the state fair and for~~
16 ~~buildings and improvements shall be paid out only upon itemized vouchers, duly verified and~~
17 ~~approved by the State Fair Commission and endorsed by the president of the commission and~~
18 ~~filed with the state auditor.~~

19 Section 5. That § 1-21-16 be repealed.

20 ~~— 1-21-16. The State Fair Commission shall prepare an annual financial report for each~~
21 ~~calendar year and submit a copy to the Legislature.~~

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

914E0585

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 125** - 02/24/2001

Introduced by: Senators Vitter, Albers, Apa, Koetzle, Moore, Olson (Ed), and Putnam and
Representatives Broderick, Abdallah, Flowers, Holbeck, and Solum

1 FOR AN ACT ENTITLED, An Act to clarify workers' compensation coverage for
2 uncompensated volunteers and prisoners.

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

4 Section 1. That § 62-1-5.1 be amended to read as follows:

5 62-1-5.1. ~~Volunteer workers~~ Any volunteer worker rendering services in or for any agency,
6 department, institution, or instrumentality of the state or of any of its political subdivisions,
7 including ~~but not limited to~~ counties, townships, school districts, or municipalities, whose
8 services have been duly recommended to the officer or governing body responsible for
9 employment of personnel for the respective entity and duly appointed thereto by such officers
10 or governing body, shall for purposes of this title be deemed ~~employees~~ an employee of the state
11 or the political subdivision, as the case may be. The ~~appointments~~ appointment shall be entered
12 into the official records or minutes of the entity.

13 In the event of injury or death, for the purposes of computing compensation for volunteer
14 workers other than volunteer firefighters, said a volunteer uncompensated ~~workers shall be~~

1 ~~considered to be earning a wage that would entitle them to the maximum compensation for death~~
2 ~~or injury allowable under this title, but in~~ worker's employment earnings from all sources during
3 the last six months of employment shall be used. In the event the volunteer uncompensated
4 worker is not otherwise employed, the worker shall be considered to be earning the state
5 minimum wage over a forty-hour week. The worker's average weekly wage shall be calculated
6 by one of the methods in §§ 62-4-25 to 62-4-27, inclusive. In no event shall may payments to
7 volunteer uncompensated workers exceed the maximum limitations for benefits as set out in this
8 title. No local prisoner, state inmate, or federal inmate providing services to the state or any of
9 its political subdivisions may be considered a volunteer worker under this section.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

717E0140

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 144 - 02/24/2001

Introduced by: Senators Vitter and Putnam and Representatives Broderick, Bartling,
Pederson (Gordon), Slaughter, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding signs in any public
2 right-of-way.

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

4 Section 1. That § 31-28-23 be amended to read as follows:

5 31-28-23. No person may, without lawful authority, attempt or actually alter, deface, injure,
6 knock down, remove, or in any manner molest or interfere with any official highway marker,
7 sign, guide board, traffic-control device, or any railroad sign or signal, barrier, warning device,
8 or sign erected in connection with highway maintenance or construction activities. A violation
9 of this section is a Class 1 misdemeanor. Any person who violates this section is responsible for
10 the cost of repairing or replacing such markers, signs, signals, barriers, or devices.

11 Section 2. That chapter 31-28 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 No person may place or maintain any unauthorized sign, signal, marking, or device within
14 any public right-of-way or attach any unauthorized sign, signal, marking, or device to any

1 existing sign or post in a public right-of-way. An initial violation of this section is a petty offense.
2 Any subsequent violation by the same person under substantially similar circumstances is a Class
3 2 misdemeanor. In addition to any other penalty provided by law, the court, as a part of the
4 sentence, shall assess the actual costs of removing the unauthorized sign, signal, marking, or
5 device.

6 Section 3. That § 31-28-22 be amended to read as follows:

7 31-28-22. Every sign, signal ~~or~~, marking, or device prohibited by §§ 31-28-19 ~~and~~, 31-28-20,
8 and section 2 of this Act is hereby declared to be a public nuisance and the Department of
9 Transportation ~~is hereby empowered to~~ or local authorities within their respective jurisdiction
10 may remove the same or cause it to be removed without notice.

