

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

726H0054

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1059 - 02/13/2002

Introduced by: Representatives Brown (Jarvis), Begalka, Broderick, Fryslie, Hennies (Don), Kooistra, McCaulley, Nachtigal, and Sebert and Senators Diedrich (Larry), de Hueck, and Dennert

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning property
2 classifications and assessment appeals.

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

4 Section 1. That § 10-11-16 be amended to read as follows:

5 10-11-16. Any ~~resident~~ property owner or taxpayer of a township or municipality, as an
6 individual or through an attorney or agent, feeling aggrieved by anything in the assessment roll
7 may appeal to the local board of equalization for the correction of alleged errors in the listing or
8 valuation of the person's property. ~~The person shall notify the~~ Any lessee responsible for payment
9 of taxes pursuant to the provisions of a lease shall be considered the taxpayer and may appeal
10 anything in the assessment roll for the correction of alleged errors in the listing or valuation of
11 the leased property. An appeal to the local board of equalization shall be perfected by mailing
12 or by filing a notice of appeal with the clerk of the local board of equalization. If perfected by
13 mailing, the postmark shall be conclusive evidence regarding the timeliness of the appeal. The
14 clerk of the local board of equalization shall be notified of the appeal no later than the Thursday



1 preceding the third Monday in March. An appeal to the local board shall encompass the
2 aggregate valuation of the property being appealed or the property classification.

3 Section 2. That § 10-11-16.1 be amended to read as follows:

4 10-11-16.1. A local board of equalization shall hear individual valuation, classification, and
5 assessment questions of property owners or taxpayers who have appealed to the local board of
6 equalization, and may make adjustments and corrections in the assessment roll. The board shall
7 notify each appellant of the decision affecting the appellant's property in writing seven days after
8 the adjournment of the local board of equalization.

9 Section 3. That § 10-11-22 be amended to read as follows:

10 10-11-22. Any ~~person~~ property owner or taxpayer feeling aggrieved may appeal from the
11 decision of any local board of equalization to the board of equalization of the county in which
12 the municipality or township is situated.

13 Section 4. That § 10-11-23 be amended to read as follows:

14 10-11-23. An appeal from the local board of equalization to a county board of equalization
15 shall be perfected by mailing or by filing a written notice of appeal with the county auditor on
16 or before the first Tuesday in April. If perfected by mailing, the postmark shall be conclusive
17 evidence regarding the timeliness of the appeal. Appeals made pursuant to § 10-11-27 shall be
18 perfected by filing a written notice of appeal with the county auditor on or before the first
19 Tuesday in April. The county auditor shall file a copy of the notice of appeal with the appropriate
20 clerk of the local board of equalization prior to the hearing of the appeal by the county board of
21 equalization.

22 Section 5. That § 10-11-27 be amended to read as follows:

23 10-11-27. No complaint concerning property assessed in any district having a local board of
24 equalization shall be considered unless it has first been made to such local board, except a

1 nonresident owner or nonresident taxpayer of the taxing district may be heard without such
2 original complaint.

3 Section 6. That § 10-11-42 be amended to read as follows:

4 10-11-42. Any ~~person~~ owner or taxpayer feeling aggrieved by the decision of the county
5 board of equalization relative to the assessment of its property or any taxing district or
6 governmental subdivision or agency in which such property is located, feeling aggrieved by the
7 decision of the county board of equalization may appeal to the Office of Hearing Examiners. An
8 appeal to the Office of Hearing Examiners from a county board of equalization shall be perfected
9 by mailing or by filing a notice of appeal with the chief administrative law judge, Pierre, South
10 Dakota, no later than the third Friday in May. If perfected by mailing, the postmark shall be
11 conclusive evidence regarding the timeliness of the appeal. The chief administrative law judge
12 shall file a copy of the notice with the county director of equalization within ten days after receipt
13 of notice of appeal. The county director of equalization shall file notice of appeal to the
14 appropriate clerk of the local board of equalization prior to the hearing of the appeal by the
15 Office of Hearing Examiners. The notice shall state informally the substance of the decision
16 appealed from and the grounds upon which appeal is taken. The county board of equalization
17 or any person pecuniarily interested in sustaining its decision, as well as the appellant, may be
18 heard in person or by attorney upon appeals to the Office of Hearing Examiners. Nothing in this
19 section prevents an appeal to the circuit court as provided in § 10-11-44, but an appeal to either
20 tribunal excludes an appeal to the other.

21 Section 7. That § 10-11-67 be amended to read as follows:

22 10-11-67. Any resident, feeling aggrieved by anything in the assessment roll, may apply,
23 personally or through an attorney or agent, to the consolidated board of equalization for the
24 correction of alleged errors in the listing or valuation of the resident's property. A notice of a

1 complaint or grievance shall be mailed or filed in writing with the county auditor no later than
2 the first Tuesday in April. If the notice is mailed, the postmark shall be conclusive evidence
3 regarding the timeliness of the appeal. An appeal to the board shall encompass the aggregate
4 valuation of the property being appealed or the property classification.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

553H0444

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1078 - 02/14/2002

Introduced by: Representatives Broderick and Pummel and Senators Munson and Duxbury

1 FOR AN ACT ENTITLED, An Act to revise certain bond and insurance requirements for trust
2 companies.

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

4 Section 1. That § 51A-6A-18 be repealed.

5 ~~—51A-6A-18. A trust company must, at all times, maintain a surety bond appropriate to the~~
6 ~~size and scope of the company's business, but in no event, in an amount less than one million~~
7 ~~dollars. In determining the amount of surety bond, the company's governing board shall give due~~
8 ~~and careful consideration to known elements and factors constituting risk and hazards for the~~
9 ~~company. Any surety bond secured by a trust company shall provide that the bonding company~~
10 ~~providing the bond shall give at least ninety days notice of cancellation or nonrenewal of the~~
11 ~~bond to the trust company and to the director.~~

12 Section 2. That § 51A-6A-19 be amended to read as follows:

13 51A-6A-19. For purposes of this section, the capital of a trust company ~~shall be~~ is the total
14 of the aggregate par value of its outstanding shares of capital stock or ownership units, its
15 surplus, and its undivided profits. The minimum capital of a trust company shall be two hundred



1 thousand dollars. The commission may require that the trust company have more capital than the
2 amount specified if the commission determines that the amount and character of the anticipated
3 business of the trust company and the safety of the customers so require. This chapter recognizes
4 that capital for a trust company serves a different purpose than does capital for a bank. It is not
5 intended that capital requirements for trust companies be judged by the same standards as banks.
6 Basic protection for fiduciary clients of a trust company shall be provided by the purchase of a
7 surety bond or a fidelity insurance bond, or both, ~~as provided in § 51A-6A-18.~~ The bond shall
8 be in an amount of not less than one million dollars. Any bond required to be secured by a trust
9 company shall provide that the bonding company providing the bond shall give at least ninety
10 days notice of cancellation or renewal of the bond to the trust company and to the director.
11 Except as may be provided elsewhere in this chapter, no trust company may reduce voluntarily
12 its capital stock or ownership units or surplus below the amount required in this section.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

975H0266

SENATE ENGROSSED NO. **HB 1113** - 02/20/2002

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

Introduced by: Representatives Hennies (Thomas), Hennies (Don), Kooistra, McCoy, Monroe, Murschel, Nesselhuf, Pederson (Gordon), Pitts, Slaughter, Van Etten, and Van Gerpen and Senators Whiting, Daugaard, de Hueck, Dennert, Ham, Kleven, McCracken, McIntyre, Moore, Olson (Ed), Reedy, Staggers, Sutton (Dan), and Volesky

1 FOR AN ACT ENTITLED, An Act to require the Department of Corrections to seek
2 membership in the Performance-based Standards Project.

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

4 Section 1. The Department of Corrections shall seek membership in the Performance-based
5 Standards Project sponsored by the Office of Juvenile Justice and Delinquency Prevention,
6 United States Department of Justice. The Department of Corrections shall apply for membership
7 as an implementation site and shall sign an agreement with the Council of Juvenile Correctional
8 Administrators, hereinafter referred to as the council, committing adequate resources to
9 complete the data collection cycles and facility improvement plans.

10 Section 2. If the membership application in section 1 of this Act is approved, the Department
11 of Corrections shall apply to the council for demonstrated program funding provided by the
12 Office of Juvenile Justice Delinquency Prevention to support changes and actions outlined in
13 facility improvement plans.



1 Section 3. If the membership application in section 1 of this Act is approved, the department
2 may request federal spending authority from the committee created in § 4-8A-2.

3 Section 4. If the membership application in section 1 of this Act is approved, the Department
4 of Corrections shall appoint at least one manager who shall organize and supervise agency
5 resources and activities to achieve membership and completion of designated programs.

6 Section 5. No child in the custody of the Department of Corrections may be placed in any
7 juvenile corrections program unless that program is actively seeking membership in the
8 Performance-based Standards Project, has completed designated programs involved with
9 membership in the council, is actively seeking accreditation through application, is licensed as
10 a child welfare agency by the Department of Social Services, or is accredited by the American
11 Corrections Association, the Joint Commission on Accreditation of Health Care Organizations,
12 or any other nationally accepted accreditation or certification and that has requirements that are
13 substantially equivalent to, or more comprehensive than, those of the Council of Juvenile
14 Correctional Administrators.

15 Section 6. The Department of Corrections shall write a report detailing the assessments made
16 by the council and the actions taken by the department. The Department of Corrections shall
17 present the report semiannually to the Corrections Commission, established in § 1-15-1.13,
18 beginning on June 30, 2002. The department shall present the report to the Governor and the
19 Legislature annually, beginning on January 1, 2003.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

872H0466

HOUSE ENGROSSED NO. **HB 1131** - 01/24/2002

Introduced by: Representatives Michels, Abdallah, Flowers, Juhnke, Monroe, Olson (Mel),
and Sutton (Duane) and Senators McCracken, Bogue, Daugaard, and Moore

1 FOR AN ACT ENTITLED, An Act to provide for civil recovery of unpaid property and
2 services.

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

4 Section 1. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The owner of a motor vehicle that receives motor fuel that was not paid for is liable to the
7 motor fuel retailer for the cost of the motor fuel received. In addition, the motor fuel retailer may
8 impose a maximum service charge of thirty dollars for collection costs if the service charge was
9 conspicuously displayed on the premises where the motor fuel was received.

10 Section 2. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 If a motor fuel retailer records the license plate number of the motor vehicle that receives
13 motor fuel that was not paid for, the retailer may contact any law enforcement officer and
14 provide the license plate number in writing and the law enforcement officer shall provide the
15 motor vehicle owner's address, recorded pursuant to § 32-5-3, in order for the retailer to mail



1 a notice and demand of payment for motor fuel.

2 Section 3. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The notice and demand of payment for motor fuel shall include the name, address, and license
5 plate number of the motor vehicle owner; the date the act occurred; the unpaid dollar amount;
6 the service charge; the type of motor fuel; a citation of sections 1 and 4 of this Act; and the
7 employee's signature. An affidavit of service by mailing shall be retained by the motor fuel
8 retailer.

