

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

337H0178

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1085 - 01/30/2002

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

Introduced by: Representatives McCaulley, Garnos, and Wick

1 FOR AN ACT ENTITLED, An Act to establish a master teacher program to award certain
2 teachers.

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

4 Section 1. The Department of Education and Cultural Affairs shall establish a master teacher
5 program. The South Dakota master teacher program shall reward qualified teachers in qualified
6 school districts by means of a yearly bonus of not more than six thousand dollars per year.

7 Section 2. The Department of Education and Cultural Affairs may allocate only those funds
8 appropriated by the Legislature for the purposes of this Act to each qualified school district
9 according to its relative portion of the total average daily membership as defined in § 13-13-10.1.
10 Any qualified school district may access a portion of the funds for the South Dakota master
11 teacher program if the school district implements a plan to reward teachers who demonstrate
12 excellence and mastery in their profession. All moneys allocated for school districts that are not
13 qualified school districts, shall be redistributed to the qualified school districts on an average
14 daily membership basis.



1 Section 3. If a qualified school identifies a teacher who has demonstrated excellence and
2 mastery, the qualified school district shall provide a written recommendation and substantiation,
3 along with the specific amount of the bonus to be paid, to the Department of Education and
4 Cultural Affairs after March first and before April fifteenth. The qualified school district is limited
5 to requesting bonuses in an amount not to exceed the amount allocated for such school district.

6 Section 4. For purposes of this Act, a master teacher must comply with the plan developed
7 by the qualified school district and meet the following criteria:

- 8 (1) The teacher has taught at least three years in the qualified school district;
- 9 (2) The teacher exhibits excellence and mastery in both a subject area and teaching
10 methods;
- 11 (3) The teacher is committed to students and their learning;
- 12 (4) The teacher is responsible for managing and monitoring student learning;
- 13 (5) The teacher thinks systematically about teaching and learns from experience;
- 14 (6) The teacher is a member of learning communities;
- 15 (7) The teacher submits a portfolio of professional work;
- 16 (8) The teacher is able to demonstrate student performance; and
- 17 (9) The teacher is endorsed by an administrator, a school board member, a parent, a
18 colleague, or a student in the school district currently employing the teacher.

19 Section 5. For purposes of this Act, a qualified school district is one that meets the following
20 criteria:

- 21 (1) The school district has a general fund balance of not more than thirty-five percent of
22 total general fund expenditures for the previous school year;
- 23 (2) The school district rewards not more than twenty-five percent of its teachers, in any
24 school year, with funds from the South Dakota master teacher program;

1 (3) The school district awards money to master teachers without a reduction or offset in
2 their regular salary;

3 (4) The school district develops a plan to reward master teachers with the advice and
4 counsel of members of the community, administration, and teachers;

5 (5) The school district identifies a panel of individuals designated to select the master
6 teachers. The panel shall consist of seven members including a teacher, an
7 administrator, a school board member, a student, a former student, a parent, and a
8 member of the business community;

9 (6) The school district's plan is approved by the Department of Education and Cultural
10 Affairs.

11 Section 6. The secretary of the Department of Education and Cultural Affairs shall approve
12 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

660H0535

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1109** - 01/31/2002

Introduced by: Representatives Van Etten, Adelstein, Brown (Richard), Duniphan, Glenski, Hansen (Tom), Hennies (Thomas), McCaulley, McCoy, Murschel, Peterson (Bill), and Pummel and Senators Vitter, Brosz, Daugaard, Ham, Kleven, McCracken, and Whiting

1 FOR AN ACT ENTITLED, An Act to exempt local governments from certain competitive bid
2 requirements.

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

4 Section 1. That § 5-18-2 be amended to read as follows:

5 5-18-2. ~~All~~ Except as provided in section 2 of this Act, all contracts of any public
6 corporation, whether for the construction of public improvements or contracts for the purchase,
7 lease or rental of materials, supplies or equipment, ~~when~~ if such contracts involve an expenditure
8 equal to or in excess of the amount provided for in § 5-18-3, ~~must~~ shall be let to the lowest
9 responsible bidder. The governing body ~~shall have the right to~~ may reject any and all bids and ~~to~~
10 readvertise for proposals if none of the bids are satisfactory, or if they believe any agreement has
11 been entered into by the bidders to prevent competition.

12 Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
13 follows:



1 A contract of a public corporation may be awarded without competitive sealed bids or
2 competitive sealed proposals regardless of the estimated cost if the governing body determines
3 that there is only one source for the required service or item of tangible personal property. The
4 governing body shall conduct negotiations, including price, delivery, and quantity to obtain the
5 price most advantageous to the governing body. The governing body shall include in the bid file
6 written verification that there was only one source for service or item. This section does not
7 apply to construction services or equipment.

8 Section 3. That § 9-12-1 be amended to read as follows:

9 9-12-1. Every municipality shall have power:

- 10 (1) To sue and be sued and to contract in its corporate name;
- 11 (2) To acquire by lease, purchase, gift, condemnation, or other lawful means and hold in
12 its corporate name or use and control as provided by law both real and personal
13 property and easements and rights of way within or without the corporate limits for
14 all purposes authorized by law or necessary to the exercise of any power granted;
- 15 (3) To provide that supplies needed for the use of the municipality shall be furnished by
16 contract let to the lowest responsible bidder, except as otherwise provided by law;
- 17 (4) To construct, operate, and maintain an auditorium and all public buildings necessary
18 for the use of the municipality;
- 19 (5) To insure the public property of the municipality;
- 20 (6) To convey, sell, give, dispose of, or lease both the personal and real property of the
21 municipality as provided by this title.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

447H0382

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1130** - 01/31/2002

Introduced by: Representatives Murschel, Adelstein, Derby, Hennies (Thomas), Hunhoff, and
Van Etten and Senators McCracken, Ham, Reedy, Vitter, and Whiting

1 FOR AN ACT ENTITLED, An Act to revise the provisions related to the sale of surplus
2 governmental property.

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

4 Section 1. That § 6-13-5.2 be amended to read as follows:

5 6-13-5.2. In lieu of receiving sealed bids as required by this chapter, a school district,
6 municipality, or county may sell real property at public auction or by listing the property with one
7 or more licensed real estate brokers. The ~~school board~~ governing body may accept any offer for
8 purchase of real property provided the offer exceeds ninety percent of the appraised value of the
9 real property as required by § 6-13-2. If a ~~school board~~ governing body sells real property by
10 public auction or through a real estate broker, the ~~school board~~ governing body shall give notice
11 of the sale of the real property as required by § 6-13-4.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

772H0362

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1159** - 01/31/2002

Introduced by: Representatives Adelstein and Brown (Richard) and Senator Everist

1 FOR AN ACT ENTITLED, An Act to permit certain persons to solemnize marriages.

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

3 Section 1. That § 25-1-30 be amended to read as follows:

4 25-1-30. Marriage may be solemnized by a justice of the Supreme Court, a judge of the
5 circuit court, a magistrate, a mayor, or any person authorized by, including but not limited to,
6 a church, a synagogue, or a moslem congregation to solemnize marriages.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

744H0489

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1165** - 01/31/2002

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

Introduced by: Representatives Napoli, Juhnke, and Madsen and Senators Apa, Greenfield, Kleven, and Madden

1 FOR AN ACT ENTITLED, An Act to permit more time to file local referendums.

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

3 Section 1. That chapter 12-1 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any referendum petition to refer a measure passed by a local unit of government may be
6 circulated immediately upon final passage of the measure.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

471H0463

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1236** - 01/31/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Duenwald, Duniphan, Eccarius, Hanson (Gary), Hennies (Thomas), Jaspers, Jensen, Juhnke, Klaudt, Lintz, Madsen, McCoy, Napoli, Pederson (Gordon), Peterson (Bill), Pummel, Rhoden, and Van Etten and Senators Apa, Bogue, Brown (Arnold), Diedrich (Larry), Ham, Kleven, Madden, McCracken, Symens, Vitter, and Whiting

1 FOR AN ACT ENTITLED, An Act to declare a disaster in certain federal forest areas and to
2 authorize state and local remedial action.