11 Section 4. The Department of Game, Fish and Parks or its designee may mark or sign a state
12 snowmobile trail within any public right-of-way or public land. The Department of Game, Fish
13 and Parks may place signs within any public right-of-way providing directions to a state owned
14 or managed public use area.

15 Section 5. That chapter 31-28 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Nothing in this chapter may be deemed to limit or encroach upon the practice and activity
18 of a professional licensed pursuant to chapter 36-18A, performing his or her professional duties.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0736

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

SB 160 - 02/22/2001

Introduced by: Senators Brown (Arnold), Everist, and Olson (Ed) and Representatives
McCoy and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to prohibit the offering of postsecondary education credit
2 or degree by nonaccredited institutions.

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

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No person or governmental entity may offer postsecondary education credit or degree in
7 South Dakota, or while organized under the laws of South Dakota, unless currently participating
8 in any federal financial assistance program authorized by Title IV of the Higher Education Act
9 of 1965 as amended to January 1, 2001. A violation of this section is a Class 1 misdemeanor and
10 subjects the violator to a civil penalty of twenty-five thousand dollars.

11 The provisions of this section do not apply to a religious institution that offers credit or
12 degree solely for the purpose of conferring status or authority within that religion.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

466E0659

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 186** - 02/24/2001

Introduced by: Senators Bogue, Albers, Brosz, Brown (Arnold), Daugaard, de Hueck, Drake, Duxbury, Everist, Greenfield, Hainje, Koetzle, Koskan, Madden, McCracken, Olson (Ed), Putnam, Symens, Vitter, Volesky, and Whiting and Representatives Clark, Duniphan, Gillespie, Hanson (Gary), Jensen, Juhnke, Klaudt, Lange, Michels, Olson (Mel), Pederson (Gordon), Peterson (Bill), Rhoden, Sigdestad, Teupel, and Van Norman

1 FOR AN ACT ENTITLED, An Act to provide for the preservation of certain public
2 broadcasting records of the legislative session.

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

4 Section 1. If any audio or visual recordings of the legislative session, floor debates, or
5 committee hearings made by South Dakota Public Broadcasting are broadcast over the internet,
6 radio, or television, such recordings shall be preserved by South Dakota Public Broadcasting for
7 not less than three years.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0768

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 226** - 02/23/2001

Introduced by: Senators Everist and Brown (Arnold) and Representatives Peterson (Bill)
and Eccarius

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority, to provide for the establishment of a corporation by the South
3 Dakota Building Authority for the purpose of raising funds for specified purposes, to provide
4 for transfer and sale at any one time or from time to time of a portion of or all future right,
5 title, and interest of the State of South Dakota to certain amounts payable to the state by
6 various tobacco companies under a master settlement agreement in exchange for the deposit
7 of the net proceeds of such sale into the state permanent tobacco settlement development
8 trust fund, to establish certain funds, and to declare an emergency.

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

10 Section 1. Terms used in this Act, mean:

- 11 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
12 organized and existing under chapter 5-12;
- 13 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
14 indebtedness, or other obligations issued, incurred, or otherwise created under the

1 authority of this Act and payable directly or indirectly out of or representing an
2 interest in tobacco settlement revenues or other rights under or with respect to the
3 master settlement agreement;

4 (3) "Corporation," the special purpose body corporate and politic established by the
5 authority by resolution as provided in section 3 of this Act;

6 (4) "Development programs," any program described in section 13 of this Act;

7 (5) "Master settlement agreement," the master settlement agreement entered into on
8 November 23, 1998, by attorneys general from the several states (including the State
9 of South Dakota) and various tobacco companies, as now or hereafter amended,
10 supplemented, or restated;

11 (6) "Master settlement escrow agent," the escrow agent under the master settlement
12 agreement;

13 (7) "Net proceeds of bonds," the original proceeds of bonds issued under this Act less any
14 amounts applied or to be applied to pay transaction and administrative expenses and
15 to fund any reserves deemed necessary or appropriate by the corporation, but does
16 not include any investment earnings realized thereon;

17 (8) "Net proceeds of sale of tobacco settlement revenues," the net proceeds of bonds plus
18 any residual interest in tobacco settlement revenues received or to be received by the
19 State of South Dakota from time to time as a result of any sale, conveyance, or other
20 transfer authorized in section 2 of this Act, but does not include any investment
21 earnings realized thereon;

