

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

762H0367

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1087** - 02/19/2002

Introduced by: Representatives Peterson (Bill) and Olson (Mel) and Senators Everist and
Hutmacher

1 FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund of a
2 school district.

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

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2002~~ 2003 and each year thereafter, the levy for the general
6 fund of a school district shall be as follows:

7 (1) The maximum tax levy shall be ~~thirteen~~ twelve dollars and ~~ninety-three~~ ninety cents
8 per thousand dollars of taxable valuation subject to the limitations on agricultural
9 property as provided in subdivision (2) of this section, owner-occupied property as
10 provided for in subdivision (3) of this section, and nonagricultural acreage property
11 as provided for in subdivision (4) of this section;

12 (2) The maximum tax levy on agricultural property for such school district shall be ~~four~~
13 three dollars and ~~four~~ seventy-four cents per thousand dollars of taxable valuation. If
14 the district's levies are less than the maximum levies as stated in this section, the levies



1 shall maintain the same proportion to each other as represented in the mathematical
2 relationship at the maximum levies;

3 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in
4 § 10-13-40, for such school district may not exceed six dollars and ~~fifty~~ two cents per
5 thousand dollars of taxable valuation. If the district's levies are less than the maximum
6 levies as stated in this section, the levies shall maintain the same proportion to each
7 other as represented in the mathematical relationship at the maximum levies; and

8 (4) The maximum tax levy on nonagricultural acreage property as defined in
9 § 10-6-33.14, for such school district shall be ~~five~~ four dollars and ~~four~~ seventy-four
10 cents per thousand dollars of taxable valuation. If the district's levies are less than the
11 maximum levies as stated in this section, the levies shall maintain the same proportion
12 to each other as represented in the mathematical relationship at the maximum levies.

13 All levies in this section shall be imposed on valuations where the median level of assessment
14 represents eighty-five percent of market value as determined by the Department of Revenue.
15 These valuations shall be used for all school funding purposes. If the district has imposed an
16 excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other
17 as represented in the mathematical relationship at the maximum levies in this section. The school
18 district may elect to tax at less than the maximum amounts set forth in this section.

19 Section 2. That § 10-12-42.1 be repealed.

20 ~~10-12-42.1. Notwithstanding the provisions of § 10-12-42, the levy for taxes payable in 2001~~
21 ~~shall be as follows:~~

22 ~~(1) The maximum tax levy shall be thirteen dollars and ninety-three cents per thousand~~
23 ~~dollars of taxable valuation subject to the limitations on agricultural property as~~
24 ~~provided in subdivision (2) of this section, owner-occupied property as provided for~~

1 in subdivision (3) of this section, and nonagricultural acreage property as provided for
2 in subdivision (4) of this section;

3 ~~—(2)—~~ The maximum tax levy on agricultural property for such school district shall be three
4 dollars and thirty-three cents per thousand dollars of taxable valuation. If the districts'
5 levies are less than the maximum levies as stated in chapter 10-13, the levies shall
6 maintain the same proportion to each other as represented in the mathematical
7 relationship at the maximum levies;

8 ~~—(3)—~~ The maximum tax levy for an owner-occupied single-family dwelling as defined in
9 § 10-13-40, for such school district may not exceed five dollars and thirty-six cents
10 per thousand dollars of taxable valuation. If the district's levies are less than the
11 maximum levies as stated in chapter 10-13, the levies shall maintain the same
12 proportion to each other as represented in the mathematical relationship at the
13 maximum levies;

14 ~~—(4)—~~ The maximum tax levy on nonagricultural acreage property as defined in
15 § 10-6-33.14, for such school district shall be four dollars and thirty-three cents per
16 thousand dollars of taxable valuation. If the district's levies are less than the maximum
17 levies as stated in chapter 10-13, the levies shall maintain the same proportion to each
18 other as represented in the mathematical relationship at the maximum levies.

19 ~~—~~ All levies in this section shall be imposed on valuations where the median level of assessment
20 represents eighty-five percent of market value as determined by the Department of Revenue.
21 These valuations shall be used for all school funding purposes. If the district has imposed an
22 excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other
23 as represented in the mathematical relationship at the maximum levies in this section. The school
24 district may elect to tax at less than the maximum amounts set forth in this section.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

975H0266

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1113 - 02/15/2002

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



1 facility improvement plans.

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

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

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

780H0040

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1116** - 01/23/2002

Introduced by: Representatives McCaulley, Begalka, Brown (Jarvis), Duenwald, Duniphan, Eccarius, Frost, Fryslie, Garnos, Hansen (Tom), Hennies (Don), Hennies (Thomas), Hunhoff, Jaspers, Jensen, Juhnke, Klaudt, Koistinen, Lintz, Madsen, McCoy, Michels, Monroe, Murschel, Napoli, Pederson (Gordon), Peterson (Bill), Rhoden, Sebert, Slaughter, Smidt, Sutton (Duane), Teupel, Van Etten, Van Gerpen, and Wick and Senators Bogue, Apa, Brosz, Brown (Arnold), Craddock, de Hueck, Diedrich (Larry), Diedrich (Elmer), Everist, Greenfield, Koskan, Madden, McCracken, Putnam, and Vitter

1 FOR AN ACT ENTITLED, An Act to prohibit a person from being on the general election
2 ballot for President or vice-president and another office.

