

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

367E0178

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1079 - 02/07/2001

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 Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to determine the venue of the offense of underage
2 possession or consumption of alcoholic beverages.

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

4 Section 1. That § 35-9-6 be amended to read as follows:

5 35-9-6. In any arrest, citation, or prosecution, ~~or adjudication~~ arising from a violation of
6 § 35-9-2, if the person is apprehended for:

7 (1) The purchase or attempted purchase of alcoholic beverages, the ~~situs~~ venue is the
8 locality where the purchase or attempted purchase occurred;

9 (2) The possession or consumption of alcoholic beverages, the ~~situs~~ venue is the locality
10 where the person was apprehended or any other locality where the person possessed
11 or consumed any portion of the alcoholic beverages.

12 Section 2. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 In any juvenile adjudication arising from a violation of § 35-9-2, if the person is apprehended

1 for:

2 (1) The purchase or attempted purchase of alcoholic beverages, the venue is the locality
3 where the purchase or attempted purchase occurred or the juvenile's county of
4 residence;

5 (2) The possession or consumption of alcoholic beverages, the venue is the locality where
6 the juvenile was apprehended or any other locality where the juvenile possessed or
7 consumed any portion of the alcoholic beverages or the juvenile's county of residence.

8 However, no transfer to the juvenile's county of residence may occur unless the state's
9 attorney of the juvenile's county of residence affirmatively consents to the transfer.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

415E0771 SENATE EDUCATION COMMITTEE ENGROSSED NO.
HB 1258 - 02/27/2001

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

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

1 FOR AN ACT ENTITLED, An Act to revise the distribution of state aid to education.

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

3 Section 1. That § 13-13-10.1 be amended to read as follows:

4 13-13-10.1. Terms used in this chapter mean:

5 (1) "Average daily membership," the average number of resident and nonresident

6 kindergarten through twelfth grade pupils enrolled in all schools operated by the

7 school district during the previous regular school year, minus average number of

8 pupils for whom the district receives tuition, except pupils described in subdivision

9 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the

10 average number of pupils for whom the district pays tuition;

11 (1A) Nonresident students who are in the care and custody of the Department of Social

12 Services, the Unified Judicial System, the Department of Corrections, or other state

13 agencies and are attending a public school may be included in the average daily

14 membership of the receiving district when enrolled in the receiving district. When

1 counting a student who meets these criteria in its general enrollment average daily
2 membership, the receiving district may begin the enrollment on the first day of
3 attendance. The district of residence prior to the custodial transfer may not include
4 students who meet these criteria in its general enrollment average daily membership
5 after the student ceases to attend school in the resident district;

6 (2) "Adjusted average daily membership," calculated as follows:

7 (a) For districts with an average daily membership of two hundred or less and a
8 general fund balance percentage of forty-five percent or less, multiply 1.2 times
9 the average daily membership;

10 (b) For districts with an average daily membership of less than six hundred, but
11 greater than two hundred and a general fund balance percentage of forty-five
12 percent or less, raise the average daily membership to the 0.8293 power and
13 multiply the result times 2.98;

14 (c) For districts with an average daily membership of six hundred or more or a
15 general fund balance percentage of more than forty-five percent, multiply 1.0
16 times their average daily membership;

17 (2A) "General fund balance percentage," is a school district's ending general fund
18 unreserved fund balance less the additional revenue a school district has received from
19 the imposition of the excess tax levy authorized by § 10-12-43 for the previous school
20 fiscal year divided by the school district's total general fund expenditures for the
21 previous school fiscal year, the quotient expressed as a percent;

22 (3) "Index factor," is the annual percentage change in the consumer price index for urban
23 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
24 the United States Department of Labor for the year before the year immediately

1 preceding the year of adjustment or three percent, whichever is less;

2 (3A) "Enrollment adjustment," is one-half of the negative of the annual percent change in
3 the statewide general enrollment average daily membership for the year before the
4 year immediately preceding the year of adjustment. However, the enrollment
5 adjustment may not be less than zero;

6 (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive,
7 is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student
8 allocation shall be \$3,350 increased by the index factor. Each school fiscal year
9 thereafter, the per student allocation shall be the previous fiscal year's per student
10 allocation increased by the index factor plus the enrollment adjustment;

11 (5) "Local need," the per student allocation multiplied by the adjusted average daily
12 membership;

13 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
14 applying the levies established pursuant to § 10-12-42.

15 Section 2. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The secretary of the Department of Education and Cultural Affairs shall determine the
18 reduction in state aid to education to school districts resulting from school districts having a
19 general fund balance percentage greater than forty-five percent. The secretary of the Department
20 of Education and Cultural Affairs shall distribute the amount of money so determined to school
21 districts with a general fund balance percentage of twenty-five or less on a pro rata basis
22 according to the school district's modified average daily membership where modified average
23 daily membership is equal to the average daily membership for school districts with an average
24 daily membership of six hundred or less and for school districts with an average daily

1 membership of more than six hundred is equal to six hundred plus one-half of the average daily
2 membership over six hundred.

3 Section 3. The enrollment adjustment shall apply only to the distribution of state aid to
4 education in fiscal year 2002.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

712E0013 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. SB 14 - 02/27/2001

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

Introduced by: Senators Brosz, Diedrich (Larry), Everist, Hutmacher, McIntyre, Munson, and Reedy and Representatives Juhnke, Brown (Richard), Heineman, and Pummel at the request of the Interim Education Committee

1 FOR AN ACT ENTITLED, An Act to amend the General Appropriations Act for fiscal year
2 2001.

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

4 Section 1. That certain programs in chapter 14 of the 2000 Session Laws be amended to read
5 as follows:

6 DEPARTMENT OF HEALTH

7 Health Systems Development and Regulation

8 Operating Expenses, delete "\$45,555" and insert "\$145,555"

9 Health and Medical Services

10 Operating Expenses, delete "\$1,567,358" and insert "\$2,067,358"

11 DEPARTMENT OF HUMAN SERVICES

12 Rehabilitation Services

13 Operating Expenses, delete "\$479,160" and insert "\$1,479,160"

1 Adjust all totals accordingly.

2 Section 2. The fund source used to support the other fund expenditure authority appropriated
3 by this Act shall be the intergovernmental transfer fund established in § 28-6-33. Any expenditure
4 authority and cash appropriated by this Act which are unspent at the end of fiscal year 2001 shall
5 be carried over to fiscal year 2002.

6 Section 3. This Act is effective June 22, 2001.

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

400E0325 HOUSE APPROPRIATIONS COMMITTEE ENGROSSED
NO. **SB 52** - 02/27/2001

Introduced by: The Committee on Appropriations at the request of the Department of
Social Services

1 FOR AN ACT ENTITLED, An Act to repeal an annual appropriation from the children's trust
2 fund and to repeal a statute that terminates an additional charge for birth records that is
3 deposited in the fund.

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

5 Section 1. That § 26-14-3 be amended to read as follows:

6 26-14-3. ~~There is hereby annually appropriated the sum of sixty thousand dollars to the~~
7 ~~Department of Social Services from the children's trust fund.~~ The funds so appropriated
8 children's trust fund may be used with any other money otherwise annually appropriated or
9 contributed to nonprofit organizations to establish or continue community-based education
10 programs to prevent the occurrence and recurrence of child abuse and neglect. The department
11 may not assess administrative fees or charges against the fund. ~~No money may be appropriated~~
12 ~~from the children's trust fund unless there is at least sixty thousand dollars in the fund.~~

13 Section 2. That § 26-14-4 be repealed.

14 ~~26-14-4. If the fund exceeds one million dollars, the additional charge for supplying a~~

1 ~~certified copy of the record of any birth shall be terminated.~~

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0341

HOUSE ENGROSSED NO. **SB 53** - 02/27/2001

Introduced by: The Committee on State Affairs at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the reunification of
2 an abused or neglected child with a parent and the subsequent termination of parental rights.