22 (9) "Permanent tobacco settlement development trust fund," the State of South Dakota
23 permanent tobacco settlement development trust fund created by section 10 of this
24 Act;

1 (10) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
2 with noncollateralized direct obligations of any bank or savings institution, insurance
3 company, or bank or insurance holding company if the institution or holding company
4 is rated in the highest four classifications by at least one standard rating service and
5 any bond, note, or other obligation of any state or any agency, authority, or other
6 instrumentality of any state or political subdivision thereof if the bond, note, or other
7 obligation is rated in the four highest classifications established by at least one
8 standard rating service;

9 (11) "Residual interest in tobacco settlement revenues," any tobacco settlement revenues
10 not required to pay principal or interest on bonds or administrative or transaction
11 expenses of the corporation or authority or to fund reserves or other requirements
12 relating to bonds issued, incurred, or otherwise created under this Act;

13 (12) "Tobacco settlement residual fund," the tobacco settlement residual fund created by
14 section 11 of this Act;

15 (13) "Tobacco settlement revenues," all of the amounts now or hereafter payable to the
16 State of South Dakota under or in connection with the master settlement agreement;

17 (14) "Tobacco development interest fund" the fund created by section 12 of this Act.

18 Section 2. At any one time or from time to time, all or any portion of the right, title, and
19 interest of the State of South Dakota in, to, and under the master settlement agreement,
20 including the right to receive and collect tobacco settlement revenues, may be sold, conveyed,
21 or otherwise transferred by the state to the authority or to a corporation established by the
22 authority under this Act in exchange for the net proceeds of bonds and a right to the residual
23 interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the
24 permanent tobacco settlement development trust fund, and the residual interest in tobacco

1 settlement revenues shall be deposited to the tobacco settlement residual fund. Any sale,
2 conveyance, or other transfer authorized by this section shall be evidenced by an instrument or
3 agreement in writing signed on behalf of the state by the Governor. The Governor shall file a
4 certified copy of the instrument or agreement with the Legislature promptly upon execution and
5 delivery thereof. The instrument or agreement may include an irrevocable direction to the master
6 settlement escrow agent to pay all or a specified portion of amounts otherwise due to the State
7 of South Dakota under or in connection with the master settlement agreement, including, without
8 limitation, all or any portion of tobacco settlement revenues directly to or upon the order of the
9 authority or corporation, as the case may be, or to any escrow agent or any trustee under an
10 indenture or other agreement securing any bonds issued, incurred, or created under this Act. The
11 irrevocable direction to the master settlement escrow agent may include the direction to pay any
12 residual interest in tobacco settlement revenues initially to or upon the order of the authority or
13 corporation or to any escrow agent or any trustee under an indenture or other agreement
14 securing any bonds. Upon the filing of a certified copy of the instrument or agreement by the
15 Governor, the sale, conveyance, or other transfer of rights under or with respect to the master
16 settlement agreement, including the right to receive the tobacco settlement revenues, shall, for
17 all purposes, be a true sale and absolute conveyance of all right, title, and interest therein
18 described in accordance with the terms thereof, valid, binding, and enforceable in accordance
19 with the terms thereof and such instrument or agreements and any related instrument, agreement,
20 or other arrangement, including any pledge, grant of security interest, or other encumbrance
21 made by the corporation or the authority to secure any bonds issued, incurred, or created by the
22 corporation or the authority, are not subject to disavowal, disaffirmance, cancellation, or
23 avoidance by reason of insolvency of any party, lack of consideration, or any other fact,
24 occurrence, or rule of law. The procedures and requirements set forth in this section shall be the

1 sole procedures and requirements applicable to the sale of the state's rights under the master
2 settlement agreement, including the sale of tobacco settlement revenues, and it is not necessary
3 to satisfy or comply with any other existing law which would otherwise apply to the sale of
4 assets of the state or impose procedures or restrictions with respect thereto.