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

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

6 Notwithstanding the deadline provided in § 12-6-55, if any person is certified as a
7 presidential or vice-presidential candidate pursuant to § 12-5-3.16 and that person is a candidate
8 for another office, the person shall choose one of the candidacies and withdraw from any other
9 candidacy. If the person fails to choose one of the candidacies within seven days of certification
10 as a presidential or vice-presidential candidate, the person is deemed to have chosen the
11 candidacy pursuant to § 12-5-3.16 and is further deemed to have withdrawn from any other



1 candidacy. The resulting vacancy may be filled within seven days after the withdrawal in the
2 manner provided in §§ 12-6-56 and 12-6-57.

3 Section 2. That chapter 12-7 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Notwithstanding the deadline provided in § 12-6-55, if any person is nominated as a
6 presidential or vice-presidential candidate pursuant to § 12-7-7 and that person is a candidate for
7 another office, the person shall choose one of the candidacies and withdraw from any other
8 candidacy. If the person fails to choose one of the candidacies within seven days of certification
9 as a presidential or vice-presidential candidate, the person is deemed to have chosen the
10 candidacy pursuant to § 12-7-7 and is further deemed to have withdrawn from any other
11 candidacy.

12 Section 3. That § 12-6-3 be amended to read as follows:

13 12-6-3. No person ~~shall~~ may be a candidate for nomination or election to more than one
14 public office, ~~but~~ no matter if such person appears on the ballot in name or is represented by
15 electors pursuant to § 12-5-3.16 or 12-7-7. However, a candidate for any such office ~~shall~~ is not
16 ~~be~~ prohibited from being elected to any one or more party offices as may be provided in chapter
17 12-5.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

908H0351

HOUSE ENGROSSED NO. **HB 1120** - 02/06/2002

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

Introduced by: Representatives Sutton (Duane), Burg, Elliott, Frost, Garnos, Hennies (Thomas), Hundstad, Jensen, Klaudt, Kloucek, Lintz, McCoy, Napoli, Olson (Mel), and Rhoden and Senators Apa, Diedtrich (Elmer), and Duxbury

1 FOR AN ACT ENTITLED, An Act to appropriate funds from the special racing revolving fund
2 and the South Dakota-bred racing fund.

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

4 Section 1. The Commission on Gaming shall transfer one hundred twenty-five thousand
5 dollars from the special racing revolving fund and one hundred twenty-five thousand dollars from
6 the South Dakota-bred racing fund to the Department of Social Services to provide grants to
7 qualifying contractors according to the provisions of §§ 25-10-26 to 25-10-33, inclusive.

8 Section 2. There is hereby appropriated the sum of two hundred fifty thousand dollars
9 (\$250,000), of other fund expenditure authority, or so much thereof as may be necessary, to the
10 Department of Social Services for the expenditure of funds provided in section 1 of this Act. The
11 secretary of the Department of Social Services shall approve vouchers and the state auditor shall
12 draw warrants to pay expenditures authorized by section 1 of this Act.

13 Section 3. The Commission on Gaming shall transfer four hundred fifty thousand dollars
14 (\$450,000) from the special racing revolving fund and four hundred fifty thousand dollars



1 (\$450,000) from the South Dakota-bred racing fund to the State Fair.

2 Section 4. There is hereby appropriated the sum of nine hundred thousand dollars
3 (\$900,000), of other fund expenditure authority, or so much thereof as may be necessary, to the
4 State Fair for the expenditure of funds provided in section 3 of this Act. The secretary of the
5 Department of Agriculture shall approve vouchers and the state auditor shall draw warrants to
6 pay expenditures authorized by section 3 of this Act.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

415H0566

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1124** - 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 Brown (Richard), Elliott, Flowers, Murschel, Olson (Mel), and Sutton (Duane) and Senators Hutmacher, Albers, McIntyre, Moore, Olson (Ed), and Sutton (Dan)

- 1 FOR AN ACT ENTITLED, An Act to restrict the transfer of certain appropriated money and
- 2 to provide for the distribution of certain appropriated money.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

552H0473

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1137** - 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 Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Lange, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, Valandra, and Van Norman and Senators Hutmacher, Dennert, Duxbury, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the compensation and
2 the meetings of the State Cement Plant Commission.

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

4 Section 1. That § 5-17-4 be amended to read as follows:

5 5-17-4. ~~The~~ Any compensation of the members of the State Cement Plant Commission, ~~other~~
6 ~~than the secretary-treasurer,~~ shall be payable ~~monthly~~ quarterly, with their actual and necessary
7 expenses to be paid in the same manner as other expenditures out of the cement plant fund, upon
8 presentation of itemized, verified vouchers. ~~It is further provided that the~~ The State Cement Plant
9 Commission shall meet at ~~least once each month~~ the call of the chair or at the call of a majority
10 of the members of the commission.



