

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0384

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1053** - 02/06/2004

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

1 FOR AN ACT ENTITLED, An Act to increase liquidated court costs.

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

3 Section 1. That § 23-3-52 be amended to read as follows:

4 23-3-52. In addition to any other penalty, assessment, or fine provided by law, there shall
5 be levied liquidated costs in the amount of ~~twenty-seven~~ thirty dollars for partial reimbursement
6 to state government and its subdivisions for law enforcement and judicial expenses incurred in
7 providing the personnel, training, and facilities relative to the criminal justice system and to the
8 911 emergency reporting system, on each conviction for the following:

9 (1) Violation of state statutes or regulations having criminal penalties; or

10 (2) Violation of county or municipal ordinances.

11 If a fine is suspended in whole or in part, the liquidated costs for law enforcement and
12 training may not be reduced, except that the judge may waive all or any part of the payment of
13 liquidated costs which would work a hardship on the person convicted or on the person's
14 immediate family.

15 Section 2. That § 23-3-53 be amended to read as follows:



1 23-3-53. After a determination by the court of the amount due, the clerk of courts shall
2 collect the amount due and transmit such amount monthly to the state treasurer. The state
3 treasurer shall place ~~seventeen~~ twenty dollars of the ~~twenty-seven-dollar~~ thirty dollar fee into
4 the law enforcement officers training fund, six dollars of the ~~twenty-seven-dollar~~ thirty dollar
5 fee into the court appointed attorney and public defender payment fund, two dollars of the
6 ~~twenty-seven-dollar~~ thirty dollar fee into the court appointed special advocates fund, one dollar
7 of the ~~twenty-seven-dollar~~ thirty dollar fee into the 911 telecommunicator training fund, and one
8 dollar of the ~~twenty-seven-dollar~~ thirty dollar fee into the abused and neglected child defense
9 fund.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

168J0486

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1182 - 02/04/2004

Introduced by: Representatives Schafer, Hennies, Kraus, McLaughlin, Nesselhuf, Rave, Rounds, Sebert, Solum, and Teupel and Senators Vitter, Albers, Duniphan, Kelly, Kooistra, Nachtigal, Olson (Ed), Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the use of general
2 occupation tax revenue.

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

4 Section 1. That § 9-55-13 be amended to read as follows:

5 9-55-13. A municipality may levy a special assessment against the real property located in
6 a district, to the extent of the special benefit on such property, for the purpose of paying all or
7 any part of the total costs and expenses of any project authorized by this chapter; within ~~such~~
8 the district. The amount of each special assessment shall be determined by the governing body.
9 Assessments shall be levied in accordance with the method of assessment proposed in the
10 ordinance creating the district. If the governing body finds that the proposed method of
11 assessment does not provide a fair and equitable method of apportioning costs, then it the
12 governing body may assess the costs under ~~such a method as~~ the governing body finds to be fair
13 and equitable. If ~~the~~ a public improvement consists of convention facilities or the levy is for the
14 convention visitor's bureau and its promotional programs, ~~the~~ a general occupation tax may be



1 levied based on rented hotel and motel rooms and units offered and let for overnight
2 occupancies of less than thirty continuous calendar days, which tax may not exceed two dollars
3 per occupied room per night. Notice of a hearing on any special assessments to be levied under
4 this chapter shall be given to the landowners in ~~such the~~ district by publication of the description
5 of the land, the amount proposed to be assessed, and the general purpose for which ~~such the~~
6 assessment is to be made, once a week for two weeks in a daily or weekly newspaper of general
7 circulation published in the municipality. The notice shall be published at least thirty days prior
8 to the hearing and shall provide the date, time, and place of the hearing to hear any objections
9 or protests by landowners in the district as to the amount of assessment made against their
10 property. All special assessments levied under this chapter ~~shall be~~ constitute liens on the
11 property and shall be certified for collection and collected in the same manner as other special
12 assessments.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

490J0422

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1184 - 02/06/2004

Introduced by: Representatives Novstrup, Elliott, Hackl, Kraus, LaRue, McCaulley, Rhoden,
and Weems and Senators Dennert and Kelly

1 FOR AN ACT ENTITLED, An Act to authorize a payor to make a deduction for transmitting
2 an amount of an obligor's income pursuant to a child support order for withholding.