5 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The authority may establish by resolution a special purpose corporation which shall be body
8 corporate and politic and instrumentality of, but having a legal existence independent and
9 separate from, the State of South Dakota and the authority. The corporation shall be established
10 for the express limited public purposes set forth in this Act and no part of the net earnings of the
11 corporation shall inure to any private individual.

12 The corporation shall be governed by a board consisting of the members of the authority and
13 two additional persons appointed by the Governor, which two additional members shall be
14 independent from the state. The resolution establishing the corporation shall serve as the charter
15 of the corporation and may be amended from time to time by the authority, but the resolution
16 shall at all times provide that the power and the authority of the corporation shall be subject to
17 the terms, conditions, and limitations of this Act and any applicable covenants or agreements of
18 the corporation in any indenture or other agreement relating to any then outstanding bonds. The
19 corporation may enter into contracts regarding any matter connected with any corporate purpose
20 within the objects and purposes of this Act.

21 The authority and corporation may delegate by resolution to one or more officers or
22 employees of the authority or corporation such powers and duties as it may deem proper.

23 The corporation may issue bonds and secure repayment of the bonds with amounts payable
24 out of tobacco settlement revenues or any other property or funds of the corporation.

1 The corporation may pledge as security for any bonds any rights under the master settlement
2 agreement held by the corporation, including the right to receive or collect tobacco settlement
3 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
4 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
5 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
6 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
7 or agreement described in section 2 of this Act and signed on behalf of the state by the Governor.
8 Any such pledge made by the corporation shall be valid and binding from the time the pledge is
9 made. The property, revenues, moneys, and other funds so pledged and thereafter held or
10 received by or on behalf of the corporation shall immediately be subject to the lien of the pledge
11 without any physical delivery thereof or further act; and, subject only to the provisions of prior
12 pledges or agreements of the corporation, the lien of the pledge shall be valid and binding as
13 against the state and all parties having claims of any kind in tort, contract, or otherwise against
14 the corporation irrespective of whether such parties have notice thereof. No ordinance,
15 resolution, trust agreement, or other instrument by which such pledge is created need be filed or
16 recorded except in the records of the corporation.

17 In connection with the issuance of bonds or, at any time with respect to bonds, the
18 corporation may enter into arrangements to provide additional security and liquidity for bonds.
19 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
20 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
21 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
22 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
23 persons providing the arrangements, including from bond proceeds.

24 The resolution authorizing the issuance of bonds or the indenture or other agreement

1 approved by the resolution may provide that interest rates may vary from time to time depending
2 upon criteria established by the corporation, which may include, without limitation, a variation
3 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
4 price equal to their principal amount, and may provide for appointment of a national banking
5 association, bank, trust company, investment banking firm, or other financial institution to serve
6 as a remarketing agent in that connection. The indenture or other agreement with respect to
7 bonds may provide that alternative interest rates or provisions will apply during such times as
8 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
9 for bonds.

10 In connection with bonds under this Act or the investment of proceeds, bonds, or other funds
11 of the corporation, the corporation may enter into contracts that it determines necessary or
12 appropriate to permit it to manage payment or interest rate risk. These contracts may include,
13 but are not limited to, interest rate exchange agreements; contracts providing for payment or
14 receipt of funds based on levels of or changes in interest rates; contracts to exchange cash flows
15 or series of payments; and contracts incorporating interest rate caps, collars, floors, or locks.

16 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
17 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
18 moratorium law or statute as may, from time to time, be in effect and neither any public officer
19 nor any organization, entity, or other person shall authorize the corporation to be or become a
20 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
21 insolvency, or moratorium law or statute, as may, from time to time be in effect.

22 The corporation may not guarantee the debts of another.

23 The corporation may not be required to file any reports with the state other than those
24 required to be filed with the Legislature by authorities which issue bonds.

1 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
2 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
3 may be or become a lien, charge, or liability against the corporation or the property or funds of
4 the corporation.