9 Section 4. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 If the motor fuel retailer does not receive payment within thirty-three days after mailing the
12 notice and demand for payment for motor fuel, the vehicle owner is also liable for a civil penalty
13 of one hundred dollars, or the price of the unpaid motor fuel, whichever is greater.

14 Section 5. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The motor vehicle owner may dispute the motor fuel retailer's claim by sending written notice
17 to the retailer during the thirty-three day period in section 4 of this Act. The retailer shall cease
18 all collection efforts upon receipt of the notice. The retailer may collect the price of the motor
19 fuel, the service charge, and the civil penalty only pursuant to a judgement from a court of law.

20 Section 6. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any person who obtains property or services from a hotel or restaurant without paying for
23 it is liable to the retailer for the cost of the property or service. In addition, the retailer may
24 impose a maximum service charge of thirty dollars for collection costs if the service charge was

1 conspicuously displayed on the premises.

2 Section 7. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 If the retailer records the motor vehicle license plate number of the person who obtained
5 property or services without paying, the retailer may contact any law enforcement officer and
6 provide the license plate number in writing and the law enforcement officer shall provide the
7 motor vehicle owner's address, recorded pursuant to § 32-5-3, in order for the retailer to mail
8 a notice and demand of payment for property or services.

9 Section 8. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The notice and demand of payment for property or services shall include the name, address,
12 and license plate number of the motor vehicle owner; the date the act occurred; the unpaid dollar
13 amount; the service charge; a citation of sections 6 and 9 of this Act; and the employee's
14 signature. An affidavit of service by mailing shall be retained by the retailer.

15 Section 9. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 If the retailer does not receive payment within thirty-three days after mailing the notice and
18 demand for payment for property or services, the vehicle owner is also liable for a civil penalty
19 of one hundred dollars, or the price of the unpaid property or services, whichever is greater.

20 Section 10. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any person may dispute the retailer's claim by sending written notice to the retailer during
23 the thirty-three day period in section 9 of this Act. The retailer shall cease all collection efforts
24 upon receipt of the notice. The retailer may collect the price of the property or service, the

1 service charge, and the civil penalty only pursuant to a judgment from a court of law.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

543H0472

SENATE ENGROSSED NO. **HB 1136** - 02/19/2002

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, and Valandra and Senators Hutmacher, Dennert, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), Symens, and Volesky

1 FOR AN ACT ENTITLED, An Act to clarify the approval authority for local accounts of the
2 state treasurer and state auditor.

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

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

5 4-4-3. All state public funds shall be received and maintained in the state treasury, and shall
6 be disbursed only upon proper authorization by the state auditor and the state treasurer, unless
7 the state treasurer and state auditor ~~shall~~ jointly determine a justification exists for maintaining
8 such public funds in a local bank account. A local bank account authorized by the state auditor
9 and state treasurer is an official account of the state subject to the custody of the state treasurer
10 under § 1-10-1. Neither the state treasurer nor the state auditor may be a signatory on any local
11 account. Any agency holding state funds in any local bank account shall provide a quarterly
12 statement of activity in that account to the state treasurer and the state auditor.

13 Section 2. That § 4-3-5 be amended to read as follows:



1 4-3-5. ~~Every such~~ Each officer or employee shall designate in writing, to be filed in ~~his~~ the
2 officer's or employee's office, the bank or banks in which ~~he shall have~~ are deposited the current
3 receipts of ~~his~~ the office or department ~~and any~~. Any account showing any such deposit ~~shall be~~
4 is an official account and shall be accessible to the inspection of the auditor-general at any time
5 during banking hours.

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

8 The state treasurer and state auditor shall approve local drug buy accounts at the request of
9 the attorney general.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

466H0522

SENATE ENGROSSED NO. **HB 1160** - 02/15/2002

Introduced by: Representatives Adelstein, Clark, and Murschel

1 FOR AN ACT ENTITLED, An Act to repeal certain tort liability arising out of causes of action
2 based on seduction, abduction, and alienation of affections.

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

4 Section 1. That § 20-9-7 be repealed.

5 ~~—20-9-7. The rights of personal relation forbid:~~

6 ~~—(1)—The abduction of a husband from his wife or of a parent from his child;~~

7 ~~—(2)—The abduction or enticement of a wife from her husband, of a child from a parent, or~~
8 ~~from a guardian entitled to its custody;~~

9 ~~—(3)—The seduction of a wife, daughter, or orphan sister.~~



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

562H0395

SENATE ENGROSSED NO. **HB 1164** - 02/19/2002

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

Introduced by: Representatives Van Etten, Brown (Jarvis), Eccarius, Madsen, Michels, Monroe, Murschel, and Olson (Mel) and Senators Bogue, Craddock, Everist, and Hutmacher

1 FOR AN ACT ENTITLED, An Act to abrogate the loss of chance doctrine as set forth in
2 Jorgenson v. Vener.

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

4 Section 1. The Legislature finds that in those actions founded upon an alleged want of
5 ordinary care or skill the conduct of the responsible party must be shown to have been the
6 proximate cause of the injury complained of. The Legislature also finds that the application of
7 the so called loss of chance doctrine in such cases improperly alters or eliminates the requirement
8 of proximate causation. Therefore, the rule in Jorgenson v. Vener, 2000 SD 87, 616 N.W. 2nd
9 366 (2000) is hereby abrogated.

10 Section 2. The Legislature intends only to abrogate the loss of chance doctrine expressly
11 adopted by the court, thereby returning the common law of this state to its status immediately
12 prior to the court's decision. The Legislature does not intend to affect any other rule or principle
13 of statutory or common law, including but not limited to, aggravation of preexisting injuries,
14 proximate causation, and the requirement of informed consent for all medical treatment.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

923H0544

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1168** - 02/15/2002

Introduced by: Representatives Peterson (Bill), Eccarius, and Olson (Mel) and Senators
Everist, Brown (Arnold), and Hutmacher

1 FOR AN ACT ENTITLED, An Act to provide for a study of the legislative article of the South
2 Dakota Constitution.

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

4 Section 1. The Executive Board of the Legislative Research Council shall appoint a
5 commission to study Article III of the South Dakota Constitution. The commission shall make
6 recommendations to the 2003 Legislature regarding the length of legislative sessions, legislator
7 term limits, the legislative redistricting process, legislator conflicts of interest, and the powers
8 and duties of the Legislature.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1220 - 02/11/2002

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

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and
2 to declare an emergency.

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

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Upon motion or by petition, a court may allow a person other than a parent to intervene in
7 an action under this chapter involving child custody. In any matter under this chapter involving
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to
9 represent the child. The court may award full or partial custody, care, education, and visitation
10 rights of the child to a person other than a parent.

11 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by
4 showing serious detriment to the child as evidenced by one or more of the following
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the
14 parent sufficient to cause significant emotional harm to the child in the event of a
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of
24 the child.

1 Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A judgment under section 1 of this Act awarding any person other than a biological parent
4 custodial rights may award the biological parent with visitation rights with the child.

5 Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 If a court awards a third party custodial rights to a child, the court may set child support in
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for
10 their child.

11 Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

843H0415

SENATE ENGROSSED NO. **HB 1221** - 02/04/2002

Introduced by: Representatives Hargens, Bartling, Burg, Elliott, Hennies (Don), Hennies (Thomas), Holbeck, Jensen, Lange, Lintz, Madsen, Olson (Mel), Peterson (Jim), Pitts, Rhoden, Sigdestad, and Van Gerpen and Senators Duxbury, Daugaard, Dennert, Koskan, Putnam, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the date for filing certain certificates of
2 nomination.

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

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

5 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is
6 not nominated by a primary election may be nominated by filing with the secretary of state or
7 county auditor as prescribed by § 12-6-4, not prior to January first at eight a.m. and not later
8 than the ~~third~~ first Tuesday in June at five p.m. prior to the election, a certificate of nomination
9 which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by
10 registered mail by the ~~third~~ first Tuesday in June at five p.m. prior to the election, it is timely
11 submitted. The certificate shall specify that an independent candidate for nonjudicial public office
12 shall designate the name of any national political party, or political party organized pursuant to
13 chapter 12-5, with which the candidate has an affiliation. If no affiliation exists, the candidate
14 shall be designated by the term, no party. It shall be signed by registered voters within the district



1 or political subdivision in and for which the officers are to be elected. The number of signatures
2 required may not be less than one percent of the total combined vote cast for Governor at the
3 last certified gubernatorial election within the district or political subdivision. An independent
4 candidate for Governor shall certify the candidate's selection for lieutenant governor to the
5 secretary of state prior to circulation of the candidate's nominating petition. The candidate and
6 the candidate's selection for lieutenant governor or vice president shall sign the certification
7 before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26
8 prescribing the forms for the certificate of nomination and the certification for lieutenant
9 governor.

10 Section 2. The provisions of this Act are effective on January 1, 2003.

11 Section 3. That § 3-4-6 be amended to read as follows:

12 3-4-6. Appointments to state offices shall be made in writing and shall continue for the
13 remainder of the unexpired term of office. Unless otherwise provided by law, all other
14 appointments shall be made in writing and shall continue until the next general election and until
15 a successor is elected and qualified. A vacancy must occur prior to ~~June~~ May first in an
16 even-numbered year, other than in a year when the term of office would normally expire, for the
17 office to be filled by election for the remainder of the unexpired term. Any person elected to an
18 office that was previously vacant shall take office in the year following the election on the day
19 of that year when a full term for that office would normally commence.

20 Appointments to state offices shall be filed with the secretary of state. Appointments to
21 county offices shall be filed in the office of the county auditor and entered in the minutes of the
22 commissioners' proceedings.

23 Section 4. That § 7-7-1.9 be amended to read as follows:

24 7-7-1.9. An officer shall be nominated and elected at the next general election to the

1 combined office provided for in § 7-7-1.8. If the election submitted pursuant to § 7-7-1.5 is held
2 at a primary election, each candidate for the vacant officer shall run as an independent candidate
3 as provided in chapter 12-7, except that the petition filing deadline shall be the first Tuesday in
4 August. The officer shall be voted upon by the voters of the counties that have resolved to
5 combine ~~such~~ the office. Such officer shall hold office for a term of four years commencing on
6 the first Monday of January following ~~his~~ the officer's election.

7 Section 5. That § 7-8-9 be amended to read as follows:

8 7-8-9. ~~Commissioners~~ Any commissioner to be elected at the next general election following
9 a redistricting of the county under § 7-8-6 or 7-8-7 shall be nominated by petition ~~in accordance~~
10 ~~with the provisions of this code as to nominations of~~ pursuant to the provisions for nominating
11 independent candidates for public office by petition. However, the filing deadline shall be the first
12 Tuesday in August.

