

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

209H0045

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1004 - 01/29/2002

Introduced by: Representatives Wick, Bradford, Broderick, Gillespie, Holbeck, McCoy, and Teupel and Senators Moore, Ham, McIntyre, and Sutton (Dan) at the request of the Interim Teacher Credentialing and Compensation Committee

1 FOR AN ACT ENTITLED, An Act to provide for a refund of tuition for certain teachers.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Eligible teacher," a teacher who teaches in a subject area of critical need as
5 determined by the Department of Education and Cultural Affairs, and whose first year
6 of teaching is after the 2002 school year;

7 (2) "Postsecondary tuition," the lesser of five thousand dollars or actual qualified higher
8 education expenses as defined in subdivision 13-63-1(13) paid by the eligible teacher;

9 (3) "Secretary," the secretary of the Department of Education and Cultural Affairs.

10 Section 2. Notwithstanding provisions of § 4-7-39, at the end of each fiscal year, the
11 secretary shall transfer twenty-five percent of any money, not to exceed one million dollars, that
12 has been appropriated for state aid to general education or state aid to special education that has
13 not been spent or legally obligated to the teacher tuition reimbursement fund, which is hereby
14 created. No money may be transferred to the teacher tuition reimbursement fund if the amount



1 in the fund is two million five hundred thousand dollars or more.

2 Section 3. There is hereby created in the state treasury the South Dakota teacher tuition
3 reimbursement fund into which shall be deposited any appropriations, private donations, grants,
4 and other funds provided to the Department of Education and Cultural Affairs for tuition
5 reimbursements to teachers. Any interest earned on the money in the fund shall be deposited in
6 the fund.

7 Section 4. An eligible teacher shall receive a reimbursement equal to seventy-five percent of
8 the teacher's first year's postsecondary tuition if the teacher has taught in South Dakota for three
9 consecutive years following graduation from an accredited college or university.

10 Section 5. An eligible teacher shall receive a reimbursement equal to seventy-five percent of
11 the teacher's second year's postsecondary tuition if the teacher has taught in South Dakota for
12 five consecutive years following graduation from an accredited college or university.

13 Section 6. An eligible teacher shall receive a reimbursement equal to seventy-five percent of
14 the teacher's third year's postsecondary tuition if the teacher has taught in South Dakota for
15 seven consecutive years following graduation from an accredited college or university.

16 Section 7. An eligible teacher shall receive a reimbursement equal to seventy-five percent of
17 the teacher's fourth year's postsecondary tuition if the teacher has taught in South Dakota for
18 nine consecutive years following graduation from an accredited college or university.

19 Section 8. An eligible teacher shall receive an additional reimbursement equal to the
20 remaining twenty-five percent of the teacher's first four year's postsecondary tuition if the teacher
21 has taught in South Dakota for ten consecutive years following graduation from an accredited
22 college or university.

23 Section 9. The Department of Education and Cultural Affairs shall pay eligible teachers their
24 tuition reimbursement out of any money in the teacher tuition reimbursement fund or a

1 proportion of those funds available.

2 Section 10. The Department of Education and Cultural Affairs shall promulgate rules,

3 pursuant to chapter 1-26, to implement the provisions of this Act.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

282H0438

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1127** -

01/29/2002

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

Introduced by: Representatives Juhnke, Duenwald, and Jensen and Senator Koskan

1 FOR AN ACT ENTITLED, An Act to place certain safety zone restrictions on hunting in state-
2 owned railroad rights-of-way.

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

4 Section 1. That § 41-9-1.1 be amended to read as follows:

5 41-9-1.1. Except for controlled access facilities as defined in § 31-8-1, interstate highways,
6 unimproved section lines not commonly used as public rights-of-way, and highways within parks
7 or recreation areas or within or adjoining public shooting areas or game refuges posted for
8 restriction of an applicable use as hereinafter set forth by the Department of Game, Fish and
9 Parks, § 41-9-1 does not apply to fishing, trapping, or hunting on highways or other public
10 rights-of-way within this state that meet the requirements of § 41-9-1.3. No person, except the
11 adjoining landowner or any person receiving written permission from the adjoining landowner,
12 may use such highways or rights-of-way or any state-owned railroad right-of-way for the
13 purposes of hunting defined in this title within six hundred sixty feet of an occupied dwelling, a
14 church, schoolhouse, or livestock. No person, except the adjoining landowner or any person