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

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

870H0010

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1229 - 02/01/2002

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

Introduced by: Representatives Lintz, Duenwald, Fryslie, Hansen (Tom), Jensen, Klaudt, Pederson (Gordon), Rhoden, and Sigdestad and Senators Diedrich (Larry), Dennert, Drake, Koskan, and Vitter

1 FOR AN ACT ENTITLED, An Act to conduct a pilot study on agricultural income value, to
2 appropriate money for a pilot study, and to declare an emergency.

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

4 Section 1. The secretary of revenue shall conduct a pilot study concerning the use of
5 agricultural income value as a means to value agricultural land. The pilot study shall include an
6 analysis of various capitalization rates and determine the impact of such rates on the total
7 statewide assessed value of agricultural property and its relationship to the total statewide
8 assessed value of all property. The pilot study shall include the counties not included in the pilot
9 study provided by chapter 44 of the 2000 Session Laws. The secretary shall, for the purpose of
10 providing information, apply the provisions and procedures provided in chapter 44 of the 2000
11 Session Laws to value agricultural land in the remaining counties. The secretary shall submit a
12 report detailing the information collected to the Governor and the Seventy-eighth Legislature.

13 Section 2. There is hereby appropriated from the general fund the sum of fifty thousand



1 dollars (\$50,000), or so much thereof as may be necessary, to the Department of Revenue for
2 the purpose of conducting a pilot study concerning the use of agricultural income value as a
3 means to value agricultural land.

4 Section 3. The secretary of the Department of Revenue shall approve vouchers and the state
5 auditor shall draw warrants to pay expenditures authorized by this Act.

6 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by
7 June 30, 2003, shall revert in accordance with § 4-8-21.

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

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

640H0646 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1237 - 02/01/2002

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 "\$5,215,825".

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 "\$21,774,772" and delete



1 \$40,011,775" and insert "40,598,775".

2 Adjust all totals accordingly.

3 Section 3. The commissioner of the Bureau of Finance and Management shall transfer two
4 hundred fifty thousand dollars (\$250,000) of the remaining appropriation from the
5 intergovernmental transfer fund for the operating expenses of the Division of Rehabilitation
6 Services, Department of Human Services, to the operating expenses of the Division of
7 Developmental Disabilities, Department of Human Services, for the home and community based
8 services program.

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

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

12 After Section 27, insert:

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

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

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

169H0652

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1279** - 02/15/2002

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



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

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

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

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

1 law and shall expressly include the authority and any corporation formed pursuant to
2 this Act;

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

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

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

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

21 Section 2. There is created the South Dakota Municipal Facilities Authority, a body
22 corporate and politic, to consist of seven members appointed by the Governor. Not more than
23 four of said seven members of the authority shall be of the same political party. At least one of
24 the members to be appointed by the Governor shall be or shall have been an elected municipal

1 official and at least one of such appointed members shall be or shall have been experienced in and
2 having a favorable reputation for skill, knowledge, and experience in the field of municipal utility
3 property. The terms for the initial appointments shall be as follows: one member four years; two
4 members three years; two members two years; and two members one year. No person shall be
5 appointed to the authority who is an elected official of the State of South Dakota. One of the
6 members shall be designated by the Governor as chairman.

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

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

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

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

1 earnings of any such corporation shall inure to any private individual.

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

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

20 No such corporation shall have the authority to guarantee the debts of another.

21 No such corporation shall be required to file any reports with the state other than those
22 specified herein.

23 Except for debts incurred directly by the corporation, no lease or other contract, agreement,
24 instrument or obligation, issued, incurred or created by the State of South Dakota or any state

1 agency or instrumentality (other than such corporation) may be or become a lien, charge or
2 liability against the corporation or the property or funds of the corporation.

3 Section 7. The purposes of the authority and any corporation formed by the authority are:

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

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

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

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

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

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

1 or contracts any of the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (5) To receive and invest in permitted investments any funds transferred to it by the

1 authority, any corporation, the State of South Dakota, any public entity or any other
2 person;

3 (6) To receive deposits or prepayments and to establish, fund and apply any reserve
4 accounts or funds for any purpose;

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

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

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

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

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

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

- 1 arrangements;
- 2 (13) Receive and accept from any source aid or contributions of moneys, property, labor,
3 or other things of value to be held, used, and applied to carry out the purposes of this
4 chapter subject to the conditions upon which the grants or contributions are made,
5 including, but not limited to, gifts or grants from any department, agency, or
6 instrumentality of the United States for any purpose consistent with the provisions of
7 this chapter;
- 8 (14) Enter into agreements with any department, agency, or instrumentality of the United
9 States, any public entity or this state and with lenders or others and enter into loan
10 agreements, sales contracts and leases, or other financing arrangements with
11 contracting parties for the purpose of planning, regulating and providing for the
12 financing or refinancing of any municipal facilities;
- 13 (15) Enter into contracts or agreements for the operation, use, maintenance or
14 improvement of municipal facilities;
- 15 (16) Cooperate with and exchange services, personnel and information with any federal,
16 state, or local governmental agency or public entity;
- 17 (17) Enter into agreements for management by or on behalf of the State of South Dakota,
18 the authority or any corporation of any municipal facilities upon such terms and
19 conditions as may be mutually agreeable;
- 20 (18) Sell, exchange, donate, and convey any or all of its properties whenever the board of
21 the authority or any corporation shall find such action to be in furtherance of the
22 purposes for which the authority or corporation was organized;
- 23 (19) To establish bank accounts and securities accounts, or have such accounts established
24 on its behalf at any trust, banking or financial institution;