13 Section 6. That § 23-3-43.1 be amended to read as follows:

14 23-3-43.1. Any candidate for election to the office of county sheriff shall file with the county
15 auditor by the first Tuesday of April of the election year a certification issued by the commission
16 that such person meets the qualifications provided in § 23-3-43. However, any such candidate
17 appointed to fill a vacancy by a party central committee pursuant to § 12-6-56 or who files an
18 independent nominating petition shall file ~~such~~ a certification of qualification by the ~~second~~ first
19 Tuesday of ~~August~~ June. A sheriff appointed to fill a vacancy by the county commission shall
20 file with the county auditor ~~such~~ a certification of qualification within thirty days of ~~such~~ the
21 appointment. Failure to file ~~such~~ a certification shall prevent the candidate's name from being
22 placed on the ballot.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

640H0646

SENATE ENGROSSED NO. **HB 1237** - 02/20/2002

Introduced by: Representatives Richter, Burg, Derby, and Olson (Mel) and Senators Drake, Dennert, Duxbury, and Putnam

1 FOR AN ACT ENTITLED, An Act to amend the General Appropriations Act for fiscal year
2 2002.

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

4 Section 1. That section 16 of chapter 3 of the 2001 Session Laws be amended to read as
5 follows:

6 DEPARTMENT OF CORRECTIONS

7 State Penitentiary

8 Operating Expenses, delete "\$4,922,325" and insert "\$5,415,825".

9 Adjust all totals accordingly.

10 Section 2. That section 17 of chapter 3 of the 2001 Session Laws be amended to read as
11 follows:

12 DEPARTMENT OF HUMAN SERVICES

13 Developmental Disabilities

14 Operating Expenses, delete "\$21,481,272" and insert "\$21,974,772" and delete
15 \$40,011,775" and insert "40,598,775".



1 Adjust all totals accordingly.

2 Section 3. That section 14 of chapter 3 of the 2001 Session Laws be amended to read as
3 follows:

4 BOARD OF REGENTS

5 South Dakota School of Medicine

6 Personal Services, delete "\$9,175,134" and insert "\$9,675,134"

7 Section 4. Any expenditure authority or cash appropriated by this Act which are unspent at
8 the end of fiscal year 2002 shall be carried over to fiscal year 2003.

9 Section 5. That chapter 3 of the 2001 Session Laws be amended to read as follows:

10 After Section 27, insert:

11 "Section 27A. The state treasurer shall transfer to the general fund from the youth-at-risk
12 fund the sum of three hundred ninety-six thousand dollars (\$396,000).

13 Section 27B. The state treasurer shall transfer to the general fund from the people's trust fund
14 the sum of one hundred ninety-one thousand dollars (\$191,000).

15 Section 27C. The state treasurer shall transfer to the general fund from the South Dakota
16 Building Authority the sum of nine hundred thousand dollars (\$900,000)."

17 Section 6. This Act is effective June 11, 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

565H0163

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1240 - 02/14/2002

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~~ § 49-7A-8 or any rule
5 promulgated pursuant to § 49-7A-8, or if the location markings provided fail to identify the
6 location of the underground facilities in accordance with ~~§ 49-7A-8 statute and rule~~, any
7 excavator damaging or injuring underground facilities is not liable for such damage or injury
8 except on proof of negligence.

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

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

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

20 ~~—49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions~~
21 ~~shall be taken to protect the underground facilities. In such a case, the excavator shall give~~
22 ~~notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency~~
23 ~~exists, and each member shall as soon as practical or no longer than within four hours provide~~
24 ~~to the excavator all location information reasonably available. Any operator who determines that~~

1 ~~its facilities will not be impacted by the notice, shall immediately notify the excavator that the~~
2 ~~operator's facilities are clear from the excavation. An excavator requesting a location due to an~~
3 ~~emergency shall provide the name and the phone number of a person who has knowledge~~
4 ~~regarding the excavation. Any operator or excavator who violates this section is liable for any~~
5 ~~damages incurred.~~

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

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

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

16 Any person with a complaint against a party who violates or with a complaint against a party
17 who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or
18 any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8, may apply to the board for
19 relief. No complaint may be dismissed because of the absence of direct damage to the
20 complainant or petitioner. The board may promulgate rules of practice prescribing the form for
21 complaints in accordance with chapter 1-26.

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

24 Except as provided in section 13 of this Act and in addition to all other penalties provided

1 by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2,
2 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or
3 49-7A-8 may be assessed a penalty of up to one thousand dollars for the first violation and up
4 to five thousand dollars for each subsequent violation that occurs within twelve months of the
5 initial violation.

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

8 In addition to all other penalties provided by law, any person who intentionally violates or
9 who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or
10 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 may be
11 assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand
12 dollars for each subsequent violation that occurs within twelve months of the initial violation.

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

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

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

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

1 violation.

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

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

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

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

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

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

24 Section 19. That chapter 49-7A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A determination of probable cause shall be made by the panel solely on these submissions and
3 no other evidence shall be considered.

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

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

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

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

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

12 (3) Any history of previous violations;

13 (4) Other matters as justice requires.

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

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

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

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

23 If the amount of the penalty is not paid to the board, the Public Utilities Commission, at the
24 request of the board, shall bring an action in the name of the State of South Dakota to recover

1 the penalty in accordance with section 27 of this Act. No action may be commenced until after
2 the time has expired for an appeal from the findings, conclusions, and order of the board. The
3 costs and expenses on the part of the commission shall be paid by the board.

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

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

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

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

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

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

1 transcript of all testimony introduced at the trial.

2 Section 26. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Either party may request the removal of a board member from any hearing based on a conflict
5 of interest. The chair of the Statewide One-Call Notification Board may appoint a replacement
6 from the same representative group identified in § 49-7A-3 as the board member that was
7 removed.

8 Section 27. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

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

13 Section 28. That chapter 49-7A be amended by adding thereto a NEW SECTION to read
14 as follows:

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

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

913H0527

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1258** - 02/19/2002

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

Introduced by: Representatives Hunhoff, Abdallah, Begalka, Broderick, Elliott, Frost, Heineman, Holbeck, Kooistra, Michels, Murschel, Olson (Mel), Peterson (Bill), Sebert, Solum, Sutton (Duane), Van Etten, and Van Gerpen and Senators Olson (Ed), Albers, Brown (Arnold), Cradduck, de Hueck, McCracken, Moore, and Volesky

1 FOR AN ACT ENTITLED, An Act to establish a tuition reimbursement program for nurses.

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

3 Section 1. A nurse is eligible to receive tuition reimbursement payments pursuant to this Act
4 if the nurse is licensed to practice nursing pursuant to chapter 36-9 and agrees to practice full
5 time as a nurse in an eligible health care facility for a minimum period of two years. However,
6 no more than sixty nurses may participate in this program at any specified time.

7 Section 2. For purposes of this Act, an eligible health care facility is any facility in this state
8 which:

9 (1) Is licensed pursuant to chapter 34-12 or certified under Title XVIII or XIX of the
10 Social Security Act as amended to December 31, 2001;

11 (2) Agrees to provide its portion of the tuition reimbursement payments payable to a
12 nurse who practices in the health care facility as required by this Act; and



1 (3) Is determined to be eligible by the Department of Health.

2 Prior to making a determination under subdivision (3) of this section, the Department of
3 Health shall promulgate rules pursuant to chapter 1-26 to establish specific criteria to evaluate
4 each facility's need for nurses.

5 Section 3. A nurse who fulfills the requirements of this Act is entitled to receive tuition
6 reimbursement in the amount of five thousand dollars.

7 Section 4. Any agreement for the payment of tuition reimbursement pursuant to this Act shall
8 obligate the facility employing the nurse to provide a portion of the total amount of tuition
9 reimbursement based on the following criteria: health care facilities in communities of two
10 thousand five hundred persons or less shall provide twenty-five percent of tuition reimbursement
11 payments and health care facilities in communities of greater than two thousand five hundred
12 persons shall provide fifty percent of tuition reimbursement payments. When the facility certifies
13 to the secretary of health that it has paid the full amount for which it is obligated, the secretary
14 of health shall pay to the nurse the remaining balance of the total tuition reimbursement amount.
15 Reimbursement shall be paid upon the nurse's completion of the required two-year practice
16 period. However, a facility may pay its portion of tuition reimbursement at any time during the
17 two-year period.

18 Section 5. Any county or municipality may appropriate funds for the purpose of carrying out
19 the provisions of this Act.

20 Section 6. No tuition reimbursement agreement entered into pursuant to the provisions of
21 this Act is effective until it is filed with and approved by the secretary of health. The secretary
22 may prescribe the form of agreements and procedures for approval by rules promulgated
23 pursuant to chapter 1-26.

24 Section 7. No person may participate in the tuition reimbursement program established by

- 1 this Act who is participating in, or has previously participated in, this or any other state or federal
- 2 tuition reimbursement or forgiveness program.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

771H0419

SENATE ENGROSSED NO. **HB 1273** - 02/19/2002

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 a person with a disability and to provide for civil
3 penalties.

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

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

6 32-5-76. An owner of a motor vehicle, who is a resident of this state, who has complied with
7 all the laws of this state in obtaining regular number license plates for the motor vehicle, and who
8 operates or directs the operation of the vehicle, may submit to the county treasurer an application
9 containing a physician's certificate on a form approved by the secretary, ~~which states~~ stating that
10 the applicant is ~~so substantially disabled by~~ a person with a substantial physical disability that
11 makes it is impossible or causes substantial hardship to walk. The secretary shall promulgate a
12 rule, pursuant to chapter 1-26, defining a person with a physical disability. The county treasurer
13 shall procure, issue, and deliver to the applicant plates with letters, numbers, or symbols, or any
14 combination thereof, as the secretary may prescribe. The plates shall be designed to readily
15 apprise law enforcement officers of the fact that the motor vehicle is owned, operated, or used



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

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

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

1 thirty days, and the treasurer shall notify the secretary who shall make the necessary changes in
2 the file. Failure to surrender the portable certificate as required by this section is a Class 2
3 misdemeanor. It is a Class 1 misdemeanor to submit a false or fraudulent application or to alter
4 the portable certificate.

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

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

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

1 32-5-76.3. Any nursing facility licensed pursuant to the provisions of chapter 34-12 and
2 which has complied with all laws of this state in obtaining title, license plates, and registration
3 for its motor vehicles may apply for a set of distinctive plates as prescribed by § 32-5-76 ~~which~~
4 ~~permits~~ permitting the operator of a vehicle transporting any ~~disabled~~ person with a disability to
5 park pursuant to § 32-30-11.1. However, the vehicle may only park for the time reasonably
6 necessary to load or unload passengers in any space reserved for persons with disabilities. The
7 application shall be made on a form approved by the secretary. If the department determines that
8 the applicant is licensed as a nursing facility, the secretary shall issue and deliver a set of
9 distinctive plates to the applicant. The secretary may promulgate rules, pursuant to chapter 1-26,
10 regarding the application for, term of, and conditions under which the distinctive plates may be
11 issued. If the applicant no longer transports ~~physically disabled~~ persons with physical disabilities,
12 the applicant shall surrender the distinctive plates to the department within thirty days. Failure
13 to surrender the distinctive license plates as required by this section is a Class 2 misdemeanor.