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

4 Section 1. That § 26-8A-21.1 be amended to read as follows:

5 26-8A-21.1. Nothing in § 26-8A-21 requires reunification of a child with a parent who:

- 6 (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-
7 22-1, 22-22-19.1, 22-22-22, ~~or 26-10-1 or subdivision 22-22-1(1) or (2), or~~
8 subdivision 22-19-1(5), or committed conduct described by any of those statutes that
9 violated the law or ordinance of another jurisdiction having elements similar to an
10 offense described by any of those statutes;
- 11 (2) Committed a crime defined in § 22-18-1.1 against the child or another child of such
12 parent; ~~or,~~ or committed conduct described by that section that violated the law or
13 ordinance of another jurisdiction having elements similar to the offense described by
14 that section;
- 15 (3) Has been determined by a court by clear and convincing evidence to have subjected

1 the child or another child to torture, sexual abuse, abandonment for at least six
2 months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect
3 was a serious threat to the safety of the child or another child;

4 (4) Is incarcerated and is unavailable to care for the child during a significant period of
5 the child's minority, considering the child's age and the child's need for care by an
6 adult;

7 ~~(3)~~(5) Has had parental rights to another child involuntarily terminated by a prior legal
8 proceeding;

9 ~~(4)~~(6) Has a documented history of abuse and neglect associated with chronic alcohol or
10 drug abuse; or

11 ~~(5)~~(7) Has exposed the child to or demonstrated an inability to protect the child from
12 substantial harm or the risk of substantial harm, and the child or another child has
13 been removed from the parent's custody because the removed child has been was
14 adjudicated abused and neglected by a court on at least one previous occasion;

15 (8) Has exposed the child to or demonstrated an inability to protect the child from
16 substantial harm or the risk of substantial harm, the child has been removed from the
17 parent's custody on two separate occasions, and the Department of Social Services
18 offered or provided family services on each of the two separate occasions the child
19 was removed; or

20 (9) Has exposed the child to or demonstrated an inability to protect the child from
21 substantial harm or risk of harm resulting from a crime, act, or omission as specified
22 in subdivision (1), (2), or (3) of this section.

23 Section 2. That § 26-8A-26.1 be amended to read as follows:

24 26-8A-26.1. In addition to the provisions of § 26-8A-26, the court may find that good cause

1 exists for termination of parental rights of a parent who:

2 (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-
3 22-1, 22-22-19.1, 22-22-22, ~~or 26-10-1 or subdivision 22-22-1(1) or (2)~~, or
4 subdivision 22-19-1(5), or committed conduct described by any of those statutes that
5 violated the law or ordinance of another jurisdiction having elements similar to an
6 offense described by any of those statutes;

7 (2) Committed a crime defined in § 22-18-1.1 against the child or another child of such
8 parent; ~~or~~, or committed conduct described by that section that violated the law or
9 ordinance of another jurisdiction having elements similar to the offense described by
10 that section;

11 (3) Has been determined by a court by clear and convincing evidence to have subjected
12 the child or another child to torture, sexual abuse, abandonment for at least six
13 months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect
14 was a serious threat to the safety of the child or another child;

15 (4) Is incarcerated and is unavailable to care for the child during a significant period of
16 the child's minority, considering the child's age and the child's need for care by an
17 adult;

18 ~~(3)~~(5) Has had parental rights to another child involuntarily terminated by a prior legal
19 proceeding;

20 ~~(4)~~(6) Has a documented history of abuse and neglect associated with chronic alcohol or
21 drug abuse; ~~or~~

22 ~~(5)~~(7) Has exposed the child to or demonstrated an inability to protect the child from
23 substantial harm or the risk of substantial harm, and the child or another child has
24 been removed from the parent's custody because the removed child ~~has been~~ was

1 adjudicated abused and neglected by a court on at least one previous occasion;

2 (8) Has exposed the child to or demonstrated an inability to protect the child from
3 substantial harm or the risk of substantial harm, the child has been removed from the
4 parent's custody on two separate occasions, and the Department of Social Services
5 offered or provided family services on each of the two separate occasions the child
6 was removed; or

7 (9) Has exposed the child to or demonstrated an inability to protect the child from
8 substantial harm or risk of harm resulting from a crime, act, or omission as specified
9 in subdivision (1), (2), or (3) of this section.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0316

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 58** - 02/27/2001

Introduced by: The Committee on Commerce at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to establish certain fees for filing and indexing records

2 pursuant to the Uniform Commercial Code, to establish a fund, and to appropriate the fund.

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

4 Section 1. That § 57A-9-525 be amended to read as follows:

5 57A-9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and indexing
6 a record under this part, other than an initial financing statement of the kind described in
7 subsection (b), is (the amount specified in subsection (c), if applicable, plus):

8 (1) \$ ~~[X]~~ Thirteen dollars if the record is communicated in writing and
9 consists of one ~~or two pages~~ page, and four dollars for each additional page. One dollar of this
10 fee shall be deposited into the financing statement filing fee fund;

11 (2) \$ ~~[2X]~~ Eleven dollars if the record is communicated ~~in writing and~~
12 ~~consists of more than two pages~~ by internet. One dollar of this fee shall be deposited into the
13 financing statement filing fee fund; and

14 (3) \$ ~~[1/2X]~~ Twenty dollars if the record is communicated by another
15 medium authorized by filing-office rule.

1 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial
2 financing statement of the following kind is ~~(the amount specified in subsection (c), if applicable,~~
3 plus):

4 (1) \$_____ Thirty dollars if the financing statement indicates that it is filed in connection
5 with a public-finance transaction;

6 (2) \$_____ Thirty dollars if the financing statement indicates that it is filed in connection
7 with a manufactured-home transaction.

8 ~~{Alternative A}~~

9 ~~—(c) The number of names required to be indexed does not affect the amount of the fee in~~
10 ~~subsections (a) and (b).~~

11 ~~{Alternative B}~~

12 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing
13 or electronically, the fee for each name more than ~~two~~ one required to be indexed is \$_____
14 two dollars.

15 (d) The fee for responding to a request for information from the filing office, including for
16 ~~(issuing a certificate showing)~~~~(communicating)~~ whether there is on file any financing statement
17 naming a particular debtor, is:

18 (1) \$_____ Twelve dollars if the request is communicated in writing; and

19 (2) \$_____ Ten dollars if the request is communicated by another medium authorized by
20 filing-office rule.

21 Upon request the filing officer shall furnish a copy of any filed financing statement or
22 statement of assignment for a uniform fee of one dollar per page.

23 (e) This section does not require a fee with respect to a record of a mortgage which is
24 effective as a financing statement filed as a fixture filing or as a financing statement covering

1 as-extracted collateral or timber to be cut under § 57A-9-502(c). However, the recording and
2 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

3 Section 2. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 57A-9-527. There is hereby created, within the state treasury, the financing statement filing
6 fee fund, which is continuously appropriated, to provide funds for the operation of the uniform
7 commercial code program within the Office of the Secretary of State.

8 Section 3. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 57A-9-528. For each effective financing statement filed pursuant to this chapter, three dollars
11 of the fee collected pursuant to § 57A-9-525, and the computer search fee assessed pursuant to
12 § 57A-9-525, shall be deposited in the financing statement filing fee fund.