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

4 Section 1. The Legislature finds that:

5 (1) Numerous citizens and government officials in the state of South Dakota have
6 repeatedly petitioned the United States Forest Service both collectively and
7 individually at public meetings, by correspondence, and by telephone to request that
8 the United States Forest Service take appropriate action to remove or eliminate the
9 conditions that have created a state of emergency caused by a present risk to the lives
10 and property of citizens in and adjacent to the Black Hills National Forest;

11 (2) All the petitions have for all practical purposes been either ignored or discounted by
12 the United States Forest Service resulting only in what can be reasonably
13 characterized as inaction on the part of the United States Forest Service to



1 appropriately reduce, if not remove, the risk to the lives and property of the citizens
2 of South Dakota;

3 (3) Because the United States Forest Service has failed to exercise its responsibilities as
4 a sovereign to protect the lives and property of the citizens of South Dakota and
5 because it is a fundamental principle under the laws of any just society that the
6 persistent failure of a sovereign to fulfill such obligations constitutes grounds for the
7 forfeiture of jurisdictional supremacy, such a forfeiture must hereby be recognized and
8 declared; and

9 (4) Because of recognition and declaration of this forfeiture of jurisdictional supremacy,
10 a jurisdictional vacuum has been created that requires the state of South Dakota to
11 acknowledge its obligations as a sovereign power to protect the lives and property of
12 its citizens and consequently to authorize any action it presently deems necessary to
13 fill the vacuum created by the federal government by assuming jurisdiction to reduce
14 to acceptable levels, if not remove, the threat of catastrophic fires posed by present
15 conditions in national forests within its borders.

16 Section 2. The Legislature declares a disaster within those areas of the Black Hills National
17 Forest, as determined by the secretary of agriculture in cooperation with the local board of
18 county commissioners, that have suffered severe fire damage, that have suffered damage caused
19 by weather events or other natural disasters that increase the risk of fire, that face severe risk
20 posed by the infestation and spread of the mountain pine beetle or other noxious weeds and
21 pests, or areas in which large amounts of forest undergrowth have created the potential for
22 damaging fires in the future. The Legislature also declares that the disaster is of such magnitude
23 that the police power of the state may be exercised to the extent necessary to provide the
24 resources and services that will end the disaster and mitigate its effects.

1 Section 3. After consulting with the state forester, state wildland fire coordinator, and the
2 United States Forest Service regional forester, taking surveys, holding public hearings as may
3 be necessary, and developing a plan to mitigate the effects of the disaster, a board of county
4 commissioners for a county in which a disaster has been declared pursuant to section 2 of this
5 Act may take such actions as are necessary to clear and thin undergrowth and to remove or log
6 fire-damaged or pest-damaged trees within the area of the disaster. A county may enter into an
7 agreement with a contractor, licensee or other agent to carry out the purposes of this section.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

771H0419

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1273** - 01/30/2002

Introduced by: Representative Duniphan and Senator Ham

1 FOR AN ACT ENTITLED, An Act to revise the requirements for obtaining plates and
2 certificates to park in any space reserved for the disabled.

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

4 Section 1. That § 32-5-76 be amended to read as follows:

5 32-5-76. An owner of a motor vehicle, who is a resident of this state, who has complied with
6 all the laws of this state in obtaining regular number license plates for the motor vehicle, and who
7 operates or directs the operation of the vehicle, may submit to the county treasurer an application
8 containing a physician's certificate on a form approved by the secretary, ~~which states~~ stating that
9 the applicant is so substantially disabled by a physical disability that it is impossible or causes
10 substantial hardship to walk. The secretary shall promulgate a rule, pursuant to chapter 1-26,
11 defining physical disability and disabled. The county treasurer shall procure, issue, and deliver
12 to the applicant plates with letters, numbers, or symbols, or any combination thereof, as the
13 secretary may prescribe. The plates shall be designed to readily apprise law enforcement officers
14 of the fact that the motor vehicle is owned, operated, or used in transporting a substantially
15 disabled person. No charge may be made for the issuance of the distinctive plates. The distinctive



1 plates shall be in addition to the regular number plates issued for the motor vehicle. The
2 distinctive plates shall be displayed as set forth in § 32-5-98 and the regular number plates shall
3 be kept on or in the motor vehicle. If the applicant is no longer disabled by a physical disability
4 or is deceased, the distinctive plates shall be surrendered within thirty days to the county
5 treasurer of the applicant's residence, and the treasurer shall notify the secretary who shall make
6 the necessary changes in the registration file. The regular number plates shall remain with the
7 motor vehicle to which ~~they~~ the plates were issued. Failure to surrender the distinctive license
8 plates as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to submit
9 a false or fraudulent application.

10 Section 2. That § 32-5-76.1 be amended to read as follows:

11 32-5-76.1. Any person who is a resident of this state and disabled by a physical disability so
12 that it is impossible or causes substantial hardship to walk may be issued a portable serially
13 numbered certificate by the secretary which permits the person or the operator of a vehicle being
14 used in transporting the person to park without time limitation pursuant to § 32-30-11.1 and to
15 park in any space reserved for the ~~handicapped~~ disabled. The person shall submit an application
16 containing a physician's certificate on forms approved by the secretary to prove that the person
17 meets the criteria established by this section. If the secretary determines that the applicant meets
18 the criteria, the secretary shall issue a portable certificate to the applicant. The secretary shall
19 promulgate rules, pursuant to chapter 1-26, governing the application for, term of, and
20 conditions under which such certificates may be issued. If the applicant is no longer disabled by
21 a physical disability or is deceased, the portable certificate shall be surrendered to the county
22 treasurer of the applicant's residence within thirty days, and the treasurer shall notify the
23 secretary who shall make the necessary changes in the file. Failure to surrender the portable
24 certificate as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to

1 submit a false or fraudulent application.