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

15 32-30-11. Any person, other than the veteran to whom it was issued, who uses a disabled
16 veteran's license of identification issued pursuant to ~~§ 32-30-7~~ § 32-5-108 for the purpose of
17 parking an automobile as permitted by § 32-30-8, commits a ~~petty offense~~ Class 2 misdemeanor.
18 In addition the court shall assess a civil penalty of not less than one hundred dollars nor more
19 than three hundred dollars if the parking space is marked in accordance with the American With
20 Disabilities Act accessibility guidelines as of January 1, 2002.

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

22 32-30-11.1. Any ~~physically handicapped~~ person with a physical disability, who displays
23 special license plates issued under § 32-5-76 or 32-5-108, a serially numbered certificate issued
24 under § 32-5-76.1 or 32-5-76.2, or a similar license plate or certificate issued in another state

1 on an automobile used in transporting ~~him~~ that person, shall be entitled to park without limitation
 2 in areas where parking is normally restricted by time factors and to park in any space reserved
 3 for ~~the handicapped~~ a person with a disability. However, a municipality may, by ordinance,
 4 prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide
 5 for the accommodation of heavy traffic during morning and afternoon rush hours, ~~and the~~. The
 6 privileges extended to ~~such handicapped~~ persons ~~shall~~ with disabilities do not apply on streets
 7 or highways where and during ~~such times as~~ any time parking is prohibited.

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

9 32-30-11.2. If the police of any municipality or any other political subdivision ~~shall find~~ finds
 10 that ~~such~~ special license plates or certificates are being improperly used, ~~they~~ the police shall
 11 report such violation to the Department of ~~Commerce and Regulation~~ Revenue which ~~may~~ shall
 12 revoke the privilege of displaying license plates or certificates ~~so~~ that are improperly used.

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

14 32-30-11.3. Any person who is not ~~physically handicapped~~ a person with a physical disability
 15 and who exercises the privileges granted a ~~physically handicapped~~ person with a physical
 16 disability under § 32-30-11.1 commits a Class 2 misdemeanor. In addition the court shall assess
 17 a civil penalty of not less than one hundred dollars nor more than three hundred dollars if the
 18 parking space is marked in accordance with the American With Disabilities Act accessibility
 19 guidelines as of January 1, 2002.

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

21 32-30-11.4. The owner of any vehicle not displaying a serially numbered certificate or special
 22 license plate parked or stopped in a parking space, or blocking a parking space, on public or
 23 private property designated as reserved for ~~the physically handicapped~~ a person with a physical
 24 disability commits a Class 2 misdemeanor. In addition the court shall assess a civil penalty of not

1 less than one hundred dollars nor more than three hundred dollars if the parking space is marked
2 in accordance with the American With Disabilities Act accessibility guidelines as of January 1,
3 2002.

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

6 No owner of a vehicle may park, stop, or stand in an access aisle or lane immediately
7 adjacent to reserved parking spaces or in front of a ramp or curb-cut in such a manner that
8 blocks access to a person with a disability who uses a wheelchair. A violation of this section is
9 a Class 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one
10 hundred dollars nor more than three hundred dollars if the parking space is marked in accordance
11 with the American With Disabilities Act accessibility guidelines as of January 1, 2002.

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

13 32-30-11.6. ~~Municipalities may~~ Each municipality shall by ordinance, designate special
14 parking spaces which shall be accessible to and usable by persons with physical disabilities. Each
15 municipality may, by ordinance, designate parking spaces that are only for use by a person using
16 a wheelchair. The parking spaces shall be designed in accordance with the Americans With
17 Disabilities Act as amended on January 1, 2002.

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

20 Each sign designating a parking space for a person with a physical disability shall state the
21 penalties for illegal use of the parking space. This section only applies to a new sign or a sign that
22 replaces an existing sign after July 1, 2002.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

169H0652

SENATE ENGROSSED NO. **HB 1279** - 02/20/2002

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 and
8 liabilities of the state, the Department of Environment and Natural Resources, the Board of
9 Water and Natural Resources, the South Dakota Conservancy District and municipalities and
10 other 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
14 politic, created under section 2 of this Act;



- 1 (2) "Corporation," any special purpose body corporate and politic established by the
2 authority by resolution of the authority board as provided in section 6 of this Act;
- 3 (3) "Lease," when used with respect to municipal facilities, any lease, sublease, purchase
4 agreement, lease-purchase agreement, installment purchase agreement, lease-back
5 agreement or other contract, agreement, instrument, or arrangement pursuant to
6 which any rights, interests or property with respect to municipal facilities are
7 transferred to, by or from any party to, by or from one or more parties and any related
8 documentation, instruments or arrangements entered into or to be entered into in
9 connection therewith or ancillary thereto including, without limitation, support and
10 operating agreements, service agreements, indemnity agreements, participation
11 agreements, loan agreements or payment undertaking agreements;
- 12 (4) "Municipal facilities," all or any part of, or an undivided or other interest in, (a) any
13 utility property or (b) any other land, buildings, improvements or capital equipment,
14 and any property or other rights or interests ancillary or related to (a) or (b), whether
15 owned or used by or leased by, to or from, or to be owned, used or leased by, to or
16 from a public entity, or useful to or by a public entity;
- 17 (5) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
18 with (a) collateralized or noncollateralized obligations of, or any other payment
19 undertaking, deposit or other agreement of, any bank or savings institution,
20 investment banking firm or organization, financial institution, insurance company or
21 bank or insurance holding company (or any subsidiary or affiliate of any of the
22 foregoing), whether organized under the laws of the United States of America, any
23 state or territory thereof, or the laws of any foreign nation, if at the time such
24 investments are acquired, the senior debt or claims paying ability of such person or

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

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

20 (7) "Public entity," any county, township, municipality, political or administrative
21 subdivision of state government, water project district, irrigation district, water user
22 district, watershed district, drainage district, soil conservation district, or other
23 political subdivision or public body, authority or instrumentality recognized by state
24 law and shall expressly include the authority and any corporation formed pursuant to

1 this Act;

2 (8) "State," the State of South Dakota acting by and through the Department of
3 Environment and Natural Resources or any other department, agency or authority of
4 the state designated by the Governor;

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 or her duties. The oath and bond shall
14 be filed 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 have the authority to guarantee the debts of another.

19 No such corporation shall 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 purposes of the authority and any corporation formed by the authority are:

- 2 (1) To acquire, own, lease, sublease, sell, transfer or otherwise use, operate, obtain
3 service from or dispose of municipal facilities to, for or on behalf of, the state, any
4 public entity or other person;
- 5 (2) To make, acquire, dispose of or pledge loans in connection with any transactions
6 involving municipal facilities and to enter into deposit, payment undertaking or similar
7 arrangements in connection with such transactions;
- 8 (3) To serve the Legislature by making reports concerning the providing of such property
9 and facilities;
- 10 (4) To finance or refinance municipal facilities and to enter into transactions a purpose
11 of which is to raise capital or provide access to capital for or by public entities; and
- 12 (5) To invest, on its own behalf or on behalf of any party to any lease, any funds or any
13 other amounts in permitted investments.

14 Section 8. The state, the authority or any corporation formed by the authority may take title
15 to or enter into any conveyance, lease or contract necessary or desirable in furtherance of the
16 purposes set forth in this Act, including, without limitation, to acquire, own, lease, sell, transfer
17 or otherwise use, operate or obtain services from or dispose of land or municipal facilities and
18 any other improvements made upon or under such land and capital equipment necessary or useful
19 for the operation of the municipal facilities to be acquired by it pursuant to this Act, including,
20 without limitation, lease, lease-purchase, and, subject to compliance with the provisions of South
21 Dakota Constitution, Art. XIII, § 1, installment purchase contracts. Without limitation, the state,
22 the authority or any corporation formed by the authority may include in such conveyances, leases
23 or contracts any of the following provisions:

- 24 (1) In lease contracts, options to purchase the property subject to the lease or the lessor's

1 interest therein, and provisions for the deferred payment or prepayment by lessee to
2 lessor of rent, and provisions for designating a portion of the periodic payments to be
3 made thereunder as interest, net of all other costs and expenses of ownership,
4 operation, maintenance, and insurance of the leased property by the authority or any
5 such corporation as agent of the lessor; and

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

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

12 Section 9. The state, the authority and each corporation formed by the authority shall have
13 the power and authority:

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

20 (2) To pledge as security for any arrangement entered into with respect to municipal
21 facilities (i) any rights under any lease, support and operating agreement, deposit
22 agreements, payment undertaking agreements, service agreement or other contract,
23 agreement or instrument, (ii) any rights with respect to investment of monies,
24 including permitted investments and contracts related or ancillary thereto, (iii) moneys

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

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

18 (4) To enter into contracts necessary or appropriate to permit it to manage payment or
19 interest rate risk or credit risk in connection with any sale, lease or other contract,
20 agreement, instrument or arrangement relating to municipal facilities or the investment
21 of funds of the state, any public entity, the authority or any corporation in connection
22 therewith. These contracts may include, but are not limited to, interest rate exchange
23 agreements; contracts providing for payment or receipt of funds based on levels of or
24 changes in interest rates; contracts to exchange cash flows or series of payments; and

1 contracts incorporating interest rate caps, collars, floors, or locks;

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

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

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

11 (8) To pool or cross-collateralize any leases, contracts or other agreements or assets in
12 order to secure any obligations, leases, contracts or other agreements or
13 arrangements.

14 Section 10. The authority and any corporation formed by the authority shall also have the
15 power and authority:

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

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

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

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

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

- 1 (6) To receive deposits or prepayments and to establish, fund and apply any reserve
2 accounts or funds for any purpose;
- 3 (7) To establish, assess, levy and collect, or cause to be established, assessed, levied and
4 collected, fees, rates and charges for the use of utility property or other municipal
5 facilities which are subject to a lease authorized hereunder or which are otherwise
6 owned, leased or controlled by the state, corporation, the authority, any public entity
7 or other person pursuant to a transaction authorized hereby;
- 8 (8) To employ attorneys, accountants, engineers, consultants and financial experts,
9 managers, advisors and such other employees and agents as may be necessary in its
10 judgment and to fix their compensation;
- 11 (9) Make and execute contracts and all other instruments necessary or convenient for the
12 performance of its duties and the exercise of its powers and functions under this Act;
- 13 (10) Contract with the South Dakota Building Authority to provide staff and support
14 services;
- 15 (11) Procure insurance against any loss in connection with the property and other assets,
16 including loans and loan notes in such amounts and from such insurers as it may deem
17 available;
- 18 (12) Procure insurance, letters of credit, guarantees, or other credit enhancement
19 arrangements from any public or private entities, including any department, agency,
20 or instrumentality of the United States, for payment of all or any portion of any
21 obligations of the authority or corporation, including the power to pay premiums, fees
22 or other charges on any such insurance, letters of credit, guarantees, or credit
23 arrangements;
- 24 (13) Receive and accept from any source aid or contributions of moneys, property, labor,

1 or other things of value to be held, used, and applied to carry out the purposes of this
2 chapter subject to the conditions upon which the grants or contributions are made,
3 including, but not limited to, gifts or grants from any department, agency, or
4 instrumentality of the United States for any purpose consistent with the provisions of
5 this chapter;

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

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

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

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

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

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

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

1 implied from it;

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

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

5 To accomplish projects of the kind listed in this Act, the authority and any corporation
6 formed by the authority may convey property, without charge, to the State of South Dakota or
7 any public entity, if all obligations which have been secured by the property have been paid or
8 payment has been duly provided for.