13 Section 4. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 57A-9-529. At the end of each fiscal year, any funds in the financing statement filing fee
16 fund, not otherwise appropriated, in excess of twenty-five thousand dollars, shall revert to the
17 general fund.

18 Section 5. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 57A-9-530. If a filed financing or continuation statement covers farm products or accounts,
21 or livestock, or general intangibles arising from or relating to the sale of farm products by a
22 farmer, or crops growing or to be grown, the secured party may file a standard form to be
23 prescribed by the secretary of state, which may be a combined effective financing statement and
24 a uniform commercial code financing statement.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0260

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 60** - 02/27/2001

Introduced by: The Committee on Appropriations at the request of the Department of
Education and Cultural Affairs

1 FOR AN ACT ENTITLED, An Act to expand the uses of the special education extraordinary
2 cost fund.

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

4 Section 1. That § 13-37-48.1 be amended to read as follows:

5 13-37-48.1. In addition to the purposes specified in § 13-37-40, money set aside pursuant
6 to § 13-37-40 may be used by the Department of Education and Cultural Affairs to establish and
7 maintain a program to assist school districts with legal matters relating to special education, to
8 employ personnel to audit school districts for compliance with the provisions of §§ 13-37-36.1
9 to 13-37-52, to establish and maintain state protocols to assist school districts in developing
10 individualized education plans, to support activities under Part C of the Individuals with
11 Disabilities Education Act, Infants and Toddlers with Disabilities, or to purchase assistive
12 technology for students with a level two, three, four, or five disability.

13 Any approved K-12 application under the extraordinary cost fund must be funded prior to
14 funding the Part C requests.

1 Section 2. That § 13-37-35.1 be amended to read as follows:

2 13-37-35.1. Terms used in chapter 13-37 mean:

3 (1) "Level one disability," a mild disability;

4 (2) "Level two disability," a mental retardation or emotional disorder;

5 (3) "Level three disability," hearing impairment, deafness, visual impairment,
6 deaf-blindness, orthopedic impairment, or traumatic brain injury;

7 (4) "Level four disability," autism;

8 (5) "Level five disability," multiple disabilities;

9 (5A) "Level six disability," prolonged assistance;

10 (6) "Index factor," is the annual percentage change in the consumer price index for urban
11 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
12 the United States Department of Labor for the year before the year immediately
13 preceding the year of adjustment or three percent, whichever is less;

14 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
15 education fund of a school district of one dollar and thirty cents per thousand dollars
16 of taxable valuation;

17 (8) "Allocation for a student with a level one disability," for the school fiscal year
18 beginning July 1, 1999, is \$3,504. For each school year thereafter, the allocation for
19 a student with a level one disability shall be the previous fiscal year's allocation for
20 such child increased by the lesser of the index factor or three percent;

21 (9) "Allocation for a student with a level two disability," for the school fiscal year
22 beginning July 1, 1999, is \$7,914. For each school year thereafter, the allocation for
23 a student with a level two disability shall be the previous fiscal year's allocation for
24 such child increased by the lesser of the index factor or three percent;

1 (10) "Allocation for a student with a level three disability," for the school fiscal year
2 beginning July 1, 1999, is \$10,116. For each school year thereafter, the allocation for
3 a student with a level three disability shall be the previous fiscal year's allocation for
4 such child increased by the lesser of the index factor or three percent;

5 (11) "Allocation for a student with a level four disability," for the school fiscal year
6 beginning July 1, 1999, is \$14,705. For each school year thereafter, the allocation for
7 a student with a level four disability shall be the previous fiscal year's allocation for
8 such child increased by the lesser of the index factor or three percent;

9 (12) "Allocation for a student with a level five disability," for the school fiscal year
10 beginning July 1, 1999, is \$15,808. For each school year thereafter, the allocation for
11 a student with a level five disability shall be the previous fiscal year's allocation for
12 such child increased by the lesser of the index factor or three percent;

13 (12A) "Allocation for a student with a level six disability," for the school fiscal year
14 beginning July 2001, is \$1,608. For each school year thereafter, the allocation for a
15 student with a level six disability shall be the previous fiscal year's allocation for such
16 child increased by the lesser of the index factor or three percent;

17 (13) "Child count," is the number of students in need of special education or special
18 education and related services according to criteria set forth in rules promulgated
19 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education
20 and Cultural Affairs in accordance with rules promulgated pursuant to § 13-37-1.1;

21 (14) "Average daily membership," the average number of kindergarten through twelfth
22 grade pupils enrolled in all schools operated by the school district during the previous
23 regular school year plus the average number of pupils for whom the district pays
24 tuition;

1 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
2 secretary of education and cultural affairs for the purpose of instructing children of
3 compulsory school age. This definition excludes any school that receives a majority
4 of its revenues from public funds;

5 (16) "Nonpublic average daily membership," the average number of children under age
6 sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the
7 previous school year plus:

8 (a) For nonpublic schools located within the boundaries of a public school district
9 with an average daily membership of six hundred or more during the previous
10 school year, the average number of kindergarten through twelfth grade pupils
11 enrolled during the previous regular school year in all nonpublic schools
12 located within the boundaries of the public school district;

13 (b) For nonpublic schools located within the boundaries of a public school district
14 with an average daily membership of less than six hundred during the previous
15 school year, the average number of resident kindergarten through twelfth grade
16 pupils enrolled during the previous school year in all nonpublic schools located
17 within the State of South Dakota;

18 (17) "Special education average daily membership," average daily membership plus
19 nonpublic average daily membership;

20 (18) "Local need," an amount to be determined as follows:

21 (a) Multiply the special education average daily membership by 0.089 and multiply
22 the result by the allocation for a student with a level one disability;

23 (b) Multiply the number of students having a level two disability as reported on the
24 child count for the previous school fiscal year by the allocation for a student

- 1 with a level two disability;
- 2 (c) Multiply the number of students having a level three disability as reported on
- 3 the child count for the previous school fiscal year by the allocation for a
- 4 student with a level three disability;
- 5 (d) Multiply the number of students having a level four disability as reported on the
- 6 child count for the previous school fiscal year by the allocation for a student
- 7 with a level four disability;
- 8 (e) Multiply the number of students having a level five disability as reported on the
- 9 child count for the previous school fiscal year by the allocation for a student
- 10 with a level five disability;
- 11 (f) Multiply the number of students having a level six disability as reported on the
- 12 child count for the previous school fiscal year by the allocation for a student
- 13 with a level six disability;
- 14 (g) Sum the results of (a) through ~~(e)~~ (f);
- 15 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
- 16 divided by \$1.30. The maximum effort factor is 1.0.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

914E0585

HOUSE ENGROSSED NO. **SB 125** - 02/27/2001

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~~
15 ~~considered to be earning a wage that would entitle them to the maximum compensation for death~~

1 ~~or injury allowable under this title, but in~~ worker's employment earnings from all sources during
2 the last six months of employment shall be used. In the event the volunteer uncompensated
3 worker has never been employed, the worker shall be considered to be earning the state
4 minimum wage over a forty-hour week. The worker's average weekly wage shall be calculated
5 by one of the methods in §§ 62-4-25 to 62-4-27, inclusive. In no event ~~shall~~ may payments to
6 volunteer uncompensated workers exceed the maximum limitations for benefits as set out in this
7 title. No local prisoner, state inmate, or federal inmate providing services to the state or any of
8 its political subdivisions may be considered a volunteer worker under this section.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

717E0140

HOUSE ENGROSSED NO. **SB 144** - 02/27/2001

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 § 31-28-22 be amended to read as follows:

12 31-28-22. Every sign, signal ~~or~~ marking, or device prohibited by §§ 31-28-19 and 31-28-20
13 is hereby declared to be a public nuisance and the Department of Transportation ~~is hereby~~
14 ~~empowered to~~ or local authorities within their respective jurisdiction may remove the same or
15 cause it to be removed without notice.