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

4 Section 1. That § 25-7A-34 be amended to read as follows:

5 25-7A-34. Any payor who has been served with an order for withholding of income shall
6 deduct and pay over income or assets as provided in this section. The payor shall deduct the
7 amount designated in the order for withholding. The first payment shall be deducted from the
8 payment of income which is payable to the obligor following service of the order. The payor
9 shall transmit the amount withheld to the department in accordance with the order for
10 withholding within seven business days after the date the obligor is paid or ~~his~~ the obligor's
11 property withheld and in accordance with any subsequent notification received from the
12 department redirecting payment. In addition to the amount designated in the order for
13 withholding, the payor may deduct an amount not to exceed three dollars per month from the
14 obligor's income to cover the expenses involved in transmitting the amount withheld.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

348J0121

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1187 - 02/07/2004

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

Introduced by: Representatives Konold, Frost, and Novstrup and Senators Dennert, Brown, and McCracken

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the assessment and
2 valuation of real property.

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

4 Section 1. That § 10-6-33.24 be amended to read as follows:

5 10-6-33.24. Notwithstanding the provisions of chapter 10-6, agricultural land may be
6 assessed based on its agricultural income value if there are less than ~~fifteen~~ twenty arms-length
7 transactions of agricultural land during the three preceding assessment years. The agricultural
8 income value of agricultural land shall be determined on the basis of the capitalized annual cash
9 rent of the agricultural land. The capitalized annual cash rent shall be based on data collected
10 and analyzed pursuant to § 10-6-33.25. For the purposes of this section, arms-length transactions
11 do not include any agricultural land sales subject to the provisions of § 10-6-33.14, 10-6-33.20,
12 or 10-6-74.

13 Section 2. That § 10-6-74 be amended to read as follows:

14 10-6-74. Any real property which sells for more than one hundred ~~fifty~~ seventy-five percent



1 of its assessed value, may not be used for the purpose of valuing other real property. The sale
2 of any real property which is not used for the purpose of valuing other real property pursuant
3 to this section may not be used in any sales ratio study.

4 Section 3. That § 10-6-74 be amended to read as follows:

5 10-6-74. Any real property which sells for more than ~~one~~ two hundred ~~fifty~~ percent of its
6 assessed value, may not be used for the purpose of valuing other real property. The sale of any
7 real property which is not used for the purpose of valuing other real property pursuant to this
8 section may not be used in any sales ratio study.

9 Section 4. Section 3 of this Act is effective on July 1, 2006.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

439J0700

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1191** - 02/06/2004

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

Introduced by: Representatives McCaulley, Bartling, Begalka, Christensen, Davis, Deadrick (Thomas), Dykstra, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Hanson, Haverly, Heineman, Hennies, Hunhoff, Juhnke, Klaudt, Koistinen, Konold, Kraus, Lange, Lintz, Madsen, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Peterson (Bill), Peterson (Jim), Rave, Rhoden, Rounds, Schafer, Sebert, Smidt, Solum, Teupel, Van Etten, Van Gerpen, Weems, Wick, and Williamson and Senators Schoenbeck, Abdallah, Albers, Apa, Bogue, Earley, Greenfield, Jaspers, Kelly, Kleven, Kloucek, Koetzle, Koskan, McCracken, Moore, Napoli, Sutton (Duane), and Vitter

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings, to reinstate the
2 prohibition against certain acts causing the termination of an unborn human life, and to
3 prescribe a penalty therefor.

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

5 Section 1. The Legislature finds that the State of South Dakota has a compelling and
6 paramount interest in the preservation and protection of all human life within and subject to its
7 jurisdiction and that the preservation and protection of human life applies to all human beings,
8 born or unborn.

9 Section 2. The Legislature finds that since neither constitutional law nor Supreme Court
10 decision has resolved the question of the beginning of life, it is within the proper sphere of state
11 legislative enactment to determine the question of fact in light of the best scientific and medical



1 evidence. The Legislature finds that the life of a human being begins when the ovum is fertilized
2 by male sperm. The Legislature finds that the explosion of knowledge derived from new
3 recombinant DNA technologies over the past twenty-five years has reinforced the validity of the
4 finding of this scientific fact.

5 Section 3. The Legislature finds that, based upon the evidence derived from thirty years of
6 legalized abortions in this country, the interests of pregnant mothers protected under the South
7 Dakota Bill of Rights have been adversely affected as abortions terminate the constitutionally
8 protected fundamental interest of the pregnant mother in her relationship with her child and
9 abortions are performed without a truly informed or voluntary consent or knowing waiver of the
10 woman's rights and interests. The Legislature finds that the state has a duty to protect the
11 pregnant mother's fundamental interest in her relationship with her unborn child.

12 Section 4. The Legislature finds that abortion procedures impose significant risks to the
13 health and life of the pregnant mother, including subjecting women to significant risk of severe
14 depression, suicidal ideation, suicide, attempted suicide, post traumatic stress disorders, adverse
15 impact in the lives of women, physical injury, and a greater risk of death than risks associated
16 with carrying the unborn child to full term and childbirth.