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

21 Section 12. The State of South Dakota pledges to and agrees with any party to any sale,
22 lease, or other contract, agreement, instrument or other arrangement created under this Act that
23 the state will not limit or alter the rights and powers vested in the authority, any corporation
24 formed by the authority or other public entity by this Act so as to impair the terms of any such

1 contract made by the state, the authority, any such corporation or other public entity with such
2 party or in any way impair the rights and remedies of such party until such contract is satisfied.
3 The authority, any such corporation and any public entity is each authorized to include their
4 pledges and agreements of the state in any such contract created under this Act.

5 Section 13. The authority and any corporation formed by the authority are hereby declared
6 to be performing a public function on behalf of the state and to be a public instrumentality of the
7 state. The income of the authority and any corporation, and all municipal facilities and any other
8 property at any time owned by the authority or any corporation, and the acquisition, sale,
9 transfer, lease or purchase of municipal facilities by or from the state, the authority or any
10 corporation or any public entity, and the pledge of any right, title or interest in any municipal
11 facilities by any person, shall be exempt from all taxation in the State of South Dakota. Each
12 corporation shall be exempt from all filing, reporting and similar requirements otherwise
13 applicable to nonprofit and other corporations.

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

18 Section 15. Any public entity and any department, board, commission, agency, or officer of
19 this state may sell, lease or otherwise transfer jurisdiction of or title to or any interest in any
20 property under its or his or her control to the authority or any corporation formed by the
21 authority hereunder.

22 Section 16. The state, the authority and any corporation formed by the authority may each
23 acquire by purchase, condemnation (including the power of condemnation in accordance with
24 chapter 21-35), lease, gift or otherwise any utility property and may construct, complete,

1 remodel, maintain and equip such utility property and dispose of such utility property without
2 any further authorization from the Legislature. In addition, if the Legislature by law declares it
3 to be in the public interest, the state, the authority and any corporation formed by the authority
4 may each acquire by purchase, condemnation (including the power of condemnation in
5 accordance with chapter 21-35), lease, gift or otherwise, any other municipal facilities and may
6 construct, complete, remodel, maintain and equip such other or further municipal facilities
7 subject to any limit as to appraised value or such other or further terms and conditions as shall
8 be so specified by the Legislature in such declaration. The authority shall obtain and consider
9 when determining the value of any municipal facilities to be leased, sold or acquired, at least one
10 independent appraisal.

11 Section 17. Any lease or other contract or agreement authorized hereby by, to or from the
12 state, the authority, any corporation formed by the authority or any other public entity may be:

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

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

24 (3) Provide that the rental may be deposited, paid or prepaid at any time or such times as

1 the parties to the lease agree upon, and if prepaid, any or all of such prepayment may
2 be deposited with a lessor and invested in permitted investments or may be used to
3 satisfy or repay any outstanding debt or obligations. The lessee may receive credits
4 for such prepayment or deposit at such times and in such manner specified in the
5 lease;

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

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

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

1 approved by the authority or set forth in the lease.

2 Section 18. The authority or any corporation formed by the authority may, in the event of
3 nonpayment of rents or other amounts reserved in a lease, maintain and operate such facilities
4 and sites or execute leases thereof to or service contracts with others for any suitable purposes.

5 Section 19. The charges, fees, or rentals established by the authority or any corporation
6 formed by the authority, as lessor, for the use of any municipal facilities acquired, constructed,
7 completed, remodeled, or equipped in whole or in part with the proceeds of any financing or
8 other transaction as provided in this Act shall be sufficient at all times to pay maintenance and
9 operation costs for such facilities (unless under a lease maintenance and operation costs are
10 otherwise provided for), and a proportion of the administrative expenses of the authority and any
11 corporation as provided for by each lease, and such reserves as may be provided in the lease or
12 any other resolution or other agreement of the authority.

13 Section 20. Any lease obligation of the state, the authority or any corporation formed by the
14 authority pursuant to this Act shall be payable solely and only from:

- 15 (1) Revenues to be derived by the state, the authority or such corporation from the
16 ownership, sale, lease, disposition and operation of any municipal facilities leased in
17 connection therewith;
- 18 (2) Income to be derived from leases to or involving any public entity or other person;
- 19 (3) Any funds or permitted investments, and any earnings thereon, to the extent pledged
20 therefor;
- 21 (4) Revenues to be derived by the authority or corporation from any public entity or from
22 any support and operating agreement, service agreement or any other agreement with
23 any person;
- 24 (5) Funds, if any, appropriated for such purpose by the Legislature;

- 1 (6) Revenues derived from the exercise of any power provided under this Act;
- 2 (7) Income or proceeds from any collateral pledged or provided therefor; and
- 3 (8) Revenues to be derived in connection with municipal facilities from (a) the foreclosure
4 of any mortgages, deeds of trust, notes, debentures, bonds, and other security
5 interests held by it, or pledged and assigned by it in connection with the lease, either
6 by action or by exercise of a power of sale, (b) the sale of the equity of redemption
7 in said security interests in accordance with the terms of said instruments and
8 applicable state law or (c) other actions to enforce any obligation held by it. Each such
9 lease shall state that it does not constitute an obligation of the State of South Dakota
10 or the authority within the meaning of any provisions of the Constitution or statutes
11 of the State of South Dakota.

12 Section 21. Any lease or other instrument or agreement authorized hereunder shall be
13 executed by such officers of the authority as shall be designated by the authority. Any lease or
14 other instrument or agreement authorized hereunder bearing the signature of officers in office
15 at the date of signing thereof shall be valid and binding for all purposes, notwithstanding that
16 before delivery thereof any or all such persons whose signature appears thereon shall have ceased
17 to be such officers.

18 Section 22. The provisions of this Act and of any resolution or proceeding authorizing any
19 lease of municipal facilities shall constitute a contract with any person claiming rights under or
20 pursuant to the lease. The provisions thereof shall be enforceable either in law or in equity, by
21 suit, action, mandamus, or other proceeding in any court of competent jurisdiction to enforce and
22 compel the performance of any duties required by this Act or any resolution or proceeding
23 authorizing the lease, including the establishment of sufficient charges, fees, or rentals and the
24 application of the income from municipal facilities under this Act.

1 Section 23. The state may acquire from any public entity or other person by purchase, lease
2 or any other form of contract, agreement, instrument or conveyance all or any portion of
3 municipal facilities and may own, operate, use or otherwise contract with any public entity or
4 other person to own, operate, use or contract for use or operation of municipal facilities, and the
5 state may dispose of all or any portion of municipal facilities by sale, lease or any other form of
6 contract, instrument or conveyance to any public entity or other person, subject only to any
7 applicable terms and conditions set forth herein.

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

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

1 lessee in connection with any transaction contemplated by this Act, provide a deposit agreement,
2 payment undertaking or similar contract to any party to a lease or lease transaction, and, in the
3 event it is lessee, it may sublease such property.

4 Section 25. Notwithstanding any other provisions of law, all funds received by the authority
5 and any corporation formed by the authority shall be set forth in an informational budget as
6 described in § 4-7-7.2 and be annually reviewed by the Legislature.

7 Section 26. The authority shall be audited annually in accordance with chapter 4-11 and any
8 such audit shall include any corporation formed by the authority.

9 Section 27. The authority shall keep an accurate record of the rental payments under each
10 lease entered into by the authority or corporation.

11 Section 28. No member, officer, agent, or employee of the state, the Board of Water and
12 Natural Resources, the South Dakota Conservancy District, the authority or any corporation
13 formed by the authority, nor any other person who executes a lease, shall be liable personally by
14 reason of the issuance thereof.

15 Section 29. A public entity may by ordinance or resolution of its governing body exercise all
16 the powers conferred on (a) the South Dakota Building Authority and the Governor pursuant
17 to §§ 5-12-15, 5-12-19, and 5-12-42 to 5-12-45, inclusive, and (b) the authority or any
18 corporation formed by the authority under this Act, with respect to the acquisition, lease,
19 ownership, operation, sale and leaseback of utility property or other municipal facilities.

20 For all purposes of this section, (1) any sale price shall not be required to exceed the
21 appraised value of the municipal facilities being sold or otherwise transferred, (2) no lease or
22 other contract or agreement entered into by a public entity as provided herein shall have a term
23 in excess of one hundred years, (3) only the net proceeds remaining with the public entity after
24 any deposit, payment or prepayment required by any lease, contract, agreement or other

1 arrangement entered into in connection therewith or relating to or concerning such municipal
2 facilities are subject to § 6-13-8, (4) to the extent that a public entity sells, transfers or otherwise
3 conveys municipal facilities to the state, the authority, any corporation or other person as
4 provided hereunder and enters into a lease, support and operating agreement or other contract,
5 agreement or other arrangement as described herein, as modified hereby, such public entity and
6 such sale, transfer, conveyance, lease, contract, agreement and other arrangement shall not be
7 subject to any restriction, condition or limitation or procedural requirement prescribed by any
8 other law or charter applicable to such public entity; (5) at the time of lease or sale of municipal
9 facilities by a public entity, unless the public entity retains pursuant to lease, contract or other
10 arrangement the right to possession of such facilities, the public entity shall enter into a franchise
11 agreement, a utility service contract, or other contract, requiring the purchaser to furnish the
12 public entity, its residents and users located in the area now served by the facilities sold, utility
13 service, at such rates as are approved by the public entity and on such further terms and
14 conditions as are determined by the public entity's governing body; (6) the provisions of § 9-40-
15 25 shall not apply to utility property described herein; and (7) bonds which have been defeased
16 or for which payment has been provided for by virtue of an arrangement involving an irrevocable
17 deposit of investments described in § 4-5-26 shall be deemed paid in full for all purposes under
18 chapter 9-40. The public entity may enter into all other contracts considered necessary or
19 desirable with respect to the municipal facilities being sold, including but not limited to, contracts
20 relating to the operation, maintenance, insurance, improvements, replacement, and extension of
21 the facilities sold or similar new facilities to be operated in conjunction therewith by the public
22 entity or the other contracting party.