2 Section 3. That § 32-5-76.2 be amended to read as follows:

3 32-5-76.2. Any nonprofit organization, licensed hospital, retirement home, or educational
4 institution which has under its care or responsibility physically disabled persons, which transports
5 physically disabled persons, and which has complied with all laws of this state in obtaining title,
6 license plates, and registration for its motor vehicles may apply for a portable serially numbered
7 certificate which permits the operator of a vehicle transporting the disabled person to park
8 pursuant to § 32-30-11.1 ~~and to park only.~~ However, the vehicle may only park for the time
9 reasonably necessary to load or unload passengers in any space reserved for the ~~handicapped~~
10 disabled. In addition, any local government entity that owns a vehicle used to transport disabled
11 individuals may apply for the portable certificate. The application shall be made on a form
12 approved by the secretary. If the department determines that the applicant transports disabled
13 persons, the secretary shall issue and deliver a portable certificate to the applicant. The secretary
14 may promulgate rules pursuant to chapter 1-26 regarding the application for, term of, and
15 conditions under which the certificate may be issued. If the applicant no longer transports
16 physically disabled persons, ~~it~~ the applicant shall surrender the certificate to the department
17 within thirty days. Failure to surrender the portable certificate as required by this section is a
18 Class 2 misdemeanor. It is a Class 1 misdemeanor to submit a false or fraudulent application.

19 Section 4. That § 32-5-76.3 be amended to read as follows:

20 32-5-76.3. Any nursing facility licensed pursuant to the provisions of chapter 34-12 and
21 which has complied with all laws of this state in obtaining title, license plates, and registration
22 for its motor vehicles may apply for a set of distinctive plates as prescribed by § 32-5-76 ~~which~~
23 ~~permits~~ permitting the operator of a vehicle transporting any disabled person to park pursuant
24 to § 32-30-11.1. However, the vehicle may only park for the time reasonably necessary to load

1 or unload passengers in any space reserved for the disabled. The application shall be made on a
2 form approved by the secretary. If the department determines that the applicant is licensed as a
3 nursing facility, the secretary shall issue and deliver a set of distinctive plates to the applicant.
4 The secretary may promulgate rules, pursuant to chapter 1-26, regarding the application for,
5 term of, and conditions under which the distinctive plates may be issued. If the applicant no
6 longer transports physically disabled persons, the applicant shall surrender the distinctive plates
7 to the department within thirty days. Failure to surrender the distinctive license plates as required
8 by this section is a Class 2 misdemeanor.

9 Section 5. That § 32-30-11 be amended to read as follows:

10 32-30-11. Any person, other than the veteran to whom it was issued, who uses a disabled
11 veteran's license of identification issued pursuant to ~~§ 32-30-7~~ § 32-5-108 for the purpose of
12 parking an automobile as permitted by § 32-30-8, commits a ~~petty offense~~ Class 2 misdemeanor.
13 In addition, the court shall assess a civil penalty of not less than two hundred dollars nor more
14 than five hundred dollars.

15 Section 6. That § 32-30-11.1 be amended to read as follows:

16 32-30-11.1. Any physically ~~handicapped~~ disabled person, who displays special license plates
17 issued under § 32-5-76 or 32-5-108, a serially numbered certificate issued under § 32-5-76.1 or
18 32-5-76.2, or a similar license plate or certificate issued in another state on an automobile used
19 in transporting ~~him~~ that person, shall be entitled to park without limitation in areas where parking
20 is normally restricted by time factors and to park in any space reserved for the ~~handicapped~~
21 disabled. However, a municipality may, by ordinance, prohibit parking on any street or highway
22 for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic
23 during morning and afternoon rush hours, ~~and the~~ The privileges extended to such ~~handicapped~~
24 disabled persons ~~shall do~~ not apply on streets or highways where and during ~~such times as any~~

1 time parking is prohibited.

2 Section 7. That § 32-30-11.2 be amended to read as follows:

3 32-30-11.2. If the police of any municipality or any other political subdivision ~~shall find~~ finds
4 that ~~such~~ special license plates or certificates are being improperly used, ~~they~~ the police shall
5 report such violation to the Department of ~~Commerce and Regulation~~ Revenue which ~~may~~ shall
6 revoke the privilege of displaying license plates or certificates ~~so~~ that are improperly used.

7 Section 8. That § 32-30-11.3 be amended to read as follows:

8 32-30-11.3. Any person who is not physically ~~handicapped~~ disabled and who exercises the
9 privileges granted a physically ~~handicapped~~ disabled person under § 32-30-11.1 commits a
10 Class 2 misdemeanor. In addition, the court shall assess a civil penalty of not less than two
11 hundred dollars nor more than five hundred dollars.

12 Section 9. That § 32-30-11.4 be amended to read as follows:

13 32-30-11.4. The owner of any vehicle not displaying a serially numbered certificate or special
14 license plate parked or stopped in a parking space, or blocking a parking space, on public or
15 private property designated as reserved for the physically ~~handicapped~~ disabled commits a Class
16 2 misdemeanor. In addition, the court shall assess a civil penalty of not less than two hundred
17 dollars nor more than five hundred dollars.

18 Section 10. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 No owner of a vehicle may park, stop, or stand in an access aisle or lane immediately
21 adjacent to reserved parking spaces or in front of a ramp or curb-cut in such a manner that
22 blocks access to a disabled person who uses a wheelchair. A violation of this section is a Class
23 2 misdemeanor. In addition, the court shall assess a civil penalty of not less than two hundred
24 dollars nor more than five hundred dollars.

1 Section 11. That § 32-30-11.6 be amended to read as follows:

2 32-30-11.6. ~~Municipalities may~~ Each municipality shall by ordinance, designate special
3 parking spaces which shall be accessible to and usable by persons with physical disabilities. The
4 parking spaces shall be designed in accordance with the Americans With Disabilities Act as
5 amended on January 1, 2002.

6 Section 12. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Each sign designating a parking space for the physically disabled shall state the penalties for
9 illegal use of the parking space. This section only applies to a new sign or a sign that replaces an
10 existing sign after July 1, 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

169H0652

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1279** - 01/30/2002

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

Introduced by: Representatives Peterson (Bill), Broderick, Jaspers, Madsen, Michels, Olson (Mel), Richter, and Smidt and Senators Everist, Brown (Arnold), Daugaard, Hutmacher, McCracken, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to establish the South Dakota Municipal Facilities
2 Authority, to provide for the establishment of one or more special purpose corporations by
3 the South Dakota Municipal Facilities Authority, to establish the powers of the South Dakota
4 Municipal Facilities Authority and each such corporation, including the power to acquire,
5 own, lease, sublease and dispose of certain land, improvements and capital equipment
6 comprising all or a portion of any municipal facilities, including any system or part of a
7 system of waterworks, sewage or waste disposal, and to establish or confirm the powers of
8 the state, the Department of Environment and Natural Resources, the Board of Water and
9 Natural Resources, the South Dakota Conservancy District and municipalities and other
10 public entities of the state in connection therewith.