1 Section 3. The Department of Game, Fish and Parks or its designee may mark or sign a state
2 snowmobile trail within any public right-of-way or public land. The Department of Game, Fish
3 and Parks may place signs within any public right-of-way providing directions to a state owned
4 or managed public use area.

5 Section 4. That chapter 31-28 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Nothing in this chapter may be deemed to limit or encroach upon the practice and activity
8 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

307E0387

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

SB 153 - 02/27/2001

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

Introduced by: Senators Olson (Ed), de Hueck, Dennert, Duxbury, Ham, Hutmacher, Koetzle, McIntyre, Moore, Munson, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Brown (Richard), Davis, Elliott, Flowers, Gillespie, Hennies (Don), Hennies (Thomas), Holbeck, Kooistra, Lintz, Madsen, McCoy, Murschel, Nesselhuf, Olson (Mel), and Pederson (Gordon)

1 FOR AN ACT ENTITLED, An Act to subject uncertified school administrators to a code of
2 professional ethics and to allow for the publication of violations of the code of professional
3 ethics.

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

5 Section 1. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Individuals employed in an administrative capacity, but who do not hold a valid South
8 Dakota certificate pursuant to chapter 13-42, are subject to the code of professional ethics as
9 established under § 13-43-45.

10 Section 2. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The Professional Administrators Practices and Standards Commission may publish a

1 summary of the findings of fact, conclusions of law, and the decisions of the commission as they
2 relate to violations of the code of professional ethics in the designated legal newspaper of the
3 school system where the respondent is currently employed or was last employed. The findings
4 shall be published for three consecutive weeks.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0736

HOUSE ENGROSSED NO. **SB 160** - 02/28/2001

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 holding
8 accreditation from a regional accrediting agency recognized by the United States Department of
9 Education pursuant to 20 U.S.C. § 1099b as amended to January 1, 2001, or participating in any
10 federal financial assistance program authorized by Title IV of the Higher Education Act of 1965
11 as amended to January 1, 2001. A violation of this section is a Class 1 misdemeanor and subjects
12 the violator to a civil penalty of twenty-five thousand dollars.

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

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

177E0658

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 165 - 02/27/2001

Introduced by: Senators Koskan, Diedtrich (Elmer), and Volesky and Representatives Lange, Hargens, Kloucek, and Smidt

1 FOR AN ACT ENTITLED, An Act to provide for incentives for development of certain
2 commercial small power production facilities.

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

4 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any commercial small power production facility, utilizing renewable resources, such as sun,
7 wind, geothermal, or biomass, that begins generating electricity after June 30, 2001, produces
8 ten megawatts or less of electricity as measured by nameplate rating, and is located within one
9 county and owned by a natural person, corporation, nonprofit or for profit business organization,
10 or tribal council (if the facility is located outside the boundaries of the reservation), irrigation
11 district, drainage district, or other political subdivision or agency of the state authorized by
12 statute to carry on the business of developing, transmitting, utilizing, or distributing electric
13 power is subject to the provisions of this Act for any new or expanded facility.

14 Section 2. Rural electric cooperatives developing commercial small power production

1 facilities utilizing renewable energy are not subject to tax pursuant to § 10-35-1.2 but are subject
2 to a gross receipts tax as defined in § 10-36-6.

3 Section 3. Terms used in this Act mean:

4 (1) "Department," the Department of Revenue;

5 (2) "New or expanded facility," a new commercial small power production facility as
6 defined in section 1 of this Act or an addition to an existing commercial small power
7 production facility, the construction or installation of which is subject to contractors'
8 excise tax pursuant to chapter 10-46A or 10-46B;

9 (3) "Project," the installation or construction of the first ten megawatts of generation
10 capacity of a new or expanded facility;

11 (4) "Project cost," the amount paid in money for a project;

12 (5) "Secretary," the secretary of the Department of Revenue.

13 Section 4. Any person may apply for and obtain a refund or credit for contractors' excise
14 taxes imposed and paid under the provisions of chapter 10-46A or 10-46B for the construction
15 of a new or expanded facility that is a commercial small power production facility that is defined
16 in section 1 of this Act.

17 Section 5. The refund pertains only to project costs incurred and paid after July 1, 2001. The
18 refund pertains only to project costs that were incurred and paid within thirty-six months of the
19 approval of the application required by this Act. No refund may be made unless:

20 (1) The project costs exceed five hundred thousand dollars; and

21 (2) The person applying for the refund obtains a permit from the secretary as set forth in
22 section 7 of this Act.

23 Section 6. The amount of the tax refund shall be one hundred percent of the contractor's
24 excise taxes attributed to the project cost, excluding any associated transmission facilities.

1 Section 7. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
2 from the secretary at least thirty days prior to commencement of the project. The application for
3 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
4 be made and submitted for each project. Upon approval of the application, the secretary shall
5 issue a permit entitling the applicant to submit refund claims as provided by this Act. The permit
6 or refund claims are not assignable or transferable except as collateral or security pursuant to
7 chapter 57A-9.

8 Section 8. Any claim for refund shall be submitted on forms prescribed by the secretary and
9 shall be supported by such documentation as the secretary may require. The secretary may deny
10 any claim where the claimant has failed to provide information or documentation requested or
11 considered necessary by the secretary to determine the validity of the claim.

12 Section 9. Any claim for refund shall be submitted to the department on or before the last day
13 of the month following each quarterly period. The secretary shall determine the amount of the
14 tax refund. Ninety percent of the amount of refund shall be paid to the claimant in accordance
15 with §§ 10-59-22 and 10-59-23, and ten percent shall be withheld by the department. No interest
16 shall be paid on the refund amount.

17 Section 10. The amounts withheld by the department in accordance with section 9 of this Act
18 shall be retained until the project has been completed and the claimant has met all the conditions
19 of this Act, at which time all sums retained shall be paid to claimant.

20 Section 11. If any claim has been fraudulently presented or supported as to any item in the
21 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be rejected
22 in its entirety and all sums previously refunded to the claimant shall constitute a debt to the state
23 and a lien in favor of the state upon all property and rights to property whether real or personal
24 belonging to the claimant and may be recovered in an action of debt.

1 Section 12. Any person aggrieved by the denial in whole or in part of a refund claimed under
2 this Act, may within thirty days after service of the notice of a denial by the secretary, demand
3 and is entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted
4 pursuant to chapter 1-26.

5 Section 13. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
6 procedures for filing refund claims and the requirements necessary to qualify for a refund.

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

527E0529

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 204 - 02/27/2001

Introduced by: Senators Hagen and Volesky and Representatives Valandra and Bradford

1 FOR AN ACT ENTITLED, An Act to permit tribal identification cards in lieu of other
2 identification when applying for a driver's license.