1 receiving written permission from the adjoining landowner, may use such highways or
2 rights-of-way or any state-owned railroad right-of-way for the purpose of trapping within six
3 hundred sixty feet of an occupied dwelling, church, or schoolhouse. A violation of this section
4 is a Class 2 misdemeanor. If any person is convicted of knowingly discharging a firearm within
5 six hundred sixty feet of any occupied dwelling, church, or schoolhouse for which such distance
6 has been clearly and accurately marked and posted, the court shall, in addition to any other
7 penalty, revoke the person's hunting privileges for a period of one year from the date of
8 conviction.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

447H0381

HOUSE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **HB 1176** - 01/29/2002

Introduced by: Representatives Hunhoff and Gillespie and Senators Vitter and Reedy

1 FOR AN ACT ENTITLED, An Act to revise the time permitted to qualify for a municipally
2 elected office.

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

4 Section 1. That § 9-13-28 be amended to read as follows:

5 9-13-28. The auditor or clerk, within two days after the result of the election is declared,
6 shall notify ~~all persons~~ each person elected to office of ~~their~~ the person's election. ~~Unless such~~
7 ~~persons shall~~ If a person does not qualify in within ten days after ~~such notice~~ the first meeting
8 next succeeding the election, the office shall become vacant.

9 Section 2. That § 9-14-5 be amended to read as follows:

10 9-14-5. Each appointive municipal officer shall begin discharging the duties of the office as
11 soon as the officer has qualified and shall hold office until the appointment and qualification of
12 a successor.

13 Each elective municipal officer, if elected to fill a vacancy, shall begin discharging the duties
14 of the office as soon as the officer has qualified. Except as otherwise provided, ~~every~~ each
15 officer, if elected for a full term, shall begin discharging the duties of the office on the first



1 ~~Monday of May meeting of the month next succeeding the election or as soon thereafter as the~~
2 ~~officer has qualified. If the election is held on the first or third Tuesday in June the officer shall~~
3 ~~enter upon the discharge of duties on the first Monday in July next succeeding the election or as~~
4 ~~soon as the officer is qualified.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

807H0521

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1188 - 01/29/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Frost, Hennies (Thomas), Kooistra, Madsen, Pummel, and Rhoden and Senators Apa, Brosz, McCracken, Olson (Ed), Reedy, Symens, and Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain penalties for moving or obtaining a used
2 mobile home or manufactured home without an affidavit from the county treasurer.

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

4 Section 1. That § 32-5-16.6 be amended to read as follows:

5 32-5-16.6. If the owner of the used mobile home or manufactured home, prior to moving the
6 home, fails to obtain an affidavit from the county treasurer of the county in which the used
7 mobile home or manufactured home is registered, stating that the current year's taxes are paid
8 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil
9 penalty of ~~two hundred fifty dollars to~~ on the owner. If a regulated lender, as defined in
10 § 54-3-14, is repossessing a used mobile home or manufactured home and fails to obtain an
11 affidavit, prior to moving the home, from the county treasurer of the county in which the used
12 mobile home or manufactured home is registered, stating that the current year's taxes are paid
13 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil
14 penalty of ~~two hundred fifty dollars to~~ on the lender.



1 The court shall levy a civil penalty of two hundred fifty dollars for the first violation within
2 a one-year period, five hundred dollars for the second violation within a one-year period, and one
3 thousand dollars for each subsequent violation within a one-year period. All civil penalties
4 collected pursuant to this section shall be deposited in the county general fund of the county in
5 which the used mobile home or manufactured home is registered. The court shall notify the
6 Department of Revenue of any violation resulting in a civil penalty assessment for failure to
7 obtain a tax affidavit prior to moving a mobile or manufactured home.

8 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If a transporter of a used mobile home or manufactured home, prior to transporting, fails to
11 obtain an affidavit from the county treasurer of the county in which the used mobile home or
12 manufactured home is registered, stating that the current year's taxes are paid as described in
13 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty on the
14 transporter. If a manufacturer or licensed dealer, as defined in chapter 32-7A, is moving,
15 repossessing, trading, purchasing, or receiving onto the manufacturer's or licensed dealer's lot
16 a used mobile home or manufactured home and fails to obtain an affidavit from the county
17 treasurer of the county in which the used mobile home or manufactured home is registered,
18 stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive,
19 or § 10-9-3, the court shall assess a civil penalty on the manufacturer or licensed dealer.

20 The court shall levy a civil penalty of two hundred fifty dollars for the first violation within
21 a one-year period, five hundred dollars for the second violation within a one-year period, and one
22 thousand dollars for each subsequent violation within a one-year period. All civil penalties
23 collected pursuant to this section shall be deposited in the county general fund of the county in
24 which the used mobile home or manufactured home is registered. The court shall notify the

1 Department of Revenue of any violation resulting in a civil penalty assessment for failure to
2 obtain a tax affidavit prior to moving a mobile or manufactured home.