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

12 Section 1. Terms used in this Act mean:

13 (1) "Authority," the South Dakota Municipal Facilities Authority, a body corporate and



1 politic, created under section 2 of this Act;

2 (2) "Corporation," any special purpose body corporate and politic established by the
3 authority by resolution of the authority board as provided in section 9 of this Act;

4 (3) "Lease," when used with respect to municipal facilities, any lease, sublease, purchase
5 agreement, lease-purchase agreement, installment purchase agreement, lease-back
6 agreement or other contract, agreement, instrument, or arrangement pursuant to
7 which any rights, interests or property with respect to utility property are transferred
8 to, by or from any party to, by or from one or more parties and any related
9 documentation, instruments or arrangements entered into or to be entered into in
10 connection therewith or ancillary thereto including, without limitation, support and
11 operating agreements, service agreements, indemnity agreements, participation
12 agreements, loan agreements or payment undertaking agreements;

13 (4) "Municipal facilities," all or any part of, or an undivided or other interest in, (a) any
14 utility property or (b) any other land, buildings, improvements or capital equipment,
15 and any property or other rights or interests ancillary or related to (a) or (b), whether
16 owned or used by or leased by, to or from, or to be owned, used or leased by, to or
17 from a public entity, or useful to or by a public entity;

18 (5) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
19 with (a) collateralized or noncollateralized obligations of, or any other payment
20 undertaking, deposit or other agreement of, any bank or savings institution,
21 investment banking firm or organization, financial institution, insurance company or
22 bank or insurance holding company (or any subsidiary or affiliate of any of the
23 foregoing), whether organized under the laws of the United States of America, any
24 state or territory thereof, or the laws of any foreign nation, if at the time such

1 investments are acquired, the senior debt or claims paying ability of such person or
2 entity is rated in, or such person or entity has its obligations in respect of such
3 investments guaranteed or supported by a person or entity the senior debt or claims
4 paying ability of which is rated in, or whose obligations in respect of the such
5 investments are secured by bonds, notes, or other financial obligations issued by
6 issuers rated in, the highest four basic rating classifications by at least one standard
7 domestic rating service, (b) any bonds, notes or other obligations of any state or
8 territory of the United States of America or any political subdivision thereof or any
9 agency, authority or other instrumentality of the United States of America or any
10 state, territory or political subdivision thereof, if at the time such investments are
11 acquired such bonds, notes or other obligations are rated in, or the obligations in
12 respect of such investments are guaranteed or supported by a person or entity the
13 senior debt or claims paying ability of which is rated in, the four highest basic rating
14 classifications established by at least one standard domestic rating service or (c) any
15 bonds, notes or other obligation of the State of South Dakota, Board of Water and
16 Natural Resources, the South Dakota Conservancy District, the authority, any
17 corporation formed by the authority or any public body, authority or instrumentality
18 now or hereafter existing under the laws of the State of South Dakota or any public
19 entity;

20 (6) "Person," any natural person, firm, partnership, limited liability company, association,
21 corporation, nonprofit corporation, trust, grantor trust, business trust or public entity;

22 (7) "Public entity," any county, township, municipality, political or administrative
23 subdivision of state government, subdistrict, irrigation district, water user district,
24 watershed district, drainage district, soil conservation district, or other public body,

1 authority or instrumentality recognized by state law and shall expressly include the
2 authority and any corporation formed pursuant to this Act;

3 (8) "State," the State of South Dakota acting by and through the Department of
4 Environment and Natural Resources;

5 (9) "Support and operating agreement," any contract, agreement or other arrangement
6 pursuant to which a party agrees with another party to make certain municipal
7 facilities, or rights with respect thereto or in connection therewith, available to such
8 other party and which agreement may provide for the imposition of fees, rates or
9 charges for the use or operation of or receipt of services from municipal facilities;

10 (10) "Utility," any system or part of a system of waterworks, or sewage and waste disposal
11 described in § 9-40-1; and

12 (11) "Utility property," all or any part of any land, buildings, improvements or capital
13 equipment and any property or rights ancillary or related thereto comprising a utility,
14 including any extensions, additions, improvements or appurtenances to any such utility
15 or combination of systems and any interest in any of the foregoing, whether owned,
16 leased or used by, to or from the authority, any corporation formed by the authority,
17 the state or any other public entity, or useful to or by a public entity, including,
18 without limitation, as to which a public entity has arranged a service agreement.

19 Section 2. There is created the South Dakota Municipal Facilities Authority, a body
20 corporate and politic, to consist of seven members appointed by the Governor. Not more than
21 four of said seven members of the authority shall be of the same political party. At least one of
22 the members to be appointed by the Governor shall be or shall have been an elected municipal
23 official and at least one of such appointed members shall be or shall have been experienced in and
24 having a favorable reputation for skill, knowledge, and experience in the field of municipal utility

1 property. The terms for the initial appointments shall be as follows: one member four years; two
2 members three years; two members two years; and two members one year. No person shall be
3 appointed to the authority who is an elected official of the State of South Dakota. One of the
4 members shall be designated by the Governor as chairman.

5 Section 3. Following the expiration of the initial appointment, all subsequent appointments
6 to the authority shall be made for a four-year term. Each member's term of office shall expire on
7 the appropriate third Monday in January, but he or she shall continue to hold office until his or
8 her successor is appointed and qualified. Any vacancy in the authority shall be filled by
9 appointment for only the balance of the unexpired term. Four members of the authority shall
10 constitute a quorum.

11 Section 4. Each member shall, before entering upon the duties of his or her office, take and
12 subscribe the constitutional oath of office and give bond in the penal sum of twenty-five thousand
13 dollars conditioned upon the faithful performance of his duties. The oath and bond shall be filed
14 in the Office of the Secretary of State.

15 Section 5. No member of such authority shall receive any compensation for services rendered
16 under this chapter. However, members shall be reimbursed for necessary expenses incurred in
17 connection with duties and powers prescribed by this Act.

18 Section 6. In addition to all other powers hereunder, the authority shall have the power and
19 authority, by resolution of the authority board, to establish one or more special purpose
20 corporations each of which shall be a body corporate and politic and instrumentality of, but
21 separate and apart from, the State of South Dakota and the authority. Any such corporation shall
22 be established for the express limited public purposes set forth in this Act and no part of the net
23 earnings of any such corporation shall inure to any private individual.

24 Any such corporation shall be governed by a board of trustees consisting of the members of

1 the board of the authority together with two additional persons appointed by the Governor,
2 which two additional members shall be independent from the government of the state. The
3 resolution establishing the corporation shall serve as the charter of the corporation and may be
4 amended from time to time by resolution of the board, but such resolution shall at all times
5 provide that the power and the authority of the corporation shall be subject to the terms,
6 conditions and limitations of this Act and any applicable covenants or agreements of the
7 corporation in any lease, indenture or other instrument, contract or agreement then in effect. The
8 authority may delegate to the corporation any power granted to the authority under this Act,
9 including the power to enter into contracts regarding any matter connected with any corporate
10 purpose of the authority or the corporation within the objects and purposes of this Act.

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

18 No such corporation shall not have the authority to guarantee the debts of another.

19 No such corporation shall not be required to file any reports with the state other than those
20 specified herein.

21 Except for debts incurred directly by the corporation, no lease or other contract, agreement,
22 instrument or obligation, issued, incurred or created by the State of South Dakota or any state
23 agency or instrumentality (other than such corporation) may be or become a lien, charge or
24 liability against the corporation or the property or funds of the corporation.

1 Section 7. The authority and any corporation formed by the authority may delegate by
2 resolution any duties or obligations to the Department of Environment and Natural Resources.