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

4 Section 1. That § 32-12-3.1 be amended to read as follows:

5 32-12-3.1. Every applicant under this chapter shall, on making application for an operator's
6 license, restricted permit, instruction permit, or nondriver identification card, present to the
7 driver's license examiner a certified copy of a United States birth certificate issued in or by a city,
8 county, or state, ~~a federal census record~~ a tribal identification card that provides evidence that
9 a certified birth certificate issued by a city, county, or state was used to obtain the tribal
10 identification card and is in a form and content acceptable to the Department of Commerce and
11 Regulation, a naturalization and immigration record authorizing the applicant's presence in the
12 United States, or a valid passport. The examiner may accept other evidence of birth only if the
13 examiner is satisfied that the applicant cannot, for good reason beyond the applicant's control,
14 produce such primary documents. The Department of Commerce and Regulation may not require
15 new evidence of birth at the time an application is made for an operator's permit by a person

1 holding an operator's license, restricted permit, or instruction permit, if that person's operator's
2 license, restricted permit, or instruction permit is turned in to the department with the
3 application. Any person who obtains a license, permit, or identification card pursuant to this
4 section fraudulently or by use of a fraudulently obtained document is guilty of a Class 2
5 misdemeanor.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0600

HOUSE ENGROSSED NO. **SB 223** - 02/28/2001

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund tax refunds for elderly and
2 disabled persons and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the general fund the sum of one million dollars
5 (\$1,000,000), or so much thereof as may be necessary, to the Department of Revenue to provide
6 refunds for real property tax and sales tax to elderly and disabled persons pursuant to chapters
7 10-18A and 10-45A. An amount not to exceed ten thousand dollars in fiscal 2002 may be used
8 for the administrative costs of this Act.

9 Section 2. The secretary of revenue shall approve vouchers and the state auditor shall draw
10 warrants to pay expenditures authorized by this Act.

11 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
12 June 30, 2002, shall revert in accordance with § 4-8-21.

13 Section 4. Whereas, this Act is necessary for the support of the state government and its
14 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
15 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

355E0789

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 225 - 02/27/2001

Introduced by: Senators Everist and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to insurance taxes, cash
2 surrender values of insurance policies, and the payment of insurance benefits.

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

4 Section 1. That § 10-44-2 be amended to read as follows:

5 10-44-2. Any company doing insurance business in this state shall pay a tax at the rates
6 specified in this section. The tax shall be paid to the Division of Insurance at the time the
7 company files its annual statement, or, if no annual statement is required, then before March first
8 of each year.

9 If, during the previous year, a company paid more than five thousand dollars in premium
10 taxes in this state, the company shall submit payments equal to one-quarter of the previous year's
11 premium taxes to the Division of Insurance on April thirtieth, July thirty-first, October
12 thirty-first, and January thirty-first. The quarterly payments shall be credited against the amount
13 due from the company at the time the company files its annual statement, or if no annual
14 statement is required, then on March first of each year. The director of the Division of Insurance
15 may waive the requirement in writing for quarterly payments or reduce the amount of deposit

1 if the director finds the requirement would impose an undue premium tax on a company because
2 of a significant decline in sales within the state. If the sum of the quarterly payments exceeds the
3 total taxes due, the director shall credit the overpayment against subsequent amounts due or, if
4 requested in writing at the time the company files its annual statement, refund the overpayment
5 to the company. If the overpayment cannot be credited, there is excess remaining after the credit
6 is taken on the annual statement, or the refund is not requested, the division may refund the
7 amount overpaid by May first of the following year. The rates are:

8 (1) On each domestic company, two and one-half percent of premiums and one and one-
9 fourth percent of the consideration for annuity contracts. However, the rate for life
10 insurance and annuities shall be computed as follows:

11 (a) Two and one-half percent of premiums for a life policy on the first one hundred
12 thousand dollars of annual premium, and eight one-hundredths of a percent for
13 that portion of the annual life premiums exceeding one hundred thousand
14 dollars; and

15 (b) One and one-fourth percent of the consideration for annuity contracts on the
16 first five hundred thousand dollars of consideration for annuity contracts, and
17 eight one-hundredths of a percent for that portion of the consideration on
18 annuity contracts exceeding five hundred thousand dollars.

19 The tax also applies to premiums for insurance written on individuals residing outside
20 this state or property located outside this state if no comparable tax is paid by the
21 direct writing company to any other appropriate taxing authority. However, the tax
22 applies only to premiums for insurance written after July 1, 1980, on individuals
23 residing outside of the United States;

24 (2) On each foreign company, ~~two~~ the rate shall be computed as follows:

1 (a) Two and one-half percent of premiums, and one. However, for that portion of
 2 the life insurance premiums exceeding one hundred thousand dollars annually,
 3 the rate shall be eight one-hundredths of a percent; and

4 (b) One and one-fourth percent of the consideration for annuity contracts on the
 5 first five hundred thousand dollars of consideration for annuity contracts, and
 6 eight one-hundredths of a percent for that portion of the consideration on
 7 annuity contracts exceeding five hundred thousand dollars;

8 (3) On each insurer not licensed or not authorized to do business in this state, ~~two~~ the
 9 rate shall be computed as follows:

10 (a) Two and one-half percent of premiums and one. However, for that portion of
 11 the life insurance premiums exceeding one hundred thousand dollars annually,
 12 the rate shall be eight one-hundredths of a percent; and one

13 (b) One and one-fourth percent of the consideration for annuity contracts on the
 14 first five hundred thousand dollars of consideration for annuity, and eight one-
 15 hundredths of a percent for that portion of the consideration on annuity
 16 contracts exceeding five hundred thousand dollars;

17 (4) Fourteen dollars for each insurance policy issued or renewed for workers'
 18 compensation coverage.

19 Revenue from subdivision (4) of this section shall be deposited in the insurance operating
 20 fund of the state treasury and is dedicated to the Department of Labor for purposes of
 21 automating the administration of the workers' compensation law and supporting the Workers'
 22 Compensation Advisory Council.

23 Section 2. That § 58-6-70 be amended to read as follows:

24 58-6-70. If any other state or foreign country imposes any taxes, licenses, and other fees, in

1 the aggregate, or fines, penalties, deposit requirements, or other material obligations,
2 prohibitions, or restrictions upon South Dakota insurers, or upon the agents or representatives
3 of such insurers, which are, pursuant to the laws of that other state or country, in excess of those
4 directly imposed upon similar insurers, or upon the agents or representatives of such insurers,
5 of that other state or country under the statutes of this state, then, so long as the laws of that
6 other state or country continue in force or are so applied, the director of the Division of
7 Insurance shall impose the same taxes, licenses, and other fees, in the aggregate, or fines,
8 penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of
9 whatever kind upon the insurers, or upon the agents or representatives of the insurers, of the
10 other state or country doing business or seeking to do business in South Dakota. Any tax,
11 license, or other fee or obligation imposed on South Dakota insurers or their agents or
12 representatives by any first or second class municipality, county, or other political subdivision
13 or agency of the other state or country is considered to be imposed by such state or country
14 within the meaning of this section. The time and period of payment of the retaliatory tax is the
15 same, in all cases, as that of the gross premiums tax provided for in § 10-44-2. No interest
16 charges or credits may be made or allowed for the use or loss of the use of funds due to any
17 difference in the time or period of payment used in this state and the time or period used in a
18 foreign state or country.

19 This provision does not apply to life policies where the total first year premium is equal to
20 or greater than one million dollars and to annuity contracts where the total first year
21 consideration is equal to or greater than one million dollars.

22 Section 3. That § 58-15-17 be amended to read as follows:

23 58-15-17. In the case of policies issued on or after the operative date specified in § 58-15-42,
24 the loan value referred to in § 58-15-15 shall be the cash surrender value at the end of the current

1 policy year as required by § 58-15-33. The policy shall reserve to the insurer the right to defer
2 the granting of a loan, other than for the payment of any premium to the insurer, for six months
3 after application therefor. For policies where the cash surrender value pursuant to § 58-15-33
4 is in excess of one million dollars, the loan value shall be equal to the portion of the cash
5 surrender value that can immediately be converted to cash, pursuant to the policyholder's
6 consent. The consent of the policyholder shall be on a form prescribed by the director in rules
7 promulgated pursuant to chapter 1-26.