5 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The purposes of the corporation established by the authority pursuant to this Act are:

- 8 (1) To purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
9 interest of the state in, to, and under the master settlement agreement, including,
10 without limitation, all right, title, and interest to receive or collect tobacco settlement
11 revenues;
- 12 (2) To raise funds through the issuance of bonds or other obligations or evidences of
13 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
14 securitization, factoring, or other conveyance of the rights described above in
15 subdivision (1) of this section for the purposes of establishing the permanent tobacco
16 settlement development trust fund and as otherwise described in this Act;
- 17 (3) To serve the Legislature by making reports concerning the foregoing;
- 18 (4) To sue and be sued and to prosecute and defend, at law or in equity, in any court
19 having jurisdiction of the subject matter and of the parties;
- 20 (5) To have and to use a corporate seal and to alter the same at pleasure;
- 21 (6) To maintain an office at such place or places as the authority by resolution may
22 designate;
- 23 (7) To receive funds transferred to it by the authority, the state, or others; and
- 24 (8) To do all things necessary and convenient to carry out the purposes of this chapter.

1 The corporation shall also be vested with the same power and authority, and shall be subject
2 to the same limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1,
3 5-12-4, 5-12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3,
4 5-12-27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and
5 authority shall be exercised with respect to and shall be limited to the purposes of the corporation
6 set forth in section 4 of this Act, the final maturity date of any bonds issued, incurred, or created
7 hereunder may not be in excess of forty years for the date of delivery thereof, and the
8 corporation may not engage in any unrelated activities. In addition, the corporation may invest
9 any of its funds in permitted investments.

10 Section 5. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No bond of the corporation issued, incurred, or created under this Act may be or become a
13 lien, charge, or liability against the State of South Dakota or the authority, nor against the
14 property or funds of the State of South Dakota or the authority within the meaning of the
15 Constitution or statutes of South Dakota. In no event may any of the funds deposited into the
16 permanent tobacco settlement development trust fund, the tobacco settlement interest fund, or
17 the tobacco settlement residual fund be pledged to secure payment of any bonds issued under the
18 authority of this Act.

19 Section 6. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred,
22 or created under this Act that the state will not limit or alter the rights and powers vested in the
23 corporation and the authority by this Act so as to impair the terms of any contract made by the
24 corporation or the authority with those holders or in any way impair the rights and remedies of

1 those holders until such bonds, together with interest thereon, interest on any unpaid installments
2 of interest, and all costs and expenses in connection with any action or proceedings by or on
3 behalf of those holders are fully met or discharged. In addition, the state pledges to and agrees
4 with the holders of bonds issued, incurred, or created under this Act that the state will not limit
5 or alter the basis on which tobacco settlement revenues that have been sold pursuant to this Act
6 are to be paid to the corporation or the authority so as to impair the terms of any such contract.
7 The corporation and authority each may include these pledges and agreements of the state in any
8 contract with the holders of bonds issued, incurred, or created under this Act.

9 Neither the State of South Dakota nor the authority is liable on bonds issued, incurred, or
10 created under this Act, those bonds may not be a debt of the state or the authority, and this Act
11 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
12 The bonds shall contain a statement to this effect on the face of the bonds.

13 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond issued, incurred, or created by the corporation under
16 this Act or for any act or failure to act of the corporation. The corporation may not be liable for
17 any obligation of the South Dakota Building Authority or for any act or failure to act by the
18 building authority.

19 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. The income of the authority and the corporation,
23 and all properties at any time owned by the authority and the corporation, are exempt from all
24 taxation in the State of South Dakota. In addition, the corporation is exempt from all filing,

1 reporting, and similar requirements otherwise applicable to nonprofit and other corporations.

2 For purposes of chapter 47-31A and any amendment thereto and substitution therefor, bonds,
3 notes, certificates, or other obligations issued, incurred or created by the corporation under this
4 Act shall be deemed to be securities issued by a public instrumentality of the State of South
5 Dakota.

6 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The corporation may employ attorneys, accountants, tobacco industry consultants, and
9 financial experts, managers, and such other employees and agents as may be necessary in its
10 judgment and to fix their compensation.