3 Section 3. For the purposes of sections 1 and 2 of this Act, if the owner, lender, licensed
4 dealer, or transporter are the same party the court may not assess multiple civil penalties for any
5 one violation.

6 Section 4. That chapter 32-9 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The department may, pursuant to chapter 1-26, revoke and cancel or suspend the commercial
9 motor vehicle certificate which belongs to any person who the court has assessed a civil penalty
10 pursuant to section 2 of this Act four or more times within a one-year period.

11 Section 5. That chapter 32-9 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The department may, pursuant to chapter 1-26, revoke or suspend the transporter plate
14 issued pursuant § 32-9-57 which belongs to any transporter who the court has assessed a civil
15 penalty pursuant to section 2 of this Act four or more times within a one-year period. It is a Class
16 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its lawful
17 demand any transporter plate which has been revoked or suspended.

18 Section 6. That § 32-7A-4.2 be amended to read as follows:

19 32-7A-4.2. The department may deny any application, or suspend or revoke any license
20 issued under the provisions of this chapter, for a violation of any of the following provisions:

- 21 (1) Commission of fraud or willful misrepresentation in the application for or in obtaining
22 a license;
- 23 (2) A previous manufacturer or dealer license revocation in this or any other state;
- 24 (3) Willful violation, which leads to a conviction, of any law of this state which relates to

- 1 dealing in manufactured homes or mobile homes;
- 2 (4) Willful failure to comply with any administrative rule promulgated by the department;
- 3 (5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes
4 or mobile homes;
- 5 (6) Failure to allow department inspections, including initial and annual inspections,
6 complaint investigations and necessary follow-up inspections;
- 7 (7) Willful misrepresentation through false, deceptive, or misleading statements with
8 regard to the sale or financing of manufactured homes or mobile homes which a dealer
9 has, or causes to have, advertised, printed, displayed, published, distributed,
10 broadcast, televised, or made in any manner with regard to the sale or financing of
11 manufactured homes or mobile homes;
- 12 (8) Refusal to comply with a licensee's responsibility under the terms of the new
13 manufactured home or mobile home warranty issued by its respective manufacturer,
14 unless such refusal is at the direction of the manufacturer;
- 15 (9) Willful failure to comply with the terms of any bona fide written, executed agreement
16 pursuant to the sale of a manufactured home or mobile home;
- 17 (10) Violation by the dealer of any applicable manufactured home building or safety code;
- 18 (11) Failure to continuously occupy a principal place of business licensed under § 32-7A-2;
- 19 (12) Willful failure to deliver the manufacturer's statement of origin to the county treasurer
20 or the certificate of title to a person entitled to it within ~~fifteen~~ thirty days after date
21 of delivery;
- 22 (13) Conviction within the previous ten years, of a crime that related directly to the
23 business of the dealer or manufacturer involving fraud, misrepresentation or misuse
24 of funds;

- 1 (14) Inability to obtain or renew a surety bond;
- 2 (15) Misuse of the dealers' metal plates and lending for use on mobile homes or
3 manufactured homes not owned by the manufacturer or dealer;
- 4 (16) Transporting a used mobile home or manufactured home without an affidavit, four or
5 more times within a one-year period, from the county treasurer of the county in which
6 the mobile home or manufactured home is registered, stating that the current year's
7 taxes are paid; or
- 8 (17) Having a used mobile home or manufactured home located on the licensed dealer's or
9 manufacturer's lot without an affidavit, four or more times within a one-year period,
10 from the county treasurer of the county in which the mobile home or manufactured
11 home is registered, stating that the current year's taxes were paid when the licensed
12 dealer acquired the home.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

390H0448

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1234** - 01/29/2002

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

Introduced by: Representatives Heineman, Davis, and Derby and Senators Everist and McCracken

1 FOR AN ACT ENTITLED, An Act to clarify that certain political contributions to ballot
2 question committees from association dues and funds are permitted.

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

4 Section 1. That § 12-25-2 be amended to read as follows:

5 12-25-2. No candidate, candidate's committee, political action committee, or political party
6 committee may receive any contribution except from an individual, political action committee,
7 or a political party. No corporation may contribute or attempt to contribute any valuable
8 consideration to any candidate, committee, or political party except a ballot question committee.

9 No association may contribute or attempt to contribute any valuable consideration to any
10 candidate, committee, or political party except a ballot question committee.