8 Section 4. That § 58-15-26 be amended to read as follows:

9 58-15-26. There shall be a provision that when a policy ~~shall become~~ becomes a claim by the
10 death of the insured, settlement shall be made upon receipt of due proof of death and, at the
11 insurer's option, surrender of the policy ~~and/or or~~ or proof of the interest of the claimant, or both.
12 If an insurer shall specify a particular period prior to the expiration of which settlement shall be
13 made, such period ~~shall~~ may not exceed two months from the receipt of such proof. For policies
14 where the cash surrender value pursuant to § 58-15-33 is in excess of one million dollars at the
15 date of death, settlement may be made in cash or, if allowed under the policy, by distributing
16 assets of the separate account to the claimant with the consent of the policyholder. The consent
17 of the policyholder shall be on a form prescribed by the director in rules promulgated pursuant
18 to chapter 1-26.

19 Section 5. That § 58-15-26.2 be amended to read as follows:

20 58-15-26.2. Interest payable pursuant to § 58-15-26.1 shall be computed from the date of
21 death of the insured until the date of payment and shall be at the rate of four percent per annum
22 or not less than the current rate of interest on death proceeds left on deposit with the insurer
23 under an interest settlement option, whichever rate is greater. For policies where the cash
24 surrender value pursuant to § 58-15-33 is in excess of one million dollars at the date of death,

1 and with the consent of the policyholder, the interest shall be computed commencing the latter
2 of sixty days succeeding the date of death of the insured or the date proof of death has been
3 received by the insurer in good order until the date of payment. The consent of the policyholder
4 shall be on a form prescribed by the director in rules promulgated pursuant to chapter 1-26.

5 Section 6. That § 58-15-33 be amended to read as follows:

6 58-15-33. Any cash surrender value available under the policy in the event of default in a
7 premium payment due on any policy anniversary, whether or not required by § 58-15-31 shall
8 be an amount not less than the excess, if any, of the present value on such anniversary, of the
9 future guaranteed benefits which would have been provided for by the policy, including any
10 existing paid-up additions, if there had been no default, over the sum of the then present value
11 of the adjusted premiums as defined in §§ 58-15-35 to 58-15-38, inclusive, and §§ 58-15-43.1
12 to 58-15-43.11, inclusive, corresponding to premiums which would have fallen due on and after
13 such anniversary, and the amount of any indebtedness to the insurer on the policy. Any cash
14 surrender value available within thirty days after any policy anniversary under any policy paid up
15 by completion of all premium payments or any policy continued under any paid-up nonforfeiture
16 benefit, whether or not required by § 58-15-31, shall be an amount not less than the present
17 value, on such anniversary, of the future guaranteed benefits provided for by the policy, including
18 any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

19 However, for any policy issued on or after the operative date of §§ 58-15-43.1 to
20 58-15-43.11, inclusive, which provides supplemental life insurance or annuity benefits at the
21 option of the insured and for an identifiable additional premium by rider or supplemental policy
22 provision, the cash surrender value referred to in the first paragraph of this section shall be an
23 amount not less than the sum of the cash surrender value as defined in that paragraph for an
24 otherwise similar policy issued at the same age without a rider or supplemental policy provision

1 and the cash surrender value as defined in that paragraph for a policy which provides only the
2 benefits otherwise provided by a rider or supplemental policy provision.

3 Further, for any family policy issued on or after the operative date of §§ 58-15-43.1 to
4 58-15-43.11, inclusive, which defines a primary insured and provides term insurance on the life
5 of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash
6 surrender value referred to in the first paragraph of this section shall be an amount not less than
7 the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy
8 issued at the same age without term insurance on the life of the spouse and the cash surrender
9 value as defined in that paragraph for a policy which provides only the benefits otherwise
10 provided by term insurance on the life of the spouse.

11 Any cash surrender value available within thirty days after any policy anniversary under any
12 policy paid-up by completion of all premium payments or any policy continued under any paid-up
13 nonforfeiture benefit, whether or not required by § 58-15-31, shall be an amount not less than
14 the present value, on such anniversary of the future guaranteed benefits provided for by the
15 policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on
16 the policy.

17 If the cash surrender value is in excess of one million dollars, the term, cash surrender value,
18 may include payment of assets to the policyholder as well as payment of cash, if allowed under
19 the policy, with the consent of the policyholder. The consent of the policyholder shall be on a
20 form prescribed by the director in rules promulgated pursuant to chapter 1-26.

21 Section 7. That § 58-15-46 be amended to read as follows:

22 58-15-46. A policy which contains any exclusion or restriction pursuant to § 58-15-45 shall
23 also provide that in the event of death under the circumstances to which any such exclusion or
24 restriction is applicable, the insurer will return all premiums received under the policy with

1 adjustment for indebtedness and dividend credits. If the policy is a variable policy, the insurer
2 may, if the policy so provides, return all premiums received under the policy with adjustment for
3 indebtedness and adjustment to reflect the investment experience of the separate account.

4 Section 8. The amendments in section 1 of this Act are repealed on July 1, 2002.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0768

HOUSE ENGROSSED NO. **SB 226** - 02/28/2001

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
15 authority of this Act and payable directly or indirectly out of or representing an

1 interest in tobacco settlement revenues or other rights under or with respect to the
2 master settlement agreement;

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

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

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

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

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

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

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

24 (10) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together

1 with noncollateralized direct obligations of any bank or savings institution, insurance
2 company, or bank or insurance holding company if the institution or holding company
3 is rated in the highest four classifications by at least one standard rating service and
4 any bond, note, or other obligation of any state or any agency, authority, or other
5 instrumentality of any state or political subdivision thereof if the bond, note, or other
6 obligation is rated in the four highest classifications established by at least one
7 standard rating service;

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

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

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

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

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

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

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

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

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

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

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

22 The corporation may issue bonds and secure repayment of the bonds with amounts payable
23 out of tobacco settlement revenues or any other property or funds of the corporation. Bonds
24 issued by the corporation shall be accompanied by an opinion of nationally recognized bond

1 counsel substantially to the effect that interest on the bonds is excludable from the gross income
2 of the bondholder for federal income tax purposes.

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

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

1 persons providing the arrangements, including from bond proceeds.

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

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

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

24 The corporation may not guarantee the debts of another.

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

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

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

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

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

1 (7) To receive funds transferred to it by the authority, the state, or others; and

2 (8) To do all things necessary and convenient to carry out the purposes of this chapter.

3 The corporation shall also be vested with the same power and authority, and shall be subject
4 to the same limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1,
5 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,
6 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
7 authority shall be exercised with respect to and shall be limited to the purposes of the corporation
8 set forth in section 4 of this Act, the final maturity date of any bonds issued, incurred, or created
9 hereunder may not be in excess of forty years for the date of delivery thereof, and the
10 corporation may not engage in any unrelated activities. In addition, the corporation may invest
11 any of its funds in permitted investments.

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

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

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

23 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred,
24 or created under this Act that the state will not limit or alter the rights and powers vested in the

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

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

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

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

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

23 The corporation is hereby declared to be performing a public function on behalf of the state
24 and to be a public instrumentality of the state. The income of the authority and the corporation,

1 and all properties at any time owned by the authority and the corporation, are exempt from all
2 taxation in the State of South Dakota. In addition, the corporation is exempt from all filing,
3 reporting, and similar requirements otherwise applicable to nonprofit and other corporations.