11 Section 10. The permanent tobacco settlement development trust fund is hereby established
12 in the state treasury as a special trust fund. That portion of the net proceeds of sale of tobacco
13 settlement revenues which is derived from the net proceeds of bonds shall be deposited in the
14 permanent tobacco settlement development trust fund. In addition, any residual interest in
15 tobacco settlement revenues shall, upon receipt by the state, be deposited in the tobacco
16 settlement residual fund. The principal of the permanent tobacco settlement development trust
17 fund may not be expended except for costs and expenses incurred in investing or otherwise
18 administering the permanent tobacco settlement development trust and its assets. The amounts
19 in the permanent tobacco settlement development trust fund shall be state public funds within the
20 meaning of chapter 4-4 and shall be invested in permitted investments and otherwise in
21 accordance with §§ 4-5-23 and 4-5-26. All investment earnings from the permanent tobacco
22 settlement development trust fund shall be transferred to and deposited in the tobacco
23 development interest fund on a period basis no less frequently than annually.

24 Section 11. The tobacco settlement residual fund is established in the state treasury. The

1 amounts received by the state pursuant to any residual interest in tobacco settlement revenues
2 shall, upon receipt, be transferred to and deposited in the tobacco settlement residual fund. The
3 amounts in the tobacco settlement residual fund shall be state public funds within the meaning
4 of chapter 4-4 and shall remain in such fund until appropriated by the Legislature. The amounts
5 in the tobacco settlement residual fund shall be invested in permitted investments or otherwise
6 in accordance with §§ 4-5-23 and 4-5-26.

7 Section 12. The tobacco development interest fund is established in the state treasury. The
8 amounts in the tobacco development interest fund shall be state public funds within the meaning
9 of chapter 4-4 and shall remain in the fund until appropriated by the Legislature. The amounts
10 in the tobacco development interest fund shall be invested in permitted investments or otherwise
11 in accordance with §§ 4-5-23 and 4-5-26.

12 If in order to obtain or preserve any exclusion of interest on bonds from gross income of the
13 holders thereof for purposes of federal income taxation, the corporation or authority enters into
14 any agreement or covenant with the holders of bonds (or the trustee or other fiduciary acting on
15 behalf of or for the benefit of holders of bonds) that imposes restrictions or conditions on the
16 investment, use, expenditure, or other application of the proceeds of bonds issued, incurred, or
17 created under this Act, including any investment earnings thereon (whether while on deposit in
18 the permanent tobacco settlement development trust fund, the tobacco development interest fund
19 or otherwise), then the state and each agency, authority, or other body politic of the state or
20 acting on behalf of the state, shall observe and fully honor each such agreement, covenant, or
21 other restriction or condition with respect to investment, use, expenditure, or application thereof.
22 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred, or
23 created under this Act that the state will not invest, use, expend, or otherwise apply such
24 proceeds of bonds and any other amounts so as to impair the terms of any such agreement or

1 covenant made by the corporation or authority with any such holders (or trustee or other
2 fiduciary) or in any way impair the exemption or exclusion of interest on any such bonds from
3 federal income taxation. The corporation and authority each may include these pledges and
4 agreements of the state in any contract with the holders of bonds issued, incurred, or created
5 under this Act.

6 Section 13. It is the intention of this Legislature that funds deposited in the tobacco
7 development interest fund and the tobacco settlement residual fund be expended pursuant to
8 separately enacted statutes which will implement development programs intended to provide for
9 the health, welfare, and prosperity of the State of South Dakota and its residents. Any such
10 development program shall be established by a separately enacted statute which makes express
11 reference to this Act and the terms and conditions of such program shall be specified in such
12 statute. Any such statute shall expressly incorporate any agreements, covenants, or restrictions
13 described or referred to in or by sections 6 and 12 of this Act and any investment, use,
14 expenditure, or other application of moneys described in section 12 of this Act shall be expressly
15 subject to and in full compliance with the agreements, covenants, restrictions, and conditions
16 imposed by the terms of section 12 of this Act.

17 Section 14. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
19 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

644E0640

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 245** - 02/16/2001

Introduced by: Senators Brown (Arnold), Brosz, Daugaard, Drake, Ham, Hutmacher,
McCracken, Olson (Ed), and Sutton (Dan) and Representatives Heineman,
Pitts, and Smidt