23 Section 30. All municipal facilities owned, leased, acquired, sold or operated by or for the
24 benefit of the state, the authority, any corporation formed by the authority or any other public

1 entity pursuant to a lease having a term (including, for such purpose, all renewal options) in
2 excess of three years or a lease-purchase or installment purchase contract, or pursuant to an
3 operating contract described in section 29 of this Act shall constitute a separate class of property
4 which is exempt from all taxation.

5 Section 31. Any public entity which enters into a lease or other transaction described in this
6 Act may also enter into one or more support and operating agreements, participation agreements,
7 indemnity agreements, payment undertaking agreements and such other contracts or
8 arrangements related thereto or ancillary therewith with the corporation, authority, state or any
9 other public entity or any person if the governing board of a public entity determines such
10 agreements or arrangements are reasonably necessary to induce lenders, investors or other
11 persons to participate therein, and such agreements or arrangements may include, without
12 limitation, indemnities for losses or claims of any nature or cause, agreements to charge, assess,
13 levy or collect fees and charges for the use of municipal facilities, an agreement to subsidize any
14 such fees or charges and the pledge of the full faith and credit of the public entity to pay any
15 obligations of the public entity under or with respect to any such lease, agreement or other
16 arrangement.

17 Section 32. The powers conferred by this Act are in addition to all other powers conferred
18 upon the state, the authority, any corporation and any public entity, and their exercise shall be
19 subject only to such restrictions as may be provided by the South Dakota Constitution and are
20 not subject to any restriction or procedural requirements related to the acquisition, leasing,
21 financing, sale, use, operation or encumbering of municipal facilities prescribed by any other law
22 or charter, including, without limitation, any public procurement or bidding requirements.

23 Section 33. If any clause or other portion of this Act shall be held invalid, that decision shall
24 not affect the validity of the remaining portions of this Act. It is hereby declared that all such

1 remaining portions of this Act are severable, and that the Legislature would have enacted such
2 remaining portions if the portions that may be so held to be invalid had not been included in this
3 chapter.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

358H0670

SENATE ENGROSSED NO. **HB 1283** - 02/14/2002

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

Introduced by: Representatives Eccarius and Michels and Senators Daugaard, Diedrich (Larry), and Everist

1 FOR AN ACT ENTITLED, An Act to define certain serious injuries to infants as aggravated
2 assault and to provide a penalty therefor.

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

4 Section 1. That § 22-18-1.1 be amended to read as follows:

5 22-18-1.1. Any person who:

- 6 (1) Attempts to cause serious bodily injury to another, or causes such injury, under
7 circumstances manifesting extreme indifference to the value of human life;
- 8 (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous
9 weapon;
- 10 (3) Attempts to cause or knowingly causes any bodily injury to a law enforcement officer
11 or other public officer engaged in the performance of the officer's duties;
- 12 (4) Assaults another with intent to commit bodily injury which results in serious bodily
13 injury;
- 14 (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent



1 serious bodily harm; ~~or~~

2 (6) Is a convicted person under the jurisdiction of the Department of Corrections and
3 attempts to cause, or knowingly causes bodily injury to a Department of Corrections
4 employee, or authorized visitor, volunteer, or person under contract assigned to the
5 Department of Corrections; or

6 (7) Attempts to cause or causes serious bodily injury to an infant, less than three years
7 old, by causing any intracranial or intraocular bleeding, swelling, or contusion to the
8 brain, whether caused by blows, shaking, or causing the infant's head to impact with
9 an object or surface;

10 is guilty of aggravated assault. Aggravated assault is a Class 3 felony. However, a violation of
11 subdivision (7) is a Class 2 felony.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

708H0708

SENATE ENGROSSED NO. **HB 1294** - 02/20/2002

Introduced by: Representative Konold

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority.

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

4 Section 1. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to all other powers established pursuant to chapter 5-12, the building authority
7 may invest its funds or the funds under its control or direction in permitted investments as
8 defined in subdivision 5-12-48(10).

9 Section 2. That § 5-12-50 be amended to read as follows:

10 5-12-50. The authority may establish by resolution a special purpose corporation which shall
11 be body corporate and politic and instrumentality of, but having a legal existence independent
12 and separate from, the State of South Dakota and the authority. The corporation shall be
13 established for the express limited public purposes set forth in §§ 5-12-48 to 5-12-60, inclusive,
14 and no part of the net earnings of the corporation shall inure to any private individual.

15 The corporation shall be governed by a board consisting of the members of the authority and



1 two additional persons appointed by the Governor, which two additional members shall be
2 independent from the state. The resolution establishing the corporation shall serve as the charter
3 of the corporation and may be amended from time to time by the authority, but the resolution
4 shall at all times provide that the power and the authority of the corporation shall be subject to
5 the terms, conditions, and limitations of §§ 5-12-48 to 5-12-60, inclusive, and any applicable
6 covenants or agreements of the corporation in any indenture or other agreement relating to any
7 then outstanding bonds. The corporation may enter into contracts regarding any matter
8 connected with any corporate purpose within the objects and purposes of §§ 5-12-48 to 5-12-60,
9 inclusive.

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

12 The corporation may issue bonds and secure repayment of the bonds with amounts payable
13 out of tobacco settlement revenues or any other property or funds of the corporation. Bonds
14 issued by the corporation shall be accompanied by an opinion of nationally recognized bond
15 counsel substantially to the effect that ~~interest on the bonds is excludable from the gross income~~
16 ~~of the bondholder for federal income tax purposes~~ the bonds are valid and legal obligations of
17 the corporation.

18 The corporation may pledge as security for any bonds any rights under the master settlement
19 agreement held by the corporation, including the right to receive or collect tobacco settlement
20 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
21 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
22 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
23 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
24 or agreement described in § 5-12-49 and signed on behalf of the state by the Governor. Any such

1 pledge made by the corporation shall be valid and binding from the time the pledge is made. The
2 property, revenues, moneys, and other funds so pledged and thereafter held or received by or on
3 behalf of the corporation shall immediately be subject to the lien of the pledge without any
4 physical delivery thereof or further act; and, subject only to the provisions of prior pledges or
5 agreements of the corporation, the lien of the pledge shall be valid and binding as against the
6 state and all parties having claims of any kind in tort, contract, or otherwise against the
7 corporation irrespective of whether such parties have notice thereof. No ordinance, resolution,
8 trust agreement, or other instrument by which such pledge is created need be filed or recorded
9 except in the records of the corporation.

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

17 The resolution authorizing the issuance of bonds or the indenture or other agreement
18 approved by the resolution may provide that interest rates may vary from time to time depending
19 upon criteria established by the corporation, which may include, without limitation, a variation
20 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
21 price equal to their principal amount, and may provide for appointment of a national banking
22 association, bank, trust company, investment banking firm, or other financial institution to serve
23 as a remarketing agent in that connection. The indenture or other agreement with respect to
24 bonds may provide that alternative interest rates or provisions will apply during such times as

1 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
2 for bonds.

3 In connection with bonds under §§ 5-12-48 to 5-12-60, inclusive, or the investment of
4 proceeds, bonds, or other funds of the corporation, the corporation may enter into contracts that
5 it determines necessary or appropriate to permit it to manage payment or interest rate risk. These
6 contracts may include, but are not limited to, interest rate exchange agreements; contracts
7 providing for payment or receipt of funds based on levels of or changes in interest rates;
8 contracts to exchange cash flows or series of payments; and contracts incorporating interest rate
9 caps, collars, floors, or locks.

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

16 The corporation may not guarantee the debts of another.

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

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

23 Section 3. The particulars of any bond transactions made pursuant to this Act, including legal
24 fees and the costs of underwriting the bonds, shall be of public record subject to disclosure

1 pursuant to § 1-27-1.

2 Section 4. This Act is effective on the ninety-first day after it is signed by the Governor.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

395H0678

SENATE APPROPRIATIONS COMMITTEE
ENGROSSED NO. **HB 1295** - 02/15/2002

Introduced by: Representatives Duenwald, Bartling, Bradford, Broderick, Brown (Jarvis), Brown (Richard), Burg, Duniphan, Flowers, Frost, Fryslie, Garnos, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Heineman, Holbeck, Jaspers, Jensen, Juhnke, Klaudt, Konold, Lintz, Michels, Monroe, Nachtigal, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Rhoden, Richter, Sebert, Sigdestad, Smidt, Sutton (Duane), Van Gerpen, Van Norman, and Wick and Senators Symens, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Daugaard, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Duxbury, Everist, Greenfield, Hagen, Ham, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Sutton (Dan), Vitter, Volesky, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide for the voters' consideration of a proposed
2 constitutional amendment to Article XVII in June 2002, to make an appropriation therefor,
3 and to declare an emergency.

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

5 Section 1. If the Seventy-seventh Legislature proposes by joint resolution any amendment
6 to Article XVII of the Constitution of the State of South Dakota and places the question on the
7 June 4, 2002, election ballot, the state shall reimburse each county for the incremental costs
8 incurred as a result of this section. However, such total costs may not exceed thirty-five
9 thousand dollars.

10 Section 2. The election procedures, notices, and deadlines shall be the same as established



1 for a regular ballot question election. However, the requirements of § 12-13-9 shall be completed
2 by the fourth Tuesday in March 2002, and the requirements of § 12-13-1 shall be completed by
3 the second Tuesday in April 2002.

4 Section 3. There is hereby appropriated from the general fund the sum of thirty-five thousand
5 dollars (\$35,000), or so much thereof as may be necessary, to the secretary of state for the
6 incremental costs associated with the election required in section 1 of this Act. Any claim made
7 against the money appropriated by this section shall be submitted to the secretary of state by
8 January 1, 2003, and shall be paid by the secretary of state by January 31, 2003.

9 Section 4. The secretary of state shall approve vouchers and the state auditor shall draw
10 warrants to pay expenditures authorized by this Act.

11 Section 5. Any amounts appropriated in this Act not lawfully expended or obligated by
12 January 31, 2003, shall revert in accordance with § 4-8-21.

13 Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,
14 health, or safety of the state and its people, and this Act is also necessary for the support of the
15 state government and its existing public institutions, an emergency is hereby declared to exist
16 pursuant to Article III, § 22, of the South Dakota Constitution, and this Act shall be in full force
17 and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0724

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1302** - 02/13/2002

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

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

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of standard guidelines to
2 be used regarding child custody and visitation.

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

4 Section 1. For the purposes of this Act, the term, standard guidelines, means the child
5 visitation guidelines established by court rules promulgated by the South Dakota Supreme Court
6 pursuant to section 2 of this Act.

7 Section 2. The South Dakota Supreme Court shall promulgate court rules establishing
8 standard guidelines to be used statewide for child visitation in divorce or separate maintenance
9 actions or any other custody action or proceeding. The standard guidelines shall provide a
10 framework for child visitation including frequency and time for child visitation; hours or days of
11 visitation; definitions for weekends, holidays, birthdays, and other special occasions; and time
12 periods for summer visitations. In establishing the standard guidelines, the court may consider
13 varying ages and circumstances of children and treat varying ages and circumstances differently.