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

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

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

13 Section 10. The permanent tobacco settlement development trust fund is hereby established
14 in the state treasury as a special trust fund. That portion of the net proceeds of sale of tobacco
15 settlement revenues which is derived from the net proceeds of bonds shall be deposited in the
16 permanent tobacco settlement development trust fund. In addition, any residual interest in
17 tobacco settlement revenues shall, upon receipt by the state, be deposited in the tobacco
18 settlement residual fund. The principal of the permanent tobacco settlement development trust
19 fund may not be expended except for costs and expenses incurred in investing or otherwise
20 administering the permanent tobacco settlement development trust and its assets. The amounts
21 in the permanent tobacco settlement development trust fund shall be state public funds within the
22 meaning of chapter 4-4 and shall be invested in permitted investments and otherwise in
23 accordance with §§ 4-5-23 and 4-5-26. All investment earnings from the permanent tobacco
24 settlement development trust fund shall be transferred to and deposited in the tobacco

1 development interest fund on a period basis no less frequently than annually.

2 Section 11. The tobacco settlement residual fund is established in the state treasury. The
3 amounts received by the state pursuant to any residual interest in tobacco settlement revenues
4 shall, upon receipt, be transferred to and deposited in the tobacco settlement residual fund. The
5 amounts in the tobacco settlement residual fund shall be state public funds within the meaning
6 of chapter 4-4 and shall remain in such fund until appropriated by the Legislature. The amounts
7 in the tobacco settlement residual fund shall be invested in permitted investments or otherwise
8 in accordance with §§ 4-5-23 and 4-5-26.

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

14 If in order to obtain or preserve any exclusion of interest on bonds from gross income of the
15 holders thereof for purposes of federal income taxation, the corporation or authority enters into
16 any agreement or covenant with the holders of bonds (or the trustee or other fiduciary acting on
17 behalf of or for the benefit of holders of bonds) that imposes restrictions or conditions on the
18 investment, use, expenditure, or other application of the proceeds of bonds issued, incurred, or
19 created under this Act, including any investment earnings thereon (whether while on deposit in
20 the permanent tobacco settlement development trust fund, the tobacco development interest fund
21 or otherwise), then the state and each agency, authority, or other body politic of the state or
22 acting on behalf of the state, shall observe and fully honor each such agreement, covenant, or
23 other restriction or condition with respect to investment, use, expenditure, or application thereof.
24 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred, or

1 created under this Act that the state will not invest, use, expend, or otherwise apply such
2 proceeds of bonds and any other amounts so as to impair the terms of any such agreement or
3 covenant made by the corporation or authority with any such holders (or trustee or other
4 fiduciary) or in any way impair the exemption or exclusion of interest on any such bonds from
5 federal income taxation. The corporation and authority each may include these pledges and
6 agreements of the state in any contract with the holders of bonds issued, incurred, or created
7 under this Act.

8 Section 13. It is the intention of this Legislature that funds deposited in the tobacco
9 development interest fund and the tobacco settlement residual fund be expended for:

- 10 (1) Grants for college scholarships designed to encourage and reward postsecondary
11 academic excellence;
- 12 (2) Grants designed to encourage and reward academic excellence in primary and
13 secondary education;
- 14 (3) Grants designed to reduce the use of tobacco products by our state's citizens; and
- 15 (4) Grants enacted pursuant to separately enacted statutes which will implement
16 development programs intended to provide for the health, welfare, and prosperity of
17 the State of South Dakota and its residents.

18 Any grant or development program, not expressly provided for in this section, shall be
19 established by a separately enacted statute which makes express reference to this Act; and the
20 terms and conditions of such program, which shall be designed to provide for the health, welfare,
21 and prosperity of the State of South Dakota and its residents, shall be specified in such statute.
22 Any such statute shall expressly incorporate any agreements, covenants, or restrictions described
23 or referred to in or by sections 6 and 12 of this Act and any investment, use, expenditure, or
24 other application of moneys described in section 12 of this Act shall be expressly subject to and

1 in full compliance with the agreements, covenants, restrictions, and conditions imposed by the
2 terms of section 12 of this Act.

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

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0787

HOUSE ENGROSSED NO. **SB 229** - 02/28/2001

Introduced by: Senator McCracken and Representative McCoy

1 FOR AN ACT ENTITLED, An Act to provide direction to the South Dakota Investment
2 Council in the investment of the net proceeds derived from the sale of state cement
3 enterprises and to declare an emergency.

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

5 Section 1. The provisions of this Act apply only upon adoption by the people of Senate Joint
6 Resolution No. 1 adopted by the Seventy-fifth Legislature meeting in special session amending
7 Article XIII of the State Constitution relating to creation and administration of a trust fund to
8 contain net proceeds from the sale of state cement enterprises.

9 Section 2. That § 4-5-26 be amended to read as follows:

10 4-5-26. Money made available for investment may be invested in the following classes of
11 securities and investments and, except as provided by § 3-12-117, chapter 3-13, ~~and~~ the South
12 Dakota Cement Plant retirement fund, and the permanent trust fund containing the net proceeds
13 from the sale of state cement enterprises, not otherwise:

- 14 (1) Direct and indirect obligations of the United States government;
- 15 (2) Agencies and instrumentalities of the United States government;

- 1 (3) Direct obligations of the State of South Dakota and any of its political subdivisions;
- 2 (4) Obligations consisting of notes, bonds, debentures, and certificates which are direct
- 3 obligations of a solvent corporation or trust existing under the laws of the United
- 4 States or any state thereof, provided that such investments shall be rated in the four
- 5 highest classifications established by at least two standard rating services; or
- 6 (5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan
- 7 associations, building and loan associations, and bankers' acceptances.

8 Section 3. That chapter 5-17 be amended by adding thereto a NEW SECTION to read as

9 follows:

10 The State Investment Council as provided in § 4-5-12 is responsible for the investment of

11 the trust fund containing the net proceeds from the sale of state cement enterprises. The

12 investment of such funds is not restricted by the provisions of § 4-5-26, but is governed by the

13 provisions of § 4-5-27.

14 Section 4. Whereas, this Act is necessary for the support of the state government and its

15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

16 force and effect from and after the date provided for in section 1 of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

714E0465

HOUSE ENGROSSED NO. **SB 234** - 02/28/2001

Introduced by: Senators Sutton (Dan), Brown (Arnold), Daugaard, Hutmacher, and
McCracken and Representatives Garnos and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide for the development and administration of certain
2 standardized academic achievement tests.

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

4 Section 1. That § 13-3-55 be amended to read as follows:

5 13-3-55. Every school district shall administer the same national norm-referenced academic
6 achievement test to all students in grades two, four, eight, and eleven. ~~In addition, and~~ every
7 school district shall administer to all students in grades five and nine an achievement test to
8 assess writing skills. ~~These~~ In addition, every school district shall administer the same criterion-
9 referenced academic achievement test, once in the fall semester and once again in the spring
10 semester, to all students in grades three, six, and ten. The criterion-referenced tests shall be
11 designed by the state. All of the tests shall be provided by the Department of Education and
12 Cultural Affairs and shall assess proficiency in meeting state standards. ~~These~~ The tests shall be
13 administered starting ~~during the 1998-1999~~ in the spring of the 2001-2002 school year. Each
14 state-designed test for each grade level to be tested shall be a single statewide criterion-
15 referenced test, which shall be highly correlated with the state's graduation requirements, course

1 guidelines, and academic content standards. The requirements of this section pertaining to
2 critierion-referenced tests to be administered to students in grades three, six, and ten do not apply
3 to students who are receiving alternative instruction pursuant to § 13-27-3.