1 FOR AN ACT ENTITLED, An Act to create a health care access and preservation trust fund
2 and to provide that earnings from the fund be used for certain health care purposes.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4 Section 1. That § 28-6-33 be amended to read as follows:
5 28-6-33. There is hereby established in the state treasury a fund known as the
6 ~~intergovernmental transfer~~ health care access and preservation trust fund. The fund shall include
7 revenue received from publicly owned and operated nursing facilities for remittance to the fund
8 under § 28-6-31. The department shall administer the fund and shall adopt procedures for
9 participation by publicly owned and operated nursing facilities. All moneys designated for the
10 fund from whatever source derived shall be deposited with the state treasurer in the
11 ~~intergovernmental transfer~~ health care access and preservation trust fund, except for dollars
12 appropriated by the Legislature for fiscal year 2002 for the neuromuscular program, the diabetes
13 screening program, and the purchase of public access defibrillation equipment. The ~~amounts in~~
14 ~~the intergovernmental transfer~~ fund shall be invested pursuant to §§ 4-5-23 and 4-5-26 and the

1 earnings shall be deposited in the ~~intergovernmental transfer~~ health care access and preservation
2 interest fund.

3 Section 2. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The health care access and preservation interest fund is established in the state treasury. The
6 fund shall be invested according to §§ 4-5-23 and 4-5-26. The investment earnings of the fund
7 shall be credited to the fund. The money in the fund shall be appropriated by the Legislature to
8 fund health care related uses.

9 Section 3. That § 28-6-31 be amended to read as follows:

10 28-6-31. Each publicly owned and operated nursing facility participating under the provisions
11 of §§ 28-6-28 to 28-6-36, inclusive, immediately upon receiving a payment under § 28-6-30,
12 shall remit the amount of that payment, less a transaction fee, to the department for credit to:

13 (1) The ~~intergovernmental transfer~~ health care access and preservation trust fund in an
14 amount equal to the applicable federal medical assistance percentage times the total
15 remittance to the department, less the transaction fee; and

16 (2) The department's other funds for all remaining amounts.

17 Section 4. That § 28-6-35 be amended to read as follows:

18 28-6-35. The department may promulgate rules pursuant to chapter 1-26 for the
19 administration of §§ 28-6-28 to 28-6-36, inclusive. The rules may include criteria for
20 establishing, funding, and administering the pool, criteria for participation in the
21 intergovernmental transfer, penalties for failing to immediately remit the funds to the department,
22 criteria for the transfer of funds, the establishment of transaction fees, and other policies to
23 facilitate the administration of the ~~intergovernmental transfer~~ health care access and preservation
24 trust fund ~~or~~, the funding pool, and the health care access and preservation interest fund.

1 Section 5. That § 28-6-36 be amended to read as follows:

2 28-6-36. Sections 28-6-28 to ~~28-6-36~~ 28-6-35, inclusive, and section 2 of this Act do not
3 create an entitlement to any funds. The department may disburse funds to the extent funds are
4 available and, within its discretion, to the extent such appropriations are approved.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

772E0833

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 253** - 02/24/2001

Introduced by: Senators Symens, Everist, and Hutmacher and Representatives Peterson (Bill), Hanson (Gary), Olson (Mel), and Sigdestad

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Railroad Authority to
2 acquire certain facilities owned by the Burlington Northern and Santa Fe Railway Company
3 and to declare an emergency.

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

5 Section 1. It being declared in the public interest, the South Dakota Railroad Authority,
6 pursuant to chapter 49-16B, is hereby authorized to take such action to acquire, by any of the
7 means permitted in chapter 49-16B, property, real, personal, and mixed, from the Burlington
8 Northern and Santa Fe Railway Company, consisting of easements, rights-of-way, trackage,
9 bridges, rail lines, and spurs, located between mileposts 118.6 near Aberdeen, South Dakota, and
10 milepost 65.60 at the North Dakota/South Dakota border, which are in need of repair,
11 improvement, or replacement. Such property acquired by the authority, and any improvements
12 thereto undertaken as provided in this Act, are declared to be projects within the meaning of
13 § 49-16B-10. Any property acquired by the authority pursuant to this Act may be acquired
14 subject to existing mortgages on or security interests in such property.

1 Section 2. The authority may undertake, either directly or through a lessee or sub-lessee,
2 such improvements to the portion of the property described in section 1 of this Act as the
3 authority may declare to be necessary to cause such property to be suitable for the uses to be
4 made of it.

5 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,
6 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
7 effect from and after its passage and approval.