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

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

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

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

23 Section 12. The State of South Dakota pledges to and agrees with any party to any sale,
24 lease, or other contract, agreement, instrument or other arrangement created under this Act that

1 the state will not limit or alter the rights and powers vested in the authority, any corporation
2 formed by the authority or other public entity by this Act so as to impair the terms of any such
3 contract made by the state, the authority, any such corporation or other public entity with such
4 party or in any way impair the rights and remedies of such party until such contract is satisfied.
5 The authority, any such corporation and any public entity is each authorized to include their
6 pledges and agreements of the state in any such contract created under this Act.

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

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

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

24 Section 16. The state, the authority and any corporation formed by the authority may each

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

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

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

1 to be appropriate under the circumstances;

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

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

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

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

1 lessee of municipal facilities owned or leased by or to the authority or corporation is
2 hereby authorized to self-insure the municipal facilities on such terms or conditions
3 approved by the authority or set forth in the lease.

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

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

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

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

1 any person;

2 (5) Funds, if any, appropriated for such purpose by the Legislature;

3 (6) Revenues derived from the exercise of any power provided under this Act;

4 (7) Income or proceeds from any collateral pledged or provided therefor; and

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

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

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

1 authorizing the lease, including the establishment of sufficient charges, fees, or rentals and the
2 application of the income from municipal facilities under this Act.

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

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

21 Section 24. The Board of Water and Natural Resources or the South Dakota Conservancy
22 District may become a party to a lease authorized by this Act whereby the Board of Water and
23 Natural Resources or South Dakota Conservancy District loans in an initial amount of not
24 greater than ninety percent of the appraised value of utility property leased to, by or from the

1 state, authority, corporation, other public entity or nonprofit corporation pursuant to this Act.
2 The Board of Water and Natural Resources or South Dakota Conservancy District may also be
3 lender, lessor and/or lessee in connection with any transaction contemplated by this Act, provide
4 a deposit agreement, payment undertaking or similar contract to any party to a lease or lease
5 transaction, and, in the event it is lessee, it may sublease such property.

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

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

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

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

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

22 For all purposes of this section, (1) any sale price shall not be required to exceed the
23 appraised value of the municipal facilities being sold or otherwise transferred, (2) no lease or
24 other contract or agreement entered into by a public entity as provided herein shall have a term

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

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

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

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

1 Section 33. If any clause or other portion of this Act shall be held invalid, that decision shall
2 not affect the validity of the remaining portions of this Act. It is hereby declared that all such
3 remaining portions of this Act are severable, and that the Legislature would have enacted such
4 remaining portions if the portions that may be so held to be invalid had not been included in this
5 chapter.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

708H0708

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1294** - 02/05/2002

Introduced by: Representative Konold

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

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. Whereas, this Act is necessary for the support of the state government and its
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.

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

400H0716

HOUSE ENGROSSED NO. **HB 1296** - 02/07/2002

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 Appropriations at the request of the Governor

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 14 of chapter 3 of the 2001 Session Laws be amended to read as
5 follows:

6 BOARD OF REGENTS

7 Regents System Office

8 Personal Services, delete "\$861,228" and insert "\$1,983,675"

9 Adjust all totals accordingly.

10 Section 2. The fund source used to support the other fund expenditure authority appropriated
11 by section 1 of this Act shall be the private activity bond fees fund established in § 1-7-10.

12 Section 3. Any expenditure authority and cash appropriated by this Act which are unspent
13 at the end of fiscal year 2002 shall be carried over to fiscal year 2003.

14 Section 4. This Act is effective June 11, 2002.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

444H0576

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HJR 1003** - 02/19/2002

Introduced by: Representatives Sutton (Duane), Abdallah, Bartling, Broderick, Burg, Flowers, Fryslie, Murschel, Napoli, Olson (Mel), Rhoden, and Wick and Senators Apa, Dennert, Madden, Moore, Munson, Olson (Ed), Staggers, Symens, and Volesky

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election
2 an amendment to Article XII, Section 2 of the Constitution of the State of South Dakota,
3 relating to expenditures from funds established by a two-thirds vote of both houses of the
4 Legislature.

5 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF
6 SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

7 Section 1. That at the next general election held in the state, the following amendment to
8 Article XII, section 2 of the Constitution of the State of South Dakota, as set forth in section 2
9 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state
10 for approval.