11 Associations may ~~contribute any valuable consideration out of funds contributed~~ create
12 political action committees which may accept contributions from individuals for the purpose of
13 making political contributions ~~but may not make contributions out of dues or treasury funds.~~

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



1 Section 2. That § 12-25-1 be amended by adding thereto a NEW SUBDIVISION to read as
2 follows:

3 "Association," a group that has been expressly organized to satisfy the common intents and
4 purposes of its members.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

565H0163

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1240** - 01/29/2002

Introduced by: Representatives Frost, Broderick, Lintz, Pederson (Gordon), Sebert, and Wick
and Senators McCracken, McIntyre, Moore, Munson, Sutton (Dan), Vitter,
and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the Statewide One-
2 Call Notification Board, to create enforcement authority for the board, and to provide for
3 certain penalties and fines.

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

5 Section 1. That § 49-7A-2 be amended to read as follows:

6 49-7A-2. The Statewide One-Call Notification Board is established as an agency of state
7 government administered by the Public Utilities Commission and funded solely by revenue
8 generated by the one-call notification center. Any interest earned on money in the state one-call
9 fund shall be deposited in the fund. The money is continuously appropriated to the board to
10 implement and administer the provisions of this chapter. The one-call notification center may be
11 organized as a nonprofit corporation. The one-call notification center shall provide a service
12 through which a person can notify the operators of underground facilities of plans to excavate
13 and to request the marking of the facilities. All operators are subject to this chapter and the rules
14 promulgated thereto. Any operator who fails to become a member of the one-call notification



1 center or who fails to submit the locations of the operator's underground facilities to the center,
2 as required by this chapter and rules of the board, is subject to applicable penalties under sections
3 12 and 13 of this Act and is subject to civil liability for any damages caused by noncompliance
4 with this chapter. Any penalties which may be assessed by the board under this chapter shall be
5 collected as provided by law and deposited into the one-call fund.

6 Section 2. That § 49-7A-4 be amended to read as follows:

7 49-7A-4. The One-Call Notification Board shall by rules, promulgated pursuant to chapter
8 1-26, establish the procedures to operate a nonprofit one-call notification center, establish a
9 ~~notification process, establish a system of standard colors for marking~~ the procedures that
10 regulate the notification process and marking of underground facilities to prevent damage to
11 underground facilities, establish the procedures for gathering information from facility operators
12 that could further improve the ability to reduce damage to underground facilities, establish a
13 competitive bidding procedure to select a vendor to provide the notification service, and establish
14 a procedure whereby members of the one-call notification center share in the costs of the one-call
15 notification center.

16 Section 3. That § 49-7A-5 be amended to read as follows:

17 49-7A-5. No excavator may begin any excavation without first notifying the one-call
18 notification center of the proposed excavation. The excavator shall give notice by telephone,
19 facsimile, in person, or by other methods approved by the board pursuant to rules promulgated
20 pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the
21 commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state,
22 but not more than ten business days prior to any excavation. ~~Notice to the one-call notification~~
23 ~~center is notice to each member of the one-call notification center, except in instances when an~~
24 ~~operator directs the one-call notification center to require the excavator to personally contact~~

1 ~~the operator. In such instance the center shall furnish the excavator with information necessary~~
2 ~~to contact the operator. No member is required to accept notification more than ten business~~
3 ~~days prior to the excavation unless it is for planning purposes for projects that may affect the~~
4 ~~underground facilities. Once notice is given it is effective for the duration of the excavation.~~
5 ~~However, if the markings made by the operator pursuant to § 49-7A-8 disappear the excavator~~
6 ~~shall provide notice again as required by this chapter. The board may promulgate rules to reduce~~
7 ~~the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request~~
8 ~~and may lengthen the forty-eight-hour interval for nonexcavation requests.~~

9 Section 4. That § 49-7A-6 be repealed.

10 ~~—49-7A-6. The notice shall contain the name, address and telephone number of the person~~
11 ~~making the notification; the name, address and telephone number of the excavator; the date and~~
12 ~~time when excavation is scheduled to begin; the depth of planned excavation; the type and extent~~
13 ~~of excavation being planned including whether the excavation involves tunneling or horizontal~~
14 ~~boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given~~
15 ~~by the excavator shall provide access to the excavator during normal business hours. The notice~~
16 ~~shall also contain location of the excavation by any one or more of the following means:~~

17 ~~—(1)—A specific street or rural address, which has a numbered address on a marked street~~
18 ~~or avenue that is publicly recorded;~~

19 ~~—(2)—A reference to a platted lot number of record; or~~

20 ~~—(3)—A specific quarter section by section, range, township and county.~~

21 ~~—The notice shall also describe the excavation area within each location. In each notice the~~
22 ~~excavator shall describe the area to be excavated from structures or roads or other known points~~
23 ~~of reference on or near the property, or in lieu of such description, an excavator may indicate in~~
24 ~~the notice that the excavator will flag or mark the site or boundaries of the excavation. If it is~~

1 impractical to flag, mark, or describe the excavation, the excavator shall schedule a meeting with
2 the operators to inform them of the extent of the excavation on the site. The one-call notification
3 center may not confirm the notice until the excavator complies with this section.