3 Section 8. The purposes of the authority and any corporation formed by the authority are:

4 (1) To acquire, own, lease, sublease, sell, transfer or otherwise use, operate, obtain
5 service from or dispose of municipal facilities to, for or on behalf of, the state, any
6 public entity or other person;

7 (2) To make, acquire, dispose of or pledge loans in connection with any transactions
8 involving municipal facilities and to enter into deposit, payment undertaking or similar
9 arrangements in connection with such transactions;

10 (3) To serve the Legislature by making reports concerning the providing of such property
11 and facilities;

12 (4) To finance or refinance municipal facilities and to enter into transactions a purpose
13 of which is to raise capital or provide access to capital for or by public entities; and

14 (5) To invest, on its own behalf or on behalf of any party to any lease, any funds or any
15 other amounts in permitted investments.

16 Section 9. The state, the authority and any corporation formed by the authority may enter
17 into any conveyance, lease or contract necessary or desirable in furtherance of the purposes set
18 forth in this Act, including, without limitation, to acquire, own, lease, sell, transfer or otherwise
19 use, operate or obtain services from or dispose of land or municipal facilities and any other
20 improvements made upon or under such land and capital equipment necessary or useful for the
21 operation of the municipal facilities to be acquired by it pursuant to this Act, including, without
22 limitation, lease, lease-purchase, and, subject to compliance with the provisions of South Dakota
23 Constitution, Art. XIII, § 1, installment purchase contracts. Without limitation, the state, the
24 authority or any corporation formed by the authority may include in such conveyances, leases

1 or contracts any of the following provisions:

2 (1) In lease contracts, options to purchase the property subject to the lease or the lessor's
3 interest therein, and provisions for the deferred payment or prepayment by lessee to
4 lessor of rent, and provisions for designating a portion of the periodic payments to be
5 made thereunder as interest, not of all other costs and expenses of ownership,
6 operation, maintenance, and insurance of the leased property by the authority or any
7 such corporation as agent of the lessor; and

8 (2) In lease-purchase contracts or installment purchase contracts, provisions of the type
9 specified in subdivision (1), and provisions for designating a portion of the periodic
10 payments to be made thereunder as interest, for prepayment, and for acquisition of
11 unencumbered title or fee title to the property subject to the contract.

12 No term of a lease, lease-purchase or an installment purchase contract may exceed one
13 hundred years, and for such purpose, all renewal terms shall be included.

14 Section 10. The state, the authority and each corporation formed by the authority shall have
15 the power and authority:

16 (1) To acquire and enter into leases of municipal facilities, support and operating
17 agreements, deposit agreements, payment undertaking agreements, service
18 agreements and any and all contracts, agreements or other instruments related or
19 ancillary thereto, and to secure payment or performance of obligations in connection
20 therewith with any property, funds, investments or rights of the state, the authority
21 or any corporation;

22 (2) To pledge as security for any arrangement entered into with respect to municipal
23 facilities (i) any rights under any lease, support and operating agreement, deposit
24 agreements, payment undertaking agreements, service agreement or other contract,

1 agreement or instrument (ii) any rights with respect to investment of monies, including
2 permitted investments and contracts related or ancillary thereto, (iii) moneys or other
3 funds deposited with, payable to or held by or on behalf of the authority or any
4 corporation and (iv) the proceeds of the foregoing. Any such pledge so made shall be
5 valid and binding from the time such pledge is made. The property, interests,
6 revenues, moneys, other funds and rights so pledged and thereafter held or received
7 by or on behalf of the pledgor shall immediately be subject to the lien of such pledge
8 without any physical delivery thereof or further act; and, subject only to the provisions
9 of prior pledges or agreements of the pledgor, the lien of such pledge shall be valid
10 and binding as against the state, the authority, any public entity and any corporation
11 and all persons having claims of any kind in tort, contract or otherwise against the
12 state, the authority, any public entity or any corporation irrespective of whether such
13 persons have notice thereof. No ordinance, resolution, trust agreement or other
14 instrument by which such pledge is created need be filed or recorded;

15 (3) To enter into one or more support and operating agreements, service agreements or
16 other arrangements to provide additional security, property or liquidity in connection
17 with any lease or other contract or arrangement relating to municipal facilities. Such
18 arrangements may include, without limitation, bond insurance, letters of credit and
19 lines of credit;

20 (4) To enter into contracts necessary or appropriate to permit it to manage payment or
21 interest rate risk or credit risk in connection with any sale, lease or other contract,
22 agreement, instrument or arrangement relating to municipal facilities or the investment
23 of funds of the state, any public entity, the authority or any corporation in connection
24 therewith. These contracts may include, but are not limited to, interest rate exchange

1 agreements; contracts providing for payment or receipt of funds based on levels of or
2 changes in interest rates; contracts to exchange cash flows or series of payments; and
3 contracts incorporating interest rate caps, collars, floors, or locks;

4 (5) To purchase, acquire, own, operate, contract with other parties to operate, pledge,
5 lease, sublease, encumber, sell, mortgage or otherwise transfer any or all right, title
6 and interest in and to municipal facilities;

7 (6) To make loans in connection with any transactions involving municipal facilities or to
8 enter into deposit, payment undertaking or similar arrangements in connection with
9 such transactions;

10 (7) To raise funds through the sale, lease, transfer, pledge, encumbrance, mortgage or
11 other conveyance of the rights, interests, property or contracts described in this
12 section.

13 Section 11. The authority and any corporation formed by the authority shall also have the
14 power and authority:

15 (1) To serve the Legislature by making reports concerning the foregoing;

16 (2) To sue and be sued and to prosecute and defend, at law or in equity, in any court
17 having jurisdiction of the subject matter and of the parties;

18 (3) To have and to use a corporate seal and to alter the same at pleasure;

19 (4) To maintain an office at such place or places as the authority or the board of trustees
20 of the corporation by resolution may designate;

21 (5) To receive and invest in permitted investments any funds transferred to it by the
22 authority, any corporation, the State of South Dakota, any public entity or any other
23 person;

24 (6) To receive deposits or prepayments and to establish, fund and apply any reserve

1 accounts or funds for any purpose;

2 (7) To establish, assess, levy and collect, or cause to be established, assessed, levied and
3 collected, fees, rates and charges for the use of utility property or other municipal
4 facilities which are subject to a lease authorized hereunder or which are otherwise
5 owned, leased or controlled by the state, corporation, the authority, any public entity
6 or other person pursuant to a transaction authorized hereby;

7 (8) To employ attorneys, accountants, engineers, attorneys, consultants and financial
8 experts, managers, advisors and such other employees and agents as may be necessary
9 in its judgment and to fix their compensation;

10 (9) Make and execute contracts and all other instruments necessary or convenient for the
11 performance of its duties and the exercise of its powers and functions under this Act;

12 (10) Contract with the South Dakota Building Authority to provide staff and support
13 services;

14 (11) Procure insurance against any loss in connection with the property and other assets,
15 including loans and loan notes in such amounts and from such insurers as it may deem
16 available;

17 (12) Procure insurance, letters of credit, guarantees, or other credit enhancement
18 arrangements from any public or private entities, including any department, agency,
19 or instrumentality of the United States, for payment of all or any portion of any
20 obligations of the authority or corporation, including the power to pay premiums, fees
21 or other charges on any such insurance, letters of credit, guarantees, or credit
22 arrangements;

23 (13) Receive and accept from any source aid or contributions of moneys, property, labor,
24 or other things of value to be held, used, and applied to carry out the purposes of this