11 Section 2. That Article XII, section 2 of the Constitution, of the State of South Dakota, be
12 amended to read as follows:

13 § 2. The general appropriation bill shall embrace nothing but appropriations for ordinary



1 expenses of the executive, legislative, and judicial departments of the state, the current expenses
2 of state institutions, interest on the public debt, and for common schools. All other
3 appropriations shall be made by separate bills, each embracing but one object, and shall require
4 a two-thirds vote of all the members of each branch of the Legislature. The Legislature may not
5 appropriate any money from any fund that has been dedicated to a special purpose pursuant to
6 a two-thirds majority vote of both houses of the Legislature for any purpose other than the
7 special purpose for which the fund is dedicated, unless such appropriation is approved by a two-
8 thirds majority vote of both houses of the Legislature in a separate bill embracing only one
9 subject matter.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

292H0449

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 84 - 01/18/2002

Introduced by: Senators Bogue, de Hueck, Koskan, Moore, Volesky, and Whiting and
Representatives Madsen, Bartling, Brown (Jarvis), McCaulley, Michels, and
Valandra

1 FOR AN ACT ENTITLED, An Act to revise certain transcript fees.

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

3 Section 1. That § 15-15-7 be amended to read as follows:

4 15-15-7. Unless ordered by the court to be supplied to an indigent or ~~his~~ an indigent's counsel

5 and paid out of the county treasury where court was held, a fee shall be charged to the person

6 ordering a typewritten transcript by filing of an order for transcript on appeal of a proceeding

7 taken by an officer of the court, which shall be certified to be a correct transcript of the reporter's

8 notes of the evidence, at the rate of two dollars and ~~forty~~ ninety cents per page for the original.

9 The fee for a ~~carbon~~ copy, furnished on request, is ~~thirty~~ fifty cents per page, to be paid to the

10 officer of the court who prepared the transcript.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

527H0262

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 110 - 02/13/2002

Introduced by: Senators Munson, Albers, Diedrich (Elmer), Hagen, Olson (Ed), and Vitter
and Representatives Broderick, Abdallah, Brown (Richard), Flowers, Pummel,
and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 vehicle dealers.

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

4 Section 1. That § 32-6B-49.1 be amended to read as follows:

5 32-6B-49.1. No franchisor may require a franchisee to agree to the inclusion of a franchise
6 agreement may include any term or condition in a franchise, ~~or in any lease or agreement~~
7 ~~ancillary or collateral to a franchise as a condition to the offer, grant or renewal of such~~
8 ~~franchise, lease or agreement~~, that:

- 9 (1) Requires the franchisee to waive trial by jury involving the franchisor;
- 10 (2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect
11 to the franchise, lease or agreement shall or may not be submitted for resolution or
12 otherwise prevents a franchisee from bringing an action in a particular forum
13 otherwise available under the law;
- 14 (3) Requires that disputes between the franchisor and franchisee be submitted to



1 arbitration or to any other binding alternate dispute resolution procedure. However,
2 any franchise, lease or agreement may authorize the submission of a dispute to
3 arbitration or to binding alternate dispute resolution if the franchisor and franchisee
4 voluntarily agree to submit the dispute to arbitration or binding alternate dispute
5 resolution at the time the dispute arises; ~~or~~

6 (4) Requires a franchisee to pay the attorney fees of a franchisor;

7 (5) Prohibits the holder of an existing franchise from being dualled with another
8 franchisor's line that does not substantially affect the current franchisor or community;

9 (6) Prohibits the holder of an existing franchise from moving to another facility within the
10 franchisee's community that is equal to or superior to the franchisee's former facility;

11 or

12 (7) Prohibits the holder of an existing franchise from making improvements to the
13 franchisee's current facility within the franchisee's community.

14 An existing franchisee shall give the franchisor prior written notice of the proposed dual
15 arrangement, relocation, or improvement described in subdivisions (5), (6), and (7). The notice
16 shall contain sufficient information for the franchisor to evaluate the proposal. Within sixty days
17 of receiving said notice, the franchisor shall send a letter to the franchisee either approving or
18 disapproving the proposal. If the franchisor does not notify the franchisee of its approval or
19 denial of the dual arrangement, relocation, or improvement within the sixty-day period, the
20 franchisee's proposal shall be deemed to have been approved. No franchisor may unreasonably
21 withhold its approval. Denial of a proposed dual arrangement or facility improvement shall be
22 supported by credible evidence that it will substantially affect in an adverse way the current
23 franchisor or community. Denial of a proposed relocation shall be supported by credible evidence
24 that the new location is not at least equal to the franchisee's former facility.

1 This section does not apply to agreements pertaining to the lease or sale of real property.

2 Section 2. That § 32-6B-76 be amended to read as follows:

3 32-6B-76. Approval by a manufacturer or franchisor of an application filed under
4 §§ 32-6B-73 to 32-6B-78, inclusive, may not be unreasonably withheld. It is unreasonable for
5 a manufacturer or franchisor to reject a prospective transferee ~~who is of good moral character~~
6 ~~and~~ who otherwise meets the manufacturer's or franchisor's written, reasonable, and uniformly
7 applied standards or qualifications, if any, relating to the prospective transferee's business
8 experience and financial qualifications.