4 Section 5. That § 49-7A-6.1 be amended to read as follows:

5 49-7A-6.1. No operator may be billed for the costs of any notification of excavation if the
6 location of the excavation described in the notice pursuant to § 49-7A-6 is different than the one
7 call center's record of the description of the location of the operator's underground facilities.

8 Section 6. That § 49-7A-8 be amended to read as follows:

9 49-7A-8. An operator shall, upon receipt of the notice ~~provided for in §§ 49-7A-5 and~~
10 ~~49-7A-6~~, advise the excavator of the location of underground facilities in the proposed
11 excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly
12 identifiable marking within eighteen inches horizontally from the exterior sides of the
13 underground facilities. ~~The operator shall respond no later than forty-eight hours after receipt~~
14 ~~of the notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually~~
15 ~~agreed to by the parties. The board shall promulgate rules, pursuant to chapter 1-26, to establish~~
16 the response time for operators to mark the underground facilities. The response time shall be
17 no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and
18 legal holidays of the state or the excavation start time provided by the excavator, whichever is
19 later. The response time may be less than forty-eight hours for emergency or subsequent inquiries
20 to the original locate request and may be longer than forty-eight hours for nonexcavation
21 requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between
22 a marked underground facility and the cutting edge of any mechanical equipment. If excavation
23 is required within eighteen inches, horizontally, the excavator shall expose the facility with hand
24 tools or noninvasive methods approved pursuant to rule and shall protect and support the facility

1 prior to further excavation with mechanical equipment.

2 Section 7. That § 49-7A-9 be amended to read as follows:

3 49-7A-9. If location markings requested by an excavator pursuant to §§ 49-7A-5 and
4 ~~49-7A-6~~ are not provided within the time specified by those sections, or if the location markings
5 provided fail to identify the location of the underground facilities in accordance with § 49-7A-8
6 statute and rule, any excavator damaging or injuring underground facilities is not liable for such
7 damage or injury except on proof of negligence.

8 Section 8. That § 49-7A-10 be amended to read as follows:

9 49-7A-10. Compliance with this chapter and the rules promulgated pursuant thereto does not
10 excuse a person from acting in a careful and prudent manner nor does compliance with this
11 chapter and the rules promulgated pursuant thereto affect any civil remedies otherwise provided
12 by law for personal injury or for property damage except as specifically provided in this chapter.
13 If information requested pursuant to §§ ~~49-7A-5 and 49-7A-8~~ statute or rule, is provided within
14 the time specified by those sections, and if the information provided sufficiently identifies the
15 location of the underground facilities in accordance with § ~~49-7A-8~~ statute and rule, any
16 excavator damaging or injuring the underground facilities is strictly liable for all damage
17 proximately caused thereby.

18 Section 9. That § 49-7A-11 be repealed.

19 ~~49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions~~
20 ~~shall be taken to protect the underground facilities. In such a case, the excavator shall give~~
21 ~~notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency~~
22 ~~exists, and each member shall as soon as practical or no longer than within four hours provide~~
23 ~~to the excavator all location information reasonably available. Any operator who determines that~~
24 ~~its facilities will not be impacted by the notice, shall immediately notify the excavator that the~~

1 operator's facilities are clear from the excavation. An excavator requesting a location due to an
2 emergency shall provide the name and the phone number of a person who has knowledge
3 regarding the excavation. Any operator or excavator who violates this section is liable for any
4 damages incurred.

5 Section 10. That § 49-7A-12 be amended to read as follows:

6 49-7A-12. If any underground facility is damaged, dislocated, or disturbed in advance of or
7 during excavation work, the excavator shall immediately notify the operator of the facility, or,
8 if unknown, the one-call notification center of such damage, dislocation, or disturbance. No
9 excavator may conceal or attempt to conceal such damage, dislocation, or disturbance, nor may
10 that excavator attempt to make repairs to the facility unless authorized by the operator of the
11 facility. ~~The board may assess a civil penalty of up to one thousand dollars against any excavator~~
12 ~~who knowingly violates this section.~~

13 Section 11. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person with a complaint against a party who violates or with a complaint against a party
16 who procures, aids, or abets in the violation of any statute or rule of the Statewide One-Call
17 Notification Board, may apply to the board for relief. No complaint may be dismissed because
18 of the absence of direct damage to the complainant or petitioner. The board may promulgate
19 rules of practice prescribing the form and procedure for complaints in accordance with chapter
20 1-26.