1 chapter subject to the conditions upon which the grants or contributions are made,
2 including, but not limited to, gifts or grants from any department, agency, or
3 instrumentality of the United States for any purpose consistent with the provisions of
4 this chapter;

5 (14) Enter into agreements with any department, agency, or instrumentality of the United
6 States, any public entity or this state and with lenders or others and enter into loan
7 agreements, sales contracts and leases, or other financing arrangements with
8 contracting parties for the purpose of planning, regulating and providing for the
9 financing or refinancing of any municipal facilities;

10 (15) Enter into contracts or agreements for the operation, use, maintenance or
11 improvement of municipal facilities;

12 (16) Cooperate with and exchange services, personnel and information with any federal,
13 state, or local governmental agency or public entity;

14 (17) Enter into agreements for management by or on behalf of the State of South Dakota,
15 the authority or any corporation of any municipal facilities upon such terms and
16 conditions as may be mutually agreeable;

17 (18) Sell, exchange, donate, and convey any or all of its properties whenever the board of
18 the authority or any corporation shall find such action to be in furtherance of the
19 purposes for which the authority or corporation was organized;

20 (19) To establish bank accounts and securities accounts, or have such accounts established
21 on its behalf at any trust, banking or financial institution;

22 (20) Do any act and execute any instrument which in the authority's judgment is necessary
23 or convenient to the exercise of the powers granted by this chapter or reasonably
24 implied from it;

1 (21) Promulgate rules pursuant to chapter 1-26 to implement the provisions of this
2 chapter;

3 (22) To do all things necessary and convenient to carry out the purposes of this chapter.
4 To accomplish projects of the kind listed in this Act, the authority and any corporation
5 formed by the authority may convey property, without charge, to the State of South Dakota or
6 any public entity, if all obligations which have been secured by the property have been paid.

7 Section 12. No obligation of any corporation formed by the authority under any lease,
8 support and operating agreement or other contract or agreement may be or become a lien, charge
9 or liability against the State of South Dakota or the authority within the meaning of the
10 Constitution or statutes of South Dakota. No instrument of conveyance, lease or other contract
11 or other agreement entered into by the state, the authority or any corporation formed by the
12 authority, relating to municipal facilities shall be a debt of the state or the authority within the
13 meaning of the constitution or statutes of the State of South Dakota, and this Act shall not be
14 construed as a guarantee by the state or the authority of the obligations of the corporation or any
15 other person. Nothing in this chapter shall be construed to authorize the authority, any
16 corporation formed by the authority, or any department, board, commission, or other agency to
17 create an obligation of the State of South Dakota within the meaning of the constitution or
18 statues of South Dakota.

19 Section 13. The State of South Dakota pledges to and agrees with any party to any sale,
20 lease, or other contract, agreement, instrument or other arrangement created under this Act that
21 the state will not limit or alter the rights and powers vested in the authority, any corporation
22 formed by the authority or other public entity by this Act so as to impair the terms of any such
23 contract made by the state, the authority, any such corporation or other public entity with such
24 party or in any way impair the rights and remedies of such party until such contract is satisfied.

1 The authority, any such corporation and any public entity is each authorized to include their
2 pledges and agreements of the state in any such contract created under this Act.

3 Section 14. The authority and any corporation formed by the authority are hereby declared
4 to be performing a public function on behalf of the state and to be a public instrumentality of the
5 state. The income of the authority and any corporation, and all municipal facilities and any other
6 property at any time owned by the authority or any corporation, and the acquisition, sale,
7 transfer, lease or purchase of municipal facilities by or from the state, the authority or any
8 corporation or any public entity, and the pledge of any right, title or interest in any municipal
9 facilities by any person, shall be exempt from all taxation in the State of South Dakota. Each
10 corporation shall be exempt from all filing, reporting and similar requirements otherwise
11 applicable to nonprofit and other corporations.

12 Section 15. To accomplish the purposes or projects of the kind listed in this Act, the
13 authority or any corporation may adopt all necessary bylaws, rules, and regulations for the
14 conduct of the business and affairs of the authority, and for the management and use of municipal
15 facilities acquired under the powers granted by this Act.

16 Section 16. Any public entity and any department, board, commission, agency, or officer of
17 this state may sell, lease or otherwise transfer jurisdiction of or title to or any interest in any
18 property under its or his control to the authority or any corporation formed by the authority
19 hereunder.

20 Section 17. The state, the authority and any corporation formed by the authority may each
21 acquire by purchase, condemnation (including the power of condemnation in accordance with
22 chapter 21-35), lease, gift or otherwise dispose of such utility property without any further
23 authorization from the Legislature. In addition, if the Legislature by law declares it to be in the
24 public interest, the authority and any corporation formed by the authority may each acquire by

1 purchase, condemnation (including the power of condemnation in accordance with chapter 21-
2 35), lease, gift or otherwise, construct, complete, remodel, maintain and equip such other or
3 further municipal facilities subject to any limit as to appraised value or such other or further
4 terms and conditions as shall be so specified by the Legislature in such declaration. The authority
5 shall obtain and consider when determining the value of any municipal facilities to be leased, sold
6 or acquired, at least one independent appraisal.

7 Section 18. Any lease authorized hereby by, to or from the state, the authority, any
8 corporation formed by the authority or any other public entity may be:

9 (1) Upon such terms, conditions, and rentals, subject to available appropriations as in the
10 judgment of the authority are in the public interest; or

11 (2) For a term of one or more years, with an option in the lessee to extend the term of the
12 lease for a term of one year from the expiration of the original term of the lease and
13 for one year from the expiration of each extended term of the lease, until the original
14 term of the lease has been extended for a total number of years to be agreed upon by
15 the parties at a rental which, if paid for the original term and for each of the full
16 number of years for which the term of the lease may be extended, will pay or amortize
17 the total cost of any financing or the appraised value of the property or such other
18 amount as the authority or any corporation formed by the authority shall determine
19 to be appropriate under the circumstances;

20 (3) Provide that the rental may be deposited, paid or prepaid at any time or such times as
21 the parties to the lease agree upon, and if prepaid, any or all of such prepayment may
22 be deposited with a lessor and invested in permitted investments or may be used to
23 satisfy or repay any outstanding debt or obligations. The lessee may receive credits
24 for such prepayment or deposit at such times and in such manner specified in the

1 lease;

2 (4) Provide that the lessee may, at the expiration of the original or any extended term,
3 purchase the leased premises at a stated price, which may be the appraised value of
4 the leased property or such other amount paid or amortized by the payment or
5 prepayment of rents previously made by the lessee;

6 (5) Provide that in the event of the exercise of the option to purchase the leased premises
7 or in the event the lease has been extended for the full number of years which it is
8 agreed the same may be extended, and all rents and other amounts provided for in the
9 lease have been made, the lessor shall convey the premises or the lessor's interest
10 therein to the lessee with or without a covenant or warranty of title;

11 (6) Provide that the lessee shall, as additional rent for the leased premises, pay, or provide
12 for the payment of, all taxes assessed against the leased premises if any, the cost of
13 insuring the building erected thereon against loss or damage by casualty or otherwise
14 in such sum as may be agreed by the parties thereto and any other costs associated
15 with the property or any financing, and that lessee shall indemnify and hold the
16 authority, corporation and any lenders or other parties harmless for any costs, claims,
17 taxes or damages relating to or arising out of the lease or any financing or other
18 contract or any other matters relating to the transactions contemplated thereby. Any
19 lessee of municipal facilities owned or leased by or to the authority or corporation is
20 hereby authorized to self-insure the municipal facilities on such terms or conditions
21 approved by the authority or set forth in the lease.