9 Section 3. That § 32-6B-79 be amended to read as follows:

10 32-6B-79. In §§ 32-6B-79 to 32-6B-83, inclusive, the term, manufacturer, includes a
11 representative or a person or entity who is ~~affiliated with a manufacturer or representative, or~~
12 ~~who~~, directly or indirectly ~~through an intermediary~~, is controlled by, or is under common control
13 with, the manufacturer. For purposes of this section, a person or entity is controlled by a
14 manufacturer if the manufacturer has the authority directly or indirectly, by law or by agreement
15 of the parties, to direct or influence the management and policies of the person or entity.

16 Section 4. That § 32-6B-84 be amended to read as follows:

17 32-6B-84. Notwithstanding the terms of any franchise agreements, the manufacturer or
18 franchisor may exercise a right of first refusal to acquire the motor vehicle dealer's assets or
19 ownership if all of the following conditions are met:

- 20 (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall
21 notify the motor vehicle dealer in writing within sixty days of its receipt of the
22 completed proposal for the sale or transfer and all related agreements;
- 23 (2) The exercise of the right of first refusal will result in the dealer receiving the same or
24 greater consideration as the dealer has contracted to receive in connection with the

- 1 proposed change of ownership or transfer;
- 2 (3) The proposed sale or transfer of the dealership's assets does not involve the transfer
- 3 or sale to a member or members of the family of one or more dealers, or to a qualified
- 4 manager with at least two years management experience at the dealership of one or
- 5 more of these dealers, or to a partnership or corporation controlled by such persons;
- 6 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including
- 7 attorney fees which do not exceed the usual, customary, and reasonable fees charged
- 8 for similar work done for other clients, incurred by the proposed owner or transferee
- 9 prior to the manufacturer's or franchisor's exercise of its right of first refusal in
- 10 negotiating and implementing the contract for the proposed sale or transfer of the
- 11 dealership or dealership assets. Such expenses and attorney fees shall be paid to the
- 12 proposed new owner or transferee at the time of closing of the sale or transfer for
- 13 which the manufacturer or franchisor exercised its right of first refusal. No payment
- 14 of such expenses and attorney fees is required if the new owner or transferee has not
- 15 submitted an accounting of those expenses within thirty days of the dealer's receipt
- 16 of the manufacturer's or franchisor's written request for such an accounting. A
- 17 manufacturer or franchisor may request such accounting before exercising a right of
- 18 first refusal; and
- 19 (5) The dealer does not have any liability to any person as to any disclosed term,
- 20 condition, or issue as a result of a manufacturer or franchisor exercising a right of first
- 21 refusal.

22 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as

23 follows:

24 A franchisor may reasonably and periodically audit a franchisee to determine the validity of

1 paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments
2 may apply only to the two-year period immediately preceding the date on which the dealer was
3 notified of an impending audit. The limitations of this section do not apply if the franchisor can
4 prove fraud.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

439H0615

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 141 - 02/13/2002

Introduced by: Senator Whiting and Representative Brown (Jarvis)

1 FOR AN ACT ENTITLED, An Act to authorize total return unitrusts.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Disinterested person," any person who is not a related or subordinate party, as
5 defined in section 672(c) of the Internal Revenue Code (26 U.S.C. section 1, et seq.),
6 with respect to the person then acting as trustee of the trust and excludes the trustor
7 of the trust and any interested trustee;

8 (2) "Income trust," any trust, created by either an inter vivos or a testamentary
9 instrument, which directs or permits the trustee to distribute the net income of the
10 trust to one or more persons, either in fixed proportions or in amounts or proportions
11 determined by the trustee. However, no trust that otherwise is an income trust may
12 qualify pursuant to this subdivision, if it is subject to taxation under I.R.C. section
13 2001 or section 2501, until the expiration of the period for filing the return therefor
14 (including extensions);

15 (3) "Interested distributee," any person to whom distributions of income or principal can



1 currently be made who has the power to remove the existing trustee and designate as
2 successor a person who may be a related or subordinate party, as defined in I.R.C.
3 section 672(c), with respect to such distributee;

4 (4) "Interested trustee," (i) any individual trustee to whom the net income or principal of
5 the trust can currently be distributed or would be distributed if the trust were then to
6 terminate and be distributed, or (ii) any trustee who may be removed and replaced by
7 an interested distributee, or (iii) any individual trustee whose legal obligation to
8 support a beneficiary may be satisfied by distributions of income and principal of the
9 trust, or (iv) any of the above;

10 (5) "Total return unitrust," any income trust which has been converted under and meets
11 the provisions of this Act;

12 (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted
13 otherwise, whether acting in their discretion or on the direction of one or more
14 persons acting in a fiduciary capacity;

15 (7) "Trustor," any individual who created an inter vivos or a testamentary trust;

16 (8) "Unitrust amount," an amount computed as a percentage of the fair market value of
17 the trust;

18 (9) "Current valuation year," the accounting period of the trust for which the unitrust
19 amount is being determined;

20 (10) "Prior valuation year," each of the two accounting periods of the trust immediately
21 preceding the current valuation year; and

22 (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.).