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

23 Except as provided in section 13 of this Act and in addition to all other penalties provided
24 by law, any person who violates or who procures, aids, or abets in the violation of any rule of

1 the Statewide One-Call Notification Board may be assessed a penalty of up to one thousand
2 dollars for the first violation and up to five thousand dollars for each subsequent violation that
3 occurs within twelve months of the initial violation.

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

6 In addition to all other penalties provided by law, any person who intentionally violates or
7 who intentionally procures, aids, or abets in the violation of any statute or rule of the Statewide
8 One-Call Notification Board may be assessed a penalty of up to five thousand dollars for the first
9 violation and up to ten thousand dollars for each subsequent violation that occurs within twelve
10 months of the initial violation.

11 Section 14. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes
14 a separate offense. In the case of a continuing violation, each day that the violation continues
15 constitutes a separate violation.

16 Section 15. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 No penalty may be imposed pursuant to sections 12 and 13 of this Act except by order
19 following a complaint pursuant to section 10 of this Act. A complaint alleging a violation of any
20 statute, except § 49-7A-12, or alleging a violation of any rule of the Statewide One-Call
21 Notification Board shall be brought within ninety days of the alleged violation. Any complaint
22 alleging a violation of § 49-7A-12 shall be brought within one year of discovery of the alleged
23 violation.

24 Section 16. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Upon the initiation of a complaint pursuant to section 11 of this Act, a panel of three or five
3 members of the Statewide One-Call Notification Board shall be appointed by the chair for the
4 purpose of determining whether there is probable cause to believe there has been a violation of
5 any statute or rule of the board. A determination of whether there is probable cause to believe
6 there has been a violation shall be determined by a majority vote of the panel. The panel shall
7 then recommend to the board that the complaint be dismissed for lack of probable cause, or
8 recommend to the board that there is probable cause to believe that there has been violation and
9 recommend what fine, if any, should be imposed pursuant to the provisions of section 12 or 13
10 of this Act.

11 Section 17. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Upon receipt of a complaint and the appointment of a panel, the panel shall forward to the
14 respondent a statement of the complaint and a notice requiring the respondent to satisfy the
15 complaint or answer it in writing within twenty days from the date of service of the notice or
16 within such further time as may be specified by the board.

17 Section 18. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The respondent shall, within the time fixed by the notice served upon it, satisfy the complaint
20 or answer the complaint by filing the original and two copies of the answer in the office of the
21 board and serving a copy on each complainant.

22 Section 19. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 A determination of probable cause shall be made by the panel solely on these submissions and

1 no other evidence shall be considered.

2 Section 20. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The amount of recommended fine shall be determined by a majority vote of the panel.

5 Factors to be considered in determining the amount of the fine shall be:

6 (1) The amount of damage, degree of threat to the public safety, and inconvenience
7 caused;

8 (2) The respondent's plans and procedures to insure future compliance with statute and
9 rules;

10 (3) Any history of previous violations;

11 (4) Other matters as justice requires.

12 Section 21. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The board shall accept the recommendations of the panel unless either party requests a
15 hearing. The hearing shall be conducted before the board as a contested case under chapter 1-26.

16 Following the hearing, the board shall either render a decision dismissing the complaint for
17 insufficient evidence or shall impose a penalty pursuant to the provisions of section 12 or 13 of
18 this Act.

19 Section 22. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 If the amount of the penalty is not paid to the board, the Public Utilities Commission, at the
22 request of the board, shall bring an action in the name of the State of South Dakota to recover
23 the penalty in accordance with section 27 of this Act. No action may be commenced until after
24 the time has expired for an appeal from the findings, conclusions, and order of the commission.

1 The costs and expenses on the part of the commission shall be paid by the board.

2 Section 23. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 In the trial of an action pursuant to section 22 of this Act, the evidence introduced in the
5 proceedings before the board shall constitute the record and evidence on the trial of the case in
6 court. No additional evidence other than that introduced before the board may be introduced at
7 the court trial. The report and order of the board shall be taken and held to be prima facie
8 evidence of the facts stated therein.

9 Section 24. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The board shall keep a docket in which shall be entered all matters coming before it for
12 determination, with the date of the filing of each paper and the final action of the board in the
13 matter. In connection with such docket, there shall be kept a carefully prepared index in which
14 the names of the parties shall be cross-indexed under the names of both the plaintiff and
15 defendant.

16 Section 25. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 In any action or proceeding based upon a complaint which comes before the board, the board
19 shall keep a full, true, and verbatim record of all evidence introduced at any hearing or trial and
20 prepare and file as a part of its record in the action or proceeding a true and correct transcript
21 of the evidence, and attach all exhibits introduced at the trial. There shall be attached to the
22 transcript a certificate from the recording secretary to the effect that it is a true and correct
23 transcript of all testimony introduced at the trial.