22 Section 19. The authority or any corporation formed by the authority may, in the event of
23 nonpayment of rents or other amounts reserved in a lease, maintain and operate such facilities
24 and sites or execute leases thereof to or service contracts with others for any suitable purposes.

1 Section 20. The charges, fees, or rentals established by the authority or any corporation
2 formed by the authority, as lessor, for the use of any municipal facilities acquired, constructed,
3 completed, remodeled, or equipped in whole or in part with the proceeds of any financing or
4 other transaction as provided in this Act shall be sufficient at all times to pay maintenance and
5 operation costs for such facilities (unless under a lease maintenance and operation costs are
6 otherwise provided for), and a proportion of the administrative expenses of the authority and any
7 corporation as provided for by each lease, and such reserves as may be provided in the lease or
8 any other resolution or other agreement of the authority.

9 Section 21. Any lease obligation of the state, the authority or any corporation formed by the
10 authority pursuant to this Act shall be payable solely and only from:

- 11 (1) Revenues to be derived by the state, the authority or such corporation from the
12 ownership, sale, lease, disposition and operation of any municipal facilities leased in
13 connection therewith;
- 14 (2) Income to be derived from leases to or involving any public entity or other person;
- 15 (3) Any funds or permitted investments, and any earnings thereon, to the extent pledged
16 therefor;
- 17 (4) Revenues to be derived by the authority or corporation from any public entity or from
18 any support and operating agreement, service agreement or any other agreement with
19 any person;
- 20 (5) Funds, if any, appropriated for such purpose by the Legislature;
- 21 (6) Revenues derived from the exercise of any power provided under this Act;
- 22 (7) Income or proceeds from any collateral pledged or provided therefor; and
- 23 (8) Revenues to be derived in connection with municipal facilities from (a) the foreclosure
24 of any mortgages, deeds of trust, notes, debentures, bonds, and other security

1 interests held by it, or pledged and assigned by it in connection with the lease, either
2 by action or by exercise of a power of sale, (b) the sale of the equity of redemption
3 in said security interests in accordance with the terms of said instruments and
4 applicable state law or (c) other actions to enforce any obligation held by it. Each such
5 lease shall state that it does not constitute an obligation of the State of South Dakota
6 or the authority within the meaning of any provisions of the Constitution or statutes
7 of the State of South Dakota.

8 Section 22. Any lease or other instrument or agreement authorized hereunder shall be
9 executed by such officers of the authority as shall be designated by the authority. Any lease or
10 other instrument or agreement authorized hereunder bearing the signature of officers in office
11 at the date of signing thereof shall be valid and binding for all purposes, notwithstanding that
12 before delivery thereof any or all such persons whose signature appears thereon shall have ceased
13 to be such officers.

14 Section 23. The provisions of this Act and of any resolution or proceeding authorizing any
15 lease of municipal facilities shall constitute a contract with any person claiming rights under or
16 pursuant to the lease. The provisions thereof shall be enforceable either in law or in equity, by
17 suit, action, mandamus, or other proceeding in any court of competent jurisdiction to enforce and
18 compel the performance of any duties required by this Act or any resolution or proceeding
19 authorizing the lease, including the establishment of sufficient charges, fees, or rentals and the
20 application of the income from municipal facilities under this Act.

21 Section 24. The state may acquire from any public entity or other person by purchase, lease
22 or any other form of contract, agreement, instrument or conveyance all or any portion of
23 municipal facilities and may own, operate, use or otherwise contract with any public entity or
24 other person to own, operate, use or contract for use or operation of municipal facilities, and the

1 state may dispose of all or any portion of municipal facilities by sale, lease or any other form of
2 contract, instrument or conveyance to any public entity or other person, subject only to any
3 applicable terms and conditions set forth herein.

4 Any sale, acquisition, disposition, lease or other form, contract, instrument or conveyance
5 by the state of municipal facilities property pursuant to this Act shall be evidenced by an
6 instrument or agreement in writing signed on behalf of the state by the secretary of the
7 Department of Environment and Natural Resources. The secretary of the Department of
8 Environment and Natural Resources shall file a certified copy of any such instrument or
9 agreement with the Legislature promptly upon execution and delivery thereof. Upon the filing
10 of a certified copy of any such instrument or agreement by the secretary of the Department of
11 Environment and Natural Resources, such sale, lease, acquisition, disposition or other contract
12 shall, for all purposes, be valid, binding and enforceable in accordance with the terms thereof and
13 all deeds, bills of sale, leases and other instruments, contracts and agreements related thereto,
14 including any pledge, grant of security interest or other encumbrance made by the state, the
15 corporation, the authority or any public entity are not subject to disavowal, disaffirmance,
16 cancellation or avoidance by reason of insolvency of any party, lack of consideration or any other
17 fact, occurrence or rule of law.

18 Section 25. The Board of Water and Natural Resources or the South Dakota Conservancy
19 District may become a party to a lease authorized by this Act whereby the Board of Water and
20 Natural Resources or South Dakota Conservancy District loans in an initial amount of not
21 greater than ninety percent of the appraised value of utility property leased to, by or from the
22 state, authority, corporation or other public entity pursuant to this Act. The Board of Water and
23 Natural Resources or South Dakota Conservancy District may also be lender, lessor and/or
24 lessee in connection with any transaction contemplated by this Act, provide a deposit agreement,

1 payment undertaking or similar contract to any party to a lease or lease transaction, and, in the
2 event it is lessee, it may sublease such property.

3 Section 26. Notwithstanding any other provisions of law, all funds received by the authority
4 and any corporation formed by the authority shall be set forth in an informational budget as
5 described in § 4-7-7.2 and be annually reviewed by the Legislature.

6 Section 27. The authority shall be audited annually in accordance with chapter 4-11 and any
7 such audit shall include any corporation formed by the authority.

8 Section 28. The authority shall keep an accurate record of the rental payments under each
9 lease entered into by the authority or corporation.

10 Section 29. No member, officer, agent, or employee of the state, the authority or any
11 corporation formed by the authority, nor any other person who executes a lease, shall be liable
12 personally by reason of the issuance thereof.

13 Section 30. The governing body of a public entity may by ordinance or resolution exercise
14 all the powers conferred on (a) the South Dakota Building Authority and the Governor pursuant
15 to §§ 5-12-15, 5-12-19, and 5-12-42 to 5-12-45, inclusive, and (b) the authority or any
16 corporation formed by the authority under this Act, with respect to the acquisition, lease,
17 ownership, operation, sale and leaseback of utility property or other municipal facilities.