23 Section 2. A trustee, other than an interested trustee, or, if two or more persons are acting
24 as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter

1 "trustee"), may, in its sole discretion and without the approval of any court, (i) convert an income
2 trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii)
3 change the percentage used to calculate the unitrust amount and the method used to determine
4 the fair market value of the trust if:

5 (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust
6 being administered as an income trust, that future distributions from the trust will be
7 unitrust amounts rather than net income, (ii) in the case of a trust being administered
8 as a total return unitrust, that future distributions from the trust will be net income
9 rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust
10 amount or the method used to determine the fair market value of the trust will be
11 changed as stated in the policy;

12 (2) The trustee sends written notice of its intention to take such action, along with copies
13 of such written policy and this chapter, to (i) the trustor, if living, (ii) all living persons
14 who are currently receiving or eligible to receive distributions of income of the trust,
15 (iii) all living persons who would receive principal of the trust if the trust were to
16 terminate at the time of the giving of such notice (without regard to the exercise of
17 any power of appointment) or, if the trust does not provide for its termination, all
18 living persons who would receive or be eligible to receive distributions of income or
19 principal of the trust if the persons identified in subclause (ii) of this subdivision were
20 deceased, and (iv) all persons acting as adviser or protector of the trust;

21 (3) At least one person receiving notice under each of subclauses (ii) and (iii) of
22 subdivision (2) is, to the best information and belief of the trustee, legally competent;
23 and

24 (4) No person receiving such notice objects, by written instrument delivered to the

1 trustee, to the proposed action of the trustee within sixty days of receipt of such
2 notice.

3 Section 3. If there is no trustee of the trust other than an interested trustee, the interested
4 trustee or, if two or more persons are acting as trustee and are interested trustees, a majority of
5 such interested trustees, may, in its sole discretion and without the approval of any court, take
6 such action as provided in section 2 of this Act so long as the trustee appoints a disinterested
7 person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i)
8 the percentage to be used to calculate the unitrust amount, (ii) the method to be used in
9 determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded
10 in determining the unitrust amount; and complies with all of the provisions of subdivisions (1)
11 to (4), inclusive, of section 2 of this Act.

12 Section 4. If any trustee desires to (i) convert an income trust to a total return unitrust, (ii)
13 reconvert a total return unitrust to an income trust, or (iii) change the percentage used to
14 calculate the unitrust amount and the method used to determine the fair market value of the trust
15 but does not have the ability to or elects not to do it under the provisions of sections 2 and 3 of
16 this Act, or in the event the trustee receives a written objection within the applicable period, the
17 trustee may petition the court for such order as the trustee deems appropriate. In the event,
18 however, there is only one trustee of such trust and such trustee is an interested trustee or in the
19 event there are two or more trustees of such trust and a majority of them are interested trustees,
20 the court, in its own discretion or on the petition of such trustee or trustees or any person
21 interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity,
22 shall present such information to the court as shall be necessary to enable the court to make its
23 determination.

24 Section 5. The fair market value of the trust shall be determined at least annually, using such

1 valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for
2 which a fair market value cannot be readily ascertained shall be valued using such valuation
3 methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation,
4 if all income received with respect to such assets is distributed to the extent distributable in
5 accordance with the terms of the governing instrument.

6 Section 6. The unitrust amount shall be determined as follows:

7 (1) For the first three accounting periods of the trust, the unitrust amount for a current
8 valuation year of the trust shall be three percent, or such higher percentage specified
9 by the terms of the governing instrument or by the election of the trustee, the
10 disinterested person, or the court, of the net fair market value of the assets held in the
11 trust on the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a
13 current valuation year of the trust shall be three percent, or such higher percentage
14 specified by the terms of the governing instrument or by the election of the trustee,
15 the disinterested person, or the court, of the average of the net fair market value of
16 the assets held in the trust on the first business day of the current valuation year and
17 the net fair market value of the assets held in the trust on the first business day of each
18 prior valuation year;

19 (3) The percentage that may be elected in determining the unitrust amount shall be a
20 reasonable current return from the trust, taking into account the intentions of the
21 trustor of the trust as expressed in the governing instrument, the needs of the
22 beneficiaries, general economic conditions, projected current earnings and
23 appreciation for the trust, and projected inflation and its impact on the trust.
24 However, if such percentage is three percent or greater, or if no percentage is

1 specified, then that percentage shall be three percent;

2 (4) The unitrust amount for the current valuation year shall be proportionately reduced
3 for any distributions, in whole or in part, other than distributions of the unitrust
4 amount, and for any payments of expenses, including debts, disbursements and taxes,
5 from the trust within a current valuation year that the trustee determines to be
6 material and substantial, and shall be proportionately increased for the receipt, other
7 than a receipt that represents a return on investment, of any additional property into
8 the trust within a current valuation year;

9 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount
10 on a daily basis;