14 Section 3. Upon the filing of a summons and complaint for divorce or separate maintenance



1 or any other custody action or proceeding, the plaintiff shall also file and serve upon the
2 defendant a copy of the standard guidelines. The standard guidelines attached to the summons
3 shall become an order of the court upon fulfillment of the requirements of service. Any minor
4 child of the marriage shall remain in the custody of the parent who has been the primary
5 caregiver for the minor child for the majority of time in the thirty days preceding the filing of the
6 summons and complaint, unless the parties agree otherwise. The standard guidelines shall apply
7 and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the
8 standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

9 Section 4. Any agreement by the parties for visitation other than the standard guidelines shall
10 be in writing, signed by both parties and filed with the court. The agreed plan shall be approved
11 by court order and replace the standard guidelines or any plan previously filed.

12 Section 5. If either party objects to the initial custody arrangement in section 3 of this Act
13 or the standard guidelines, the court shall order a hearing which shall be held not later than thirty
14 days after the date of the objection. The court shall issue its temporary custody and visitation
15 order after considering the best interests of the child consistent with the provisions of § 25-4-45.

16 Section 6. The standard guidelines are subject to any provision established by a South Dakota
17 state court in the following: a temporary or permanent domestic protection order, an order
18 arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and
19 an order in any other proceeding affecting child custody or support.

20 Section 7. The court may order either party to pay attorney fees and costs in an action filed
21 under this Act in accordance with § 15-17-38 or any other applicable statute.

22 Section 8. The parents are responsible for payment of child support in accordance with § 25-
23 7-6.1.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0727

SENATE ENGROSSED NO. **HB 1303** - 02/15/2002

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

1 FOR AN ACT ENTITLED, An Act to revise the Governor's emergency powers in the event of
2 a terrorist or bioterrorist attack.

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

4 Section 1. That § 33-15-8 be amended to read as follows:

5 33-15-8. In the event of disaster, war, act of terrorism as defined in state law, or emergency
6 that is beyond local government capability, the Governor:

- 7 (1) May assume direct operational control over all or any part of the emergency
8 management functions within the state which may affect all or any portion of the state;
- 9 (2) May declare an emergency or disaster to exist in the stricken area and employ
10 emergency management to assist local authorities to affect relief and restoration;
- 11 (3) May call upon and use any facilities ~~and~~, equipment, other nonmedical supplies, and
12 resources available from any source, other than personal or private funds, in order to
13 carry out the purposes of this chapter by contributing to the expense incurred in
14 providing relief in such amounts as he shall determine;
- 15 (4) May suspend the provisions of any rules of any state agency, if strict compliance with



1 the provisions of ~~such~~ the rule would in any way prevent, hinder, or delay necessary
2 action in managing a disaster, war, act of terrorism, or emergency, including fire,
3 flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil
4 spill, or other water or air contamination, epidemic, blight, drought, infestation,
5 explosion, riot, or hostile military or paramilitary action, which is determined by the
6 Governor to require state or state and federal assistance or actions to supplement the
7 recovery efforts of local governments in alleviating the damage, loss, hardship, or
8 suffering caused thereby; ~~and~~

9 (5) May control the ingress and egress in a designated disaster or emergency area, the
10 movement of vehicles upon highways within the area, the movement of persons within
11 the area, and the occupancy of premises within the area;

12 (6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or
13 medical supplies located within the state as may be reasonable and necessary to
14 respond to the disaster, emergency, or act of terrorism;

15 (7) May appoint and prescribe the duties of such out-of-state health care providers as may
16 be reasonable and necessary to respond to the disaster, emergency, or act of
17 terrorism;

18 (8) May provide for the examination and safe disposal of any dead body as may be
19 reasonable and necessary to respond to the disaster, emergency, or act of terrorism;
20 and

21 (9) May provide for the protection, construction or reconstruction, repair, and
22 maintenance of public or private transportation facilities.

23 Section 2. That chapter 33-15 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The powers granted to the Governor under this Act shall remain in effect for a period of six
2 months and may be restored for one or more successive six-month periods by declaration of the
3 Governor that the conditions permitting such powers persist.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0216

HOUSE ENGROSSED NO. **SB 32** - 02/12/2002

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to require photo identification for all aeronautics operations,
2 to increase the pilot registration fee, and to declare an emergency.

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

4 Section 1. That § 50-11-24 be amended to read as follows:

5 50-11-24. Any person operating any aircraft within this state shall, except as otherwise
6 expressly provided, biennially, on or before the thirty-first day of March, register with the
7 secretary of transportation, ~~his~~ the person's federal ~~airman's~~ certificate issued under the authority
8 of the United States and shall biennially pay to the secretary a fee of ~~fifteen~~ twenty dollars.
9 Failure to register and pay the fee before the time set by this section is a Class 2 misdemeanor.
10 ~~Certificates~~ A certificate showing ~~such~~ the registration may be issued by the ~~director~~ secretary
11 as the Aeronautics Commission deems proper ~~and the~~. The commission may prescribe
12 requirements for the possession and exhibition ~~thereof~~ of the certificate.

13 Section 2. That chapter 50-11 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any airport employee, airline employee, and any employee of a fixed base operator or a



1 charter service, unless otherwise required by federal law or regulation, shall have in possession
2 while on duty at the airport a state-issued photo identification badge. The Aeronautics
3 Commission shall promulgate rules pursuant to chapter 1-26 specifying display of the badge;
4 indications on the badge regarding the scope of the person's access and movement privileges at
5 an airport; personal information including full name, employer, and identification number;
6 procedures regarding the production, issuance, retrieval, and replacement of badges; and the
7 length of time for which the badge is valid.

8 The commission shall, by rules promulgated pursuant to chapter 1-26, establish the fee for
9 a badge. The fee shall be based on the cost to produce the badge but may not exceed ten dollars.
10 Any fee collected shall be deposited into the state aeronautics fund.

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

494H0464

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 133** - 02/19/2002

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

Introduced by: Senators Diedrich (Larry), Albers, Brosz, Daugaard, de Hueck, Dennert, Diedrich (Elmer), Duxbury, Greenfield, Hutmacher, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Sutton (Dan), Symens, and Vitter and Representatives Jaspers, Begalka, Broderick, Burg, Derby, Flowers, Frost, Fryslie, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Holbeck, Hundstad, Hunhoff, Jensen, Juhnke, Klaudt, Kooistra, Lange, Nachtigal, Olson (Mel), Peterson (Jim), Pitts, Sebert, Sigdestad, Slaughter, Smidt, Sutton (Duane), Valandra, Van Gerpen, and Wick

1 FOR AN ACT ENTITLED, An Act to revise the distribution of revenue from the petroleum
2 release compensation and tank inspection fee, to increase the excise tax on certain motor
3 fuels, and to declare an emergency.

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

5 Section 1. That § 34A-13-20 be amended to read as follows:

6 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any
7 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,
8 inclusive, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19
9 shall apply to this fee. The parties required to pay the fuel excise tax under the provisions of
10 §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of



1 the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel
2 excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay
3 the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and
4 delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty
5 dollars per one thousand gallons of petroleum. ~~Beginning on January 1, 2003, the fee is ten~~
6 ~~dollars per one thousand gallons of petroleum.~~

7 The Fifty percent of the revenue collected pursuant to this section shall be deposited monthly
8 in the state highway fund and fifty percent of the revenue collected pursuant to this section shall
9 be distributed monthly in the following manner:

10 (1) ~~During fiscal year 1999, forty-two percent shall be deposited in the state capital~~
11 ~~construction fund created in § 5-27-1.~~ Beginning in fiscal year 2000 to December 31,
12 2002, inclusive, fifty percent shall be deposited in the state capital construction fund
13 created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths
14 percent shall be deposited in the state capital construction fund; and

15 (2) ~~During fiscal year 1999, fifty-eight percent shall be deposited into the petroleum~~
16 ~~release compensation fund.~~ Beginning in fiscal year 2000 to December 31, 2002,
17 inclusive, fifty percent shall be deposited in the petroleum release compensation fund.
18 Beginning on January 1, 2003, twenty-one and three-tenths percent shall be deposited
19 in the ~~petroleum release compensation~~ state highway fund.

20 Section 2. The effective date of section 1 of this Act is April 1, 2002.

21 Section 3. That § 34A-13-20 be amended to read as follows:

22 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any
23 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,
24 inclusive, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19

1 shall apply to this fee. The parties required to pay the fuel excise tax under the provisions of
 2 §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of
 3 the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel
 4 excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay
 5 the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and
 6 delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty
 7 dollars per one thousand gallons of petroleum. ~~Beginning on January 1, 2003, the fee is ten~~
 8 ~~dollars per one thousand gallons of petroleum.~~

9 The Fifty percent of the revenue collected pursuant to this section shall be deposited monthly
 10 in the ethanol fuel fund and fifty percent of the revenue collected pursuant to this section shall
 11 be distributed monthly in the following manner:

12 (1) ~~During fiscal year 1999, forty-two percent shall be deposited in the state capital~~
 13 ~~construction fund created in § 5-27-1. Beginning in fiscal year 2000 to December 31,~~
 14 ~~2002, inclusive, fifty percent shall be deposited in the state capital construction fund~~
 15 ~~created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths~~
 16 percent shall be deposited in the state capital construction fund; and

17 (2) ~~During fiscal year 1999, fifty-eight percent shall be deposited into the petroleum~~
 18 ~~release compensation fund. Beginning in fiscal year 2000 to December 31, 2002,~~
 19 ~~inclusive, fifty percent shall be deposited in the petroleum release compensation fund.~~
 20 Beginning on January 1, 2003, twenty-one and three-tenths percent shall be deposited
 21 in the ~~petroleum release compensation~~ state highway fund.

22 Section 4. The effective date of section 3 of this Act is April 1, 2003.

23 Section 5. That § 5-27-5 be amended to read as follows:

24 5-27-5. ~~During fiscal year 1999, the Bureau of Finance and Management shall transfer each~~

1 ~~month three and six-tenths percent of the monthly state capital construction fund revenues from~~
2 ~~the state capital construction fund to the public and special transportation fund.~~ Beginning in
3 fiscal year 2000 to December 31, 2002, inclusive, the Bureau of Finance and Management shall
4 transfer each month three and one-half percent of the monthly state capital construction fund
5 revenues from the state capital construction fund to the public and special transportation fund.
6 Beginning on January 1, 2003, the Bureau of Finance and Management shall transfer each month
7 two and six-tenths percent of the monthly state capital construction fund revenues from the state
8 capital construction fund to the ~~public and special transportation~~ state highway fund.