24 Section 26. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No party may request the removal of a board member from any hearing.

3 Section 27. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

4 as follows:

5 A demand in writing on the party shall be made for the assessed fine before suit is brought
6 for recovery under section 22 of this Act. No suit may be brought until the expiration of thirty
7 days after the demand.

8 Section 28. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

9 as follows:

10 Any action or proceeding or order of the Statewide One-Call Notification Board raises a
11 presumption of validity. The burden is upon the party claiming the order to be invalid to plead
12 and prove the facts establishing the invalidity.

13 Section 29. The provisions of this Act are effective January 1, 2003.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

480H0410

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1245** -

01/29/2002

Introduced by: Representatives Peterson (Jim), Begalka, Bradford, Burg, Gillespie, Hanson (Gary), Hargens, Hundstad, Nachtigal, Sigdestad, and Van Gerpen and Senators Symens, de Hueck, Dennert, Diedrich (Larry), Duxbury, McCracken, and Vitter

1 FOR AN ACT ENTITLED, An Act to require that certain exempt, dyed diesel fuel sold in the
2 state contain biodiesel fuel oil.

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

4 Section 1. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read
5 as follows:

6 "Biodiesel fuel oil," a biodegradable, combustible liquid fuel derived from vegetable oils or
7 animal fats suitable for blending with diesel fuel oil for use in internal combustion engines.

8 Section 2. That chapter 10-47B be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Beginning on July 1, 2003, all diesel fuel that is sold as an exempt, dyed special fuel pursuant
11 to §§ 10-47B-19 and 10-47B-20 shall contain at least two percent biodiesel fuel oil.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0230

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 15** - 01/16/2002

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to repeal and revise certain provisions regarding the
2 composition of the mental health planning and coordination advisory council.

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

4 Section 1. That § 27A-3-1.2 be repealed.

5 ~~— 27A-3-1.2. The council shall consist of the following who shall be appointed by and serve~~
6 ~~at the pleasure of the Governor:~~

7 ~~— (1) The secretary of the Department of Human Services, or his designee;~~

8 ~~— (2) The executive director of the South Dakota Advocacy Services;~~

9 ~~— (3) A director of a Department of Human Services approved community mental health~~
10 ~~center, whose term shall expire July 1, 1992;~~

11 ~~— (4) A qualified mental health professional who provides direct services in an approved~~
12 ~~community mental health center (not a center director), whose term shall expire~~
13 ~~July 1, 1991;~~

14 ~~— (5) A representative of the South Dakota Council of Mental Health Centers, whose term~~



- 1 shall expire July 1, 1990;
- 2 ~~— (6) — A representative of the South Dakota Board of Regents;~~
- 3 ~~— (7) — The executive director of the South Dakota Housing Development Authority, or his~~
4 designee;
- 5 ~~— (8) — The state court administrator, or his designee;~~
- 6 ~~— (9) — A qualified mental health professional from a private, nonprofit service-providing~~
7 agency other than a community mental health center, whose term shall expire July 1,
- 8 1991;
- 9 ~~— (10) — The administrator of the South Dakota Human Services Center or his designee;~~
- 10 ~~— (11) — A representative of a statewide mental health consumer organization, whose term~~
11 shall expire July 1, 1991;
- 12 ~~— (12) — A family representative of an adult (eighteen years or over) severely mentally ill~~
13 individual, whose term shall expire July 1, 1991;
- 14 ~~— (13) — A family representative of an adult (eighteen years or over) severely mentally ill~~
15 individual, whose term shall expire July 1, 1991;
- 16 ~~— (14) — A family representative of a child (under eighteen years) severely mentally ill~~
17 individual, whose term shall expire July 1, 1992;
- 18 ~~— (15) — A primary consumer of mental health services, whose term shall expire July 1, 1990;~~
- 19 ~~— (16) — A primary consumer of mental health services, whose term shall expire July 1, 1991;~~
- 20 ~~— (17) — A primary consumer of mental health services, whose term shall expire July 1, 1992;~~
- 21 ~~— (18) — A representative of a statewide family support and advocacy group whose term shall~~
22 expire July 1, 1990;
- 23 ~~— (19) — A public educator in a kindergarten through twelfth grade program (not a provider~~
24 or state employee), whose term shall expire July 1, 1991;

1 ~~—(20) A representative of consumers at large (not a provider or state employee), whose term~~
2 ~~shall expire July 1, 1992;~~