18 For the purposes of this section, (1) any sale price shall not be required to exceed the
19 appraised value of the municipal facilities being sold or otherwise transferred, (2) no lease or
20 other contract or agreement entered into by a public entity as provided herein shall have a term
21 in excess of one hundred years, (3) only the net proceeds remaining with the public entity after
22 any deposit, payment or prepayment required by any lease, contract, agreement or other
23 arrangement entered into in connection therewith or relating to or concerning such municipal
24 facilities are subject to § 6-13-8, (4) to the extent that a public entity sells, transfers or otherwise

1 conveys municipal facilities to the state, the authority, any corporation or other person as
2 provided hereunder and enters into a lease, support and operating agreement or other contract,
3 agreement or other arrangement as described herein, as modified hereby, such public entity and
4 such sale, transfer, conveyance, lease, contract, agreement and other arrangement shall not be
5 subject to any restriction, condition or limitation or procedural requirement prescribed by any
6 other law or charter applicable to such public entity; and (5) at the time of lease or sale of
7 municipal facilities by a public entity, unless the public entity retains pursuant to lease, contract
8 or other arrangement the right to possession of such facilities, the public entity shall enter into
9 a franchise agreement, a utility service contract, or other contract, requiring the purchaser to
10 furnish the public entity, its residents and users located in the area now served by the facilities
11 sold, utility service, at such rates as are approved by the public entity and on such further terms
12 and conditions as are determined by the public entity's governing body. The public entity may
13 enter into all other contracts considered necessary or desirable with respect to the municipal
14 facilities being sold, including but not limited to, contracts relating to the operation, maintenance,
15 insurance, improvements, replacement, and extension of the facilities sold or similar new facilities
16 to be operated in conjunction therewith by the public entity or the other contracting party.

17 Section 31. All municipal facilities owned, leased, acquired, sold or operated by or for the
18 benefit of the state, the authority, any corporation formed by the authority or any other public
19 entity pursuant to a lease having a term (including, for such purpose, all renewal options) in
20 excess of three years or a lease-purchase or installment purchase contract, or pursuant to an
21 operating contract described in section 30 of this Act shall constitute a separate class of property
22 which is exempt from all taxation.

23 Section 32. Any public entity which enters into a lease or other transaction described in this
24 Act may also enter into one or more support and operating agreements, participation agreements,

1 indemnity agreements, payment undertaking agreements and such other contracts or
2 arrangements related thereto or ancillary therewith with the corporation, authority, state or any
3 other public entity or person if the governing board of such public entity determines such
4 agreements or arrangements are reasonably necessary to induce lenders or investors to
5 participate therein, and such agreements or arrangements may include, without limitation,
6 indemnities for losses or claims of any nature or cause, agreements to charge, assess, levy or
7 collect fees and charges for the use of municipal facilities, an agreement to subsidize any such
8 fees or charges and the pledge of the full faith and credit of the public entity to pay any
9 obligations of the public entity under or with respect to any such lease, agreement or other
10 arrangement.

11 Section 33. Under no circumstances shall the authority, any corporation formed by the
12 authority, the state, either in its own name or acting through the Department of Environment and
13 Natural Resources, or any person which is a lender for or investor in, or the lessor, lessee or
14 nominal title owner with respect to, the utility property have any liability with respect to any
15 violation of any environmental law or regulation, including as a result of any release of any
16 hazardous substance or any other act or omission in connection with the ownership or operation
17 of any utility property which is the subject of any lease or other agreement or arrangement
18 authorized by this Act unless, in the case of a lessor or lessee, such person actually operates the
19 utility property with its own employees. Nor shall the authority, any corporation formed by the
20 authority, the state, either in its own name or acting through the Department of Environment and
21 Natural Resources, or any person which is a lender for or invested in, or the lessor, lessee or
22 nominal title owner with respect to, the utility property be deemed to be a responsible party or
23 an owner or operator of any utility property within the meaning of any environmental law or
24 regulation, it being the intention of the Legislature that all liability for environmental laws and

1 compliance therewith and with respect to and in connection with any utility property which is the
2 subject of any lease, contract or other arrangement authorized by this Act shall be retained by
3 the municipality, district or other local public entity whose residents and businesses receive
4 services or other benefits from the utility property which is the subject of any such lease, contract
5 or other arrangement.

6 Section 34. The powers conferred by this Act are in addition to all other powers conferred
7 upon the state, the authority, any corporation and any public entity, and their exercise shall be
8 subject only to such restrictions as may be provided by the South Dakota Constitution and are
9 not subject to any restriction or procedural requirements related to the acquisition, leasing,
10 financing, sale, use, operation or encumbering of municipal facilities prescribed by any other law
11 or charged, including, without limitation, any public procurement or bidding requirements.

12 Section 35. If any clause or other portion of this Act shall be held invalid, that decision shall
13 not affect the validity of the remaining portions of this Act. It is hereby declared that all such
14 remaining portions of this Act are severable, and that the Legislature would have enacted such
15 remaining portions if the portions that may be so held to be invalid had not been included in this
16 chapter.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

292H0658

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1281 - 01/31/2002

Introduced by: Representative Derby

1 FOR AN ACT ENTITLED, An Act to lengthen the period required for notice of nonrenewal of
2 certain insurance policies.

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

4 Section 1. That § 58-1-14 be amended to read as follows:

5 58-1-14. Notice of refusal to renew an insurance policy as defined in §§ 58-9-5 to 58-9-33,
6 inclusive, except a policy of homeowner's insurance, is not effective unless mailed or delivered
7 by the insurer to the named insured at least ~~thirty~~ sixty days before the effective renewal date.
8 The policy provisions control if the policy provides for a notice of refusal to renew that exceeds
9 ~~thirty~~ sixty days. This section does not apply to the cancellation and nonrenewal of automobile
10 policies or coverages as defined in § 58-11-45. A notice of nonrenewal is not required if the
11 policyholder is transferred to an insurer that is a member of the same insurance group as the
12 previous insurer and notice of such transfer is given in the form adopted by rule by the Division
13 of Insurance pursuant to chapter 1-26.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0726

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1299 - 01/30/2002

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

1 FOR AN ACT ENTITLED, An Act to change the definition and venue of perjury prosecutions
2 and to provide for the verification of certain information on certain state applications or other
3 documents.

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

5 Section 1. That § 22-29-1 be amended to read as follows:

6 22-29-1. Any person who, having taken an oath that he or she will testify, declare, depose,
7 or certify truly before any competent tribunal, officer, or person, in any ~~of the cases~~ state or
8 federal proceeding or action in which such an oath may by law be administered, intentionally and
9 contrary to ~~such the~~ the oath, states any material matter which ~~he~~ the person knows to be false, is
10 guilty of perjury.

11 Section 2. That chapter 23A-16 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Perjury may be prosecuted in the circuit court for either the county where the proceeding or
14 action is venued or where the act of perjury was committed.

15 Section 3. Any person who submits any petition, application, information, or other document



1 for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall
2 verify, under oath, that such petition, application, or information is true and correct. However,
3 it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or
4 written thereon in the form following: "I declare and affirm under the penalties of perjury that
5 this claim (petition, application, information) has been examined by me, and to the best of my
6 knowledge and belief, is in all things true and correct." Any person who signs such statement as
7 provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be
8 guilty of perjury. In addition to any penalties for perjury, administrative remedy may include loss
9 of benefits or privileges.

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.