9 Section 6. That § 10-47B-4 be amended to read as follows:

10 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 11 (1) Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline) ~~\$.22~~
12 \$.24 per gallon;
- 13 (2) Special fuel (except jet fuel) -- ~~\$.22~~ \$.24 per gallon;
- 14 (3) Ethanol blends -- ~~\$.20~~ \$.22 per gallon;
- 15 (4) Aviation gasoline -\$.06 per gallon;
- 16 (5) Jet fuel -\$.04 per gallon;
- 17 (6) E85 and M85 -- ~~\$.10~~ \$.12 per gallon;
- 18 (7) E85 and M85 used in aircraft -\$.04 per gallon;
- 19 (8) Liquid petroleum gas -- ~~\$.20~~ \$.22 per gallon;
- 20 (9) Compressed natural gas -- ~~\$.10~~ \$.12 per gallon.

21 Section 7. The effective date of section 6 of this Act is April 1, 2002, and section 6 of this
22 Act is repealed on April 1, 2004.

23 Section 8. That § 10-47B-162 be amended to read as follows:

24 10-47B-162. A production incentive payment of twenty cents per gallon is available to

1 ethanol producers for ethyl alcohol which is fully distilled and produced in South Dakota. To be
2 eligible for this payment, the ethyl alcohol shall be denatured and subsequently blended with
3 gasoline to create ethanol blend. The ethyl alcohol shall be ninety-nine percent pure and shall be
4 distilled from cereal grains. Annual production incentive payments for any facility may not
5 exceed one million dollars. No facility may receive any production incentive payments in an
6 amount greater than ten million dollars. The cumulative annual production incentive payments
7 made under this section may not exceed ~~an amount which has been appropriated by the~~
8 ~~Legislature for this purpose and has been deposited into the ethanol fuel fund in the state treasury~~
9 seven million dollars. Payments from the ethanol fuel fund shall be made on a first in time basis
10 until the fiscal year appropriation is reached. During the month when the appropriation limit is
11 to be reached, all claims received by month end shall be reimbursed proportionately on a pro-rata
12 basis for each gallon claimed.

13 Section 9. That § 10-47B-164 be amended to read as follows:

14 10-47B-164. Any money in the ethanol fuel fund is continuously appropriated for purposes
15 of providing ethanol production payments to qualified ethanol producers. The department may
16 receive and approve ethanol production incentive payment claims and authorize the issuance of
17 payment warrants to licensed ethanol producer claimants based on claims presented by the
18 licensees. At the end of each fiscal year, any unobligated cash in excess of one hundred thousand
19 dollars in the ethanol fuel fund shall be transferred to the state ~~capital construction~~ highway fund.

20 Section 10. Whereas, this Act is necessary for the support of the state government and its
21 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
22 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0721

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 182** - 02/15/2002

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

1 FOR AN ACT ENTITLED, An Act to revise the procedures for opting out of the property tax
2 freeze and for levying or increasing a property tax.

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

4 Section 1. That § 10-12-43 be amended to read as follows:

5 10-12-43. The governing body of the school district may raise additional revenues for general
6 fund purposes only, from property tax through the imposition of an excess tax levy. The
7 governing body of a school district may impose the excess tax levy with an affirmative two-thirds
8 vote of the governing body on or before July fifteenth of the year prior to the year the taxes are
9 payable. On any excess tax levy approved after July 1,2002, the governing body of the taxing
10 district shall specify in the resolution the year or number of years the excess tax levy will be
11 applied. No excess levy may be imposed for a period longer than five years unless the governing
12 body again complies with the provisions of § 10-12-43.

13 The requirements for an announcement made pursuant to this section are as follows:

14 (1) The decision of the governing body to originally impose or subsequently increase an
15 excess tax levy shall be first published within ten days of the decision;:



1 (2) Publication shall be made at least twice in the legal newspaper pursuant
2 to § 13-8-10, with no fewer than five days between publication dates, before the opt
3 out takes effect;

4 (3) The announcement shall be at least one-fourth of a page in size;

5 (4) The announcement shall be headed with the following statement in a typeface no less
6 than one-half inch or thirty-six point type: "ATTENTION TAXPAYERS: NOTICE
7 OF PROPERTY TAX INCREASE OF \$(fill in amount)." The remainder of the
8 announcement shall consist of a reproduction of the "Resolution for Opt Out,"
9 including the amount that property taxes will be increased annually by the proposed
10 opt out and a statement of the right to refer the decision of the board to a vote of the
11 people as provided in this section. The secretary of revenue, in rules promulgated
12 pursuant to chapter 1-26, shall prescribe a uniform form to be used by the school
13 district for notification of taxpayers as required by this section.

14 However, the requirements of subdivisions (3) and (4) shall be waived if:

15 (A) The opt out is for less than fifteen thousand dollars; or

16 (B) A copy of the resolution for opt out is mailed to every property taxpayer in the local
17 governmental unit, by first class mail or bulk mail, within twenty days of the decision
18 to opt out; and

19 (C) A copy of the resolution for opt out is delivered to each newspaper, radio, and
20 television outlet that delivers or transmits into the school district.

21 For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have
22 occurred until three days after the mailing is sent or the resolution is delivered to the official
23 newspaper.

24 The opt out decision may be referred to a vote of the people upon a petition signed by at

1 least five percent of the registered voters in the school district and filed with the governing body
2 within twenty days of the first publication of the decision. The referendum election shall be held
3 on or before October first of the year prior to the time the taxes are payable.

4 The governing body of the school district may rescind an opt out decision by a majority vote
5 of the governing body of the school district.

6 The amount originally imposed or subsequently increased by the school district may be
7 rescinded by the taxpayers if a vote is initiated. The petition to initiate to rescind the opt out shall
8 be signed by at least five percent of the registered voters in the school district and filed with the
9 governing body no later than July fifteenth in the year prior to the year the taxes are payable. The
10 election shall be held on or before October first preceding the year the taxes are payable. The
11 excess levy is rescinded if approved by an affirmative vote of a majority of the votes cast in the
12 taxing district.

13 Any petition filed January first or after does not affect taxes payable that year.

14 Section 2. That § 10-13-36 be amended to read as follows:

15 10-13-36. The governing body of a taxing district may exceed the limit pursuant to
16 § 10-13-35 through the imposition of an excess tax levy. The governing body of a taxing district
17 may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or
18 before July fifteenth of the year prior to the year the taxes are payable. On any excess tax levy
19 approved after July 1,2002, the governing body of the taxing district shall specify in the
20 resolution the year or number of years the excess tax levy will be applied. No excess levy may
21 be imposed for a period longer than five years unless the governing body again complies with the
22 provisions of § 10-13-36.

23 The requirements for an announcement made pursuant to this section are as follows:

24 (1) The decision of the governing body to originally impose or subsequently increase an

1 excess tax levy shall be published within ten days of the decision;

2 (2) Publication shall be made at least twice in the legal newspaper designated by the
3 governing body pursuant to law, with no fewer than five days between publication
4 dates, before the opt out takes effect;

5 (3) The announcement shall be at least one-fourth of a page in size;

6 (4) The announcement shall be headed with the following statement in a typeface no less
7 than one-half inch or thirty-six point type: "ATTENTION TAXPAYERS: NOTICE
8 OF PROPERTY TAX INCREASE OF \$(fill in amount)." The remainder of the
9 announcement shall consist of a reproduction of the "Resolution for Opt Out,"
10 including the amount that property taxes will be increased annually by the proposed
11 opt out and a statement of the right to refer the decision of the board to a vote of the
12 people as provided in this section. The secretary of revenue, in rules promulgated
13 pursuant to chapter 1-26, shall prescribe a uniform form to be used by the taxing
14 district for notification of taxpayers as required by this section.

15 However, the requirements of subdivisions (3) and (4) shall be waived if:

16 (A) The opt out is for less than fifteen thousand dollars; or

17 (B) A copy of the resolution for opt out is mailed to every property taxpayer in the local
18 governmental unit, by first class mail or bulk mail, within twenty days of the decision
19 to opt out; and

20 (C) A copy of the resolution for opt out is delivered to each newspaper, radio, and
21 television outlet that delivers or transmits in the local governmental unit's boundaries.

22 For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have
23 occurred until three days after the mailing is sent or the resolution is delivered to the official
24 newspaper.

1 The opt out decision may be referred to a vote of the people upon a petition signed by at
2 least five percent of the registered voters in the taxing district and filed with the respective
3 governing body within twenty days of the first publication of the decision. The referendum
4 election shall be held on or before October first preceding the year the taxes are payable. The
5 taxing districts may not exceed the levy limits provided in chapter 10-12 except for the
6 provisions in § 10-12-36.

7 The governing body of the taxing district may rescind an opt out decision by a majority vote
8 of the governing body of the taxing district.

9 The amount originally imposed or subsequently increased by the taxing district may be
10 rescinded by the taxpayers if a vote is initiated. The petition to initiate to rescind the opt out shall
11 be signed by at least five percent of the registered voters in the taxing district and filed with the
12 governing body no later than July fifteenth in the year prior to the year the taxes are payable. The
13 election shall be held on or before October first preceding the year the taxes are payable. The
14 excess levy is rescinded if approved by an affirmative vote of a majority of the votes cast in the
15 taxing district.

16 Any petition filed January first or after does not affect taxes payable that year.

17 Section 3. That chapter 10-12 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The decision of the governing body of a school district to increase the levy or impose a new
20 levy for the school district pension fund, capital outlay fund, or special education fund may be
21 referred to a vote of the people upon a petition signed by at least five percent of the registered
22 voters in the school district and filed with the governing body within twenty days of the first
23 publication of the decision. The referendum election shall be held on or before October first of
24 the year prior to the time the taxes are payable.

1 Section 4. That chapter 10-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The decision of the governing body to increase the levy or impose a new levy for the school
4 district pension fund, capital outlay fund, or special education fund is subject to public
5 announcement according to the following requirements:

6 (1) The decision of the governing body shall be first published within ten days of the
7 decision;

8 (2) Publication shall be made at least twice in the legal newspaper designated pursuant
9 to § 13-8-10, with no fewer than five days between publication dates, before the new
10 levy or increased levy takes effect;

11 (3) The announcement shall be at least two newspaper columns in width;

12 (4) The announcement shall be headed with the following statement: "ATTENTION
13 TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)."

14 The remainder of the announcement shall consist of a reproduction of the "Resolution
15 for Tax Increase," including the amount that property taxes will be increased annually
16 by the proposed tax increase and a statement of the right to refer the decision of the
17 board to a vote of the people as provided in this section. The secretary of revenue, in
18 rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used
19 by the school district for notification of taxpayers as required by this section.

20 However, the requirements of subdivisions (3) and (4) may be waived if:

21 (A) The tax increase is for less than fifteen thousand dollars; or

22 (B) A copy of the resolution for tax increase is mailed to every property taxpayer in the
23 local governmental unit, by first class mail or bulk mail, within twenty days of the
24 decision to tax increase; and

1 (C) A copy of the resolution for tax increase is printed in each official newspaper in the
2 local governmental unit's boundaries.

3 For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have
4 occurred until three days after the mailing is sent or the resolution is delivered to the official
5 newspaper.