3 ~~—(21) A representative of consumers at large (not a provider or state employee), whose term~~
4 ~~shall expire July 1, 1990;~~

5 ~~—(22) The secretary of the Department of Social Services, or his designee.~~

6 ~~—Future terms of those members with established terms shall be three years.~~

7 Section 2. That § 27A-3-1.1 be amended to read as follows:

8 27A-3-1.1. There is created the Mental Health Planning and Coordination Advisory Council
9 which shall be appointed by and serve at the pleasure of the Governor. The council shall be
10 assigned to the Department of Human Services. Technical assistance and staff support shall be
11 provided to the council by the Department of Human Services. The secretary of human services
12 shall be responsible for the coordination of activities between the advisory council and the
13 Department of Human Services.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0246

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 42 - 01/28/2002**

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the registration of sex
2 offenders.

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

4 Section 1. That § 22-22-30 be amended to read as follows:

5 22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the
6 following crimes regardless of the date of the commission of the offense or the date of
7 conviction:

8 (1) Rape as set forth in § 22-22-1;

9 (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by
10 an adult and the adult is convicted of a felony;

11 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if
12 committed by an adult;

13 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;

14 (5) Photographing a child in an obscene act as set forth in § 22-22-23;

15 (6) Possession of child pornography as set forth in § 22-22-23.1;



- 1 (7) Sale of obscene pictures of a child as set forth in § 22-22-24;
- 2 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 3 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 4 (10) Criminal pedophilia as set forth in § 22-22-30.1;
- 5 (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set
- 6 forth in § 22-24-1.2;
- 7 (12) An attempt to commit any of the crimes listed in this section; ~~or~~
- 8 (13) Any crime committed in a place other than this state which would constitute a sex
- 9 crime under this section if committed in this state;
- 10 (14) Any federal crime or court martial that would constitute a sex crime under federal
- 11 law; or
- 12 (15) Any crime committed in another state if that state also requires that anyone convicted
- 13 of that crime register as a sex offender in that state.

14 Section 2. That § 22-22-31 be amended to read as follows:

15 22-22-31. Any person ~~residing in this state~~ who has been convicted whether upon a verdict

16 or plea of guilty or a plea of nolo contendere, or who has received a suspended imposition of

17 sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995, for

18 commission of a sex crime, as defined in § 22-22-30, or any person who is a juvenile fifteen years

19 of age or older adjudicated of a sex crime, as defined in subdivision 22-22-30(1) or (9), or of

20 felony sexual contact, as defined in § 22-22-7.2, shall, within ten days of coming into any county

21 to reside ~~or, temporarily domicile for more than thirty days,~~ attend school, attend postsecondary

22 education classes, or work, register with the chief of police of the municipality in which the

23 person resides, domiciles, attends school, attends classes, or works, or, if no chief of police

24 exists, then with the sheriff of the county ~~in which the person resides~~. A violation of this section

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

7 Section 3. That § 22-22-31.1 be amended to read as follows:

8 22-22-31.1. The Division of Criminal Investigation shall mail a nonforwardable verification
9 form at least once annually to the last reported address of each person registered under
10 § 22-22-31. The person shall return the verification form to the Division of Criminal
11 Investigation within ten days after receipt of any such form. The verification form shall be signed
12 by the person required to register and shall state that the person still resides at the address last
13 reported to the Division of Criminal Investigation. If the person fails to return the verification
14 form to the Division of Criminal Investigation within ten days after receipt of the form, the
15 person is in violation of the registration provisions of § 22-22-31 and is subject to the penalties
16 ~~prescribed in § 22-22-31~~ this section. Nonreceipt of a registration verification does not constitute
17 a defense to failure to comply with § ~~22-22-37~~ this section. A violation of this section is a Class
18 1 misdemeanor. Any subsequent violation is a Class 6 felony.

19 Section 4. That § 22-22-36 be amended to read as follows:

20 22-22-36. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
21 who moves to a different residence address shall inform the law enforcement agency with whom
22 the person last registered of the new address, in writing, within ten days. The law enforcement
23 agency shall, within three days of receipt, forward the information to the Division of Criminal
24 Investigation and to the law enforcement agency having jurisdiction of the new residence. A

1 failure to register pursuant to this section is a Class 1 misdemeanor. Any second or subsequent
2 failure to register pursuant to this section is a Class 6 felony.

3 Section 5. That § 22-22-37 be amended to read as follows:

4 22-22-37. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
5 shall annually register with the local law enforcement agency having jurisdiction of the person's
6 residence verifying the information given pursuant to § 22-22-32. A violation of this section is
7 a Class 1 misdemeanor. Any ~~third~~ second or subsequent violation of this section is a Class 6
8 felony.