4 Section 2. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The South Dakota Academic Achievement Test Advisory Council is hereby established. The
7 council shall advise the Department of Education and Cultural Affairs, the South Dakota Board
8 of Education, education-related organizations, and other education groups on issues related to
9 statewide academic achievement tests required pursuant to this Act. The council shall meet at
10 least annually with the Department of Education and Cultural Affairs to discuss, develop, and
11 make recommendations concerning testing issues, results, mechanics, and other relevant student
12 achievement test issues in this state. The council shall consist of nine members appointed by the
13 Governor from the following categories:

- 14 (1) One teacher and one counselor who are members of the South Dakota Education
15 Association;
- 16 (2) One teacher and one counselor who may be, but are not required to be, members of
17 a professional teachers or counselors association;
- 18 (3) One school board member who is a member of the Associated School Boards of
19 South Dakota;
- 20 (4) One school administrator who is a member of the School Administrators of South
21 Dakota and one school administrator who may be, but is not required to be, a member
22 of a professional school administrators association;
- 23 (5) One member of the South Dakota Board of Education; and
- 24 (6) One parent who may be, but is not required to be, a member of a Parent Teacher

1 Association or similar association.

2 Members of the council shall be appointed for two-year terms, except that five of the
3 members of the initial council shall be appointed to two-year terms, and four of the members of
4 the initial council shall be appointed for one year. All subsequent appointments shall be for terms
5 of two years. Any vacancy on the council that occurs before the incumbent's term has expired
6 shall be filled by appointment to serve the remainder of the unexpired term. The number of terms
7 that a council member may serve is not limited. The council shall receive per diem compensation
8 and allowable expense reimbursement in an amount set pursuant to § 4-7-10.4 for all time
9 actually spent while attending council meetings. The provisions of this section shall be
10 implemented using funds from the normal operating budget of the Department of Education and
11 Cultural Affairs.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0804

HOUSE ENGROSSED NO. **SB 239** - 02/28/2001

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

1 FOR AN ACT ENTITLED, An Act to establish the regents scholarship program and provide
2 for its funding.

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

4 Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There is established the regents scholarship program to be administered by the Board of
7 Regents. The Board of Regents may establish such policies and procedures as it deems necessary
8 to carry out the purposes of this program. The purpose of the program is to allow South
9 Dakota's most academically accomplished high school graduates to receive an affordable
10 education at one of South Dakota's universities, colleges, or technical schools.

11 Section 2. In order to be eligible for a regents scholarship award, a student shall:

- 12 (1) Be a resident of South Dakota at the time of graduation from high school;
- 13 (2) Meet the high school graduation requirements as provided in Board of Regents Policy
14 2:3.2.F as in effect on January 25, 2001;
- 15 (3) Attend one of the accredited universities, colleges, or technical institutes located in

1 South Dakota;

2 (4) Enter into the program within one year of graduation from high school.

3 A student is eligible to participate in the regents scholarship program for the equivalent of
4 four academic years or until the attainment of a baccalaureate or technical degree, whichever
5 comes first.

6 Section 3. If it is determined that a student cannot complete the course requirements as
7 provided in Board of Regents policy 2:3.2.F as in effect on January 25, 2001, due to the
8 unavailability of the courses of study at the student's high school, the student may be admitted
9 into the regents scholarship program.

10 Section 4. Scholarship payments shall be made on a semester-by-semester basis. The amount
11 of award shall be as follows:

- 12 (1) One thousand dollars for the first year of attendance;
- 13 (2) One thousand dollars for the second year of attendance;
- 14 (3) One thousand five hundred dollars for the third year of attendance;
- 15 (4) Two thousand five hundred dollars for the fourth year of attendance.

16 The total amount of the scholarship may not exceed six thousand dollars.

17 Section 5. In order to maintain eligibility, a student shall:

18 (1) Maintain a cumulative 3.0 grade point average on a 4.0 scale. Cumulative grade point
19 average shall be calculated after the second semester and every semester thereafter.

20 The student shall complete consecutive spring and fall terms in order to remain
21 eligible for continuation of the scholarship program from term to term. Once a
22 student's cumulative grade point average falls below 3.0 on a 4.0 scale, the student
23 permanently loses eligibility for continuation in the scholarship program;

24 (2) Complete fifteen credit hours of instruction per semester. The student must enroll in

1 and complete at least fifteen credit hours of instruction in each consecutive spring and
2 fall term. If the executive director of the Board of Regents determines that a student's
3 failure to enroll or to maintain continued enrollment occurred as a direct result of
4 legitimate factors outside the student's control, or has resulted from the student's
5 participation in an activity that in the executive director's judgment provides
6 knowledge or experience that will enhance the student's academic pursuits, the
7 executive director may extend the student's eligibility to participate in the program for
8 up to two additional years, if the student does not enroll in a noneligible institution;

9 (3) Sit for and pass the college proficiency exam as required by Board of Regents Policy
10 2.28 as in effect on October 6, 2000, at the end of the sophomore year. If the student
11 fails to pass the proficiency exam the first time, eligibility is forfeited for continuation
12 in the scholarship program;

13 (4) All eligible students shall certify not to use tobacco products for the entire term in
14 which they will be participating in the regents scholarship. Failure to comply shall
15 result in loss of eligibility.

16 Section 6. No scholarship may be awarded and no payment may be made pursuant to the
17 regents scholarship program prior to July 1, 2002.

18 Section 7. Section 3 of this Act is repealed on July 1, 2003.

19 Section 8. Each school district is entitled to an amount equal to ten percent of the amount
20 of money received each year under the provisions of the Regent's Scholarship Program as
21 enacted by the Seventy-sixth Legislative Assembly by a student who has graduated from the
22 school district. The entitlement provided for in this section is contingent upon the student
23 successfully meeting the terms of the scholarship and successfully completing a full academic
24 year.

1 Section 9. A school district shall annually apply to the Department of Education and Cultural
2 Affairs for its entitlement as provided for in section 8 of this Act.

3 Section 10. The Department of Education and Cultural Affairs may promulgate rules
4 pursuant to chapter 1-26 to accept applications and establish eligibility criteria.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

644E0640

HOUSE ENGROSSED NO. **SB 245** - 02/28/2001

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. The ~~amounts in the~~
12 ~~intergovernmental transfer~~ fund shall be invested pursuant to §§ 4-5-23 and 4-5-26 and the
13 earnings shall be deposited in the ~~intergovernmental transfer~~ health care access and preservation
14 interest fund.

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

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

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

8 28-6-31. Each publicly owned and operated nursing facility participating under the provisions
9 of §§ 28-6-28 to 28-6-36, inclusive, immediately upon receiving a payment under § 28-6-30,
10 shall remit the amount of that payment, less a transaction fee, to the department for credit to:

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

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

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

16 28-6-35. The department may promulgate rules pursuant to chapter 1-26 for the
17 administration of §§ 28-6-28 to 28-6-36, inclusive. The rules may include criteria for
18 establishing, funding, and administering the pool, criteria for participation in the
19 intergovernmental transfer, penalties for failing to immediately remit the funds to the department,
20 criteria for the transfer of funds, the establishment of transaction fees, and other policies to
21 facilitate the administration of the ~~intergovernmental transfer~~ health care access and preservation
22 trust fund ~~or, the funding pool, and the health care access and preservation interest fund.~~

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

24 28-6-36. Sections 28-6-28 to ~~28-6-36~~ 28-6-35, inclusive, and section 2 of this Act do not

- 1 create an entitlement to any funds. The department may disburse funds to the extent funds are
- 2 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.