11 (6) If the net fair market value of an asset held in the trust has been incorrectly
12 determined either in a current valuation year or in a prior valuation year, the unitrust
13 amount shall be increased in the case of an undervaluation, or be decreased in the case
14 of an overvaluation, by an amount equal to the difference between the unitrust amount
15 determined based on the correct valuation of the asset and the unitrust amount
16 originally determined;

17 (7) In determining the net fair market value of the assets held in trust, the determination
18 may not include the value of any residential property or any tangible personal property
19 that, as of the first business day of the current valuation year, one or more income
20 beneficiaries of the trust have or had the right to occupy, or have or had the right to
21 possess or control, other than in a capacity as trustee, and instead the right of
22 occupancy or the right of possession or control shall be deemed to be the unitrust
23 amount with respect to the residential property or the tangible personal property; or
24 any asset specifically given to a beneficiary under the terms of the trust and the return

1 on investment on that asset, which return on investment shall be distributed to the
2 beneficiary.

3 Section 7. The unitrust amount may not be less than the net income of the trust, determined
4 without regard to the provisions of section 8 of this Act, for (i) a trust for which a marital
5 deduction has been taken for federal tax purposes under I.R.C. section 2056 or 2523 (during the
6 lifetime of the spouse for whom the trust was created), or (ii) a trust to which the generation-
7 skipping transfer tax due under I.R.C. section 2601 does not apply by reason of any effective
8 date or transition rule.

9 Section 8. Following the conversion of an income trust to a total return unitrust, the trustee:

10 (1) Shall treat the unitrust amount as if it were net income of the trust for purposes of
11 determining the amount available, from time to time, for distributions from the trust;

12 and

13 (2) May allocate to trust income for each taxable year of the trust (or portions thereof)

14 (i) net short-term capital gain described in I.R.C. section 1222(5) for such year (or
15 portion thereof) but only to the extent that the amounts so allocated together with all
16 other amounts allocate to trust income for such year (or portion thereof) does not

17 exceed the unitrust amount for such year (or portion thereof); and (ii) net long-term
18 capital gain described in I.R.C. section 1222(7) for such year (or portion thereof) but

19 only to the extent that the amount so allocated together with all other amounts,
20 including amounts described in clause (i) above, allocated to trust income for such

21 year (or portion thereof) does not exceed the unitrust amount for such year (or
22 portion thereof).

23 Section 9. In administering a total return unitrust, the trustee may, in its sole discretion but
24 subject to the provisions of the governing instrument, determine:

- 1 (1) The effective date of the conversion;
- 2 (2) The timing of distributions (including provisions for prorating a distributions for a
3 short year in which a beneficiary' right to payments commences or ceases);
- 4 (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in
5 kind;
- 6 (4) If the trust is reconverted to an income trust, the effective date of such reconversion;
7 and
- 8 (5) Such other administrative issues as may be necessary or appropriate to carry out the
9 purposes of this Act.

10 Section 10. Conversion to a total return unitrust under the provisions of this Act does not
11 affect any other provisions of the governing instrument, if any, regarding distributions of
12 principal.

13 Section 11. In the case of a trust for which a marital deduction has been taken for federal tax
14 purpose under I.R.C. section 2056 or 2523, the spouse otherwise entitled to receive the net
15 income of the trust has the right, by written instrument delivered to the trustee, to compel the
16 reconversion during his or her lifetime of the trust from a total return unitrust to an income trust,
17 notwithstanding anything in this Act to the contrary.

18 Section 12. This Act shall be construed as pertaining to the administration of a trust and shall
19 be available to any trust that is administered in South Dakota under South Dakota law unless (i)
20 the governing instrument reflects an intention that the current beneficiary or beneficiaries are to
21 receive an amount other than a reasonable current return from the trust, ii) the trust is a trust
22 described in I.R.C. section 170(f)(2)(B), 6664(d), 1361(d), 2702(a)(3), or 2702(b), (iii) one or
23 more persons to whom the trustee could distribute income have a power of withdrawal over the
24 trust that is not subject to an ascertainable standard under I.R.C. section 2041 or 2514 or that

1 can be exercised to discharge a duty of support he or she possesses, or (iv) the governing
2 instrument expressly prohibits use of this Act by specific reference to the chapter. A provision
3 in the governing instrument that "The provisions of this Act, or any corresponding provision of
4 future law, may not be used in the administration of this trust" or similar words reflecting such
5 intent are sufficient to preclude use of this Act.

6 Section 13. Any trustee or disinterested person who in good faith takes or fails to take any
7 action under this Act is not liable to any person affected by such action or inaction, regardless
8 of whether such person received written notice as provided in this Act and regardless of whether
9 such person was under a legal disability at the time of the delivery of such notice. Such person's
10 exclusive remedy shall be to obtain an order of the court directing the trustee to convert an
11 income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust
12 or to change the percentage used to calculate the unitrust amount.

13 Section 14. Nothing in this Act is intended to create or imply a duty to take any action under
14 this Act, and no trustee is liable for not considering whether to take any action or for choosing
15 not to take any such action.

16 Section 15. This Act is effective upon enactment and is available to trusts in existence at the
17 date of enactment or created thereafter.