17 Section 5. The Legislature finds that the guarantee of due process of law under the South
18 Dakota Bill of Rights applies equally to born and unborn human beings and that there is no
19 justification for the taking of a guiltless human life by the state or by any person within and
20 subject to the jurisdiction of the state.

21 Section 6. The Legislature finds that a pregnant mother possesses her own natural and
22 inalienable right to life under the South Dakota Bill of Rights, and therefore has a right to seek
23 treatment necessary to protect her own life, subject to the requirements imposed upon a doctor
24 treating such pregnant mother set forth in this Act.

1 Section 7. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant
4 woman any medicine, drug, or other substance with the specific intent of causing or abetting the
5 termination of the life of an unborn human being. No person may knowingly use or employ any
6 instrument or procedure upon a pregnant woman with the specific intent of causing or abetting
7 the termination of the life of an unborn human being. Any licensed physician who provides
8 health care to a pregnant woman shall, in all cases, make every effort to preserve both the life
9 of the mother and the life of her unborn child. Medical treatment provided to the mother by a
10 licensed physician which results in the accidental or unintentional injury or death of the unborn
11 child is not a violation of this statute.

12 Any violation of this section is a Class 5 felony.

13 Section 8. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Nothing in this Act may be construed to prohibit the sale, use, prescription, or administration
16 of a contraceptive measure, drug or chemical, if it is administered prior to the time when a
17 pregnancy could be determined through conventional medical testing and if the contraceptive
18 measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

19 Section 9. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Subject to the provisions of section 7 of this Act, no licensed physician who performs a
22 medical procedure designed or intended to prevent the death of a pregnant mother is guilty of
23 violating section 5 of this Act. Nothing in this Act may be construed to subject the pregnant
24 mother upon whom any abortion is performed or attempted to any criminal conviction and

1 penalty.

2 Section 10. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Terms used in this Act mean:

5 (1) "Pregnant," the human female reproductive condition, of having a living unborn
6 human being within her body throughout the entire embryonic and fetal ages of the
7 unborn child from fertilization to full gestation and child birth;

8 (2) "Unborn human being," an individual living member of the species homo sapiens
9 throughout the entire embryonic and fetal ages of the unborn child from fertilization
10 to full gestation and childbirth;

11 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
12 pellucida of a female human ovum.

13 Section 11. If any provision of this Act is found to be unconstitutional, the provision is
14 severable; and the other provisions of this Act remain effective.

15 Section 12. Nothing in this Act may be construed to repeal, by implication or otherwise, any
16 provision not explicitly repealed.

17 Section 13. If any provision of this Act is ever temporarily or permanently restrained or
18 enjoined by judicial order, the provisions of chapters 34-23A and 22-17 shall be enforced.
19 However, if such temporary or permanent restraining order or injunction is subsequently stayed
20 or dissolved, or otherwise ceases to have effect, all provisions of this Act that are not restrained
21 shall have full force and effect.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

617J0190

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1194** -

02/05/2004

Introduced by: Representatives Lintz, Burg, Deadrick (Thomas), Gassman, Hanson, Hargens, Hundstad, Juhnke, Olson (Mel), Olson (Ryan), Pederson (Gordon), Peterson (Jim), Sigdestad, and Teupel and Senators Duenwald, Bogue, Koskan, and Symens

1 FOR AN ACT ENTITLED, An Act to limit the terms of certain conservation easements.

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

3 Section 1. That § 1-19B-57 be amended to read as follows:

4 1-19B-57. A conservation easement may be created, conveyed, recorded, assigned, released,

5 modified, terminated, or otherwise altered or affected in the same manner as other easements.

6 However, no conservation easement created after July 1, 2004, except for a wetlands easement,

7 may be for a period of more than thirty years. No right or duty in favor of or against a holder and

8 no right in favor of a person having a third-party right of enforcement arises under a

9 conservation easement before its acceptance by the holder and recording the acceptance. An

10 interest in real property in existence at the time a conservation easement is created is not

11 impaired by it unless the owner of the interest is a party to the conservation easement or

12 consents to it.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

465J0626

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1214** -
02/06/2004

Introduced by: Representatives Weems, Begalka, Christensen, Deadrick (Thomas), Frost, Gillespie, Heineman, Kraus, Lange, LaRue, Miles, Rave, Schafer, Teupel, Van Etten, Van Gerpen, and Wick and Senators Koskan, Albers, Brown, Dempster, Duenwald, Ham-Burr, Olson (Ed), Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to require certain prenatal information to be provided when
2 a pregnancy test has been performed and there has been a positive result.

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

4 Section 1. That chapter 34-23B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If any physician, physician assistant, nurse practitioner, or primary health care provider has
7 performed a pregnancy test on a patient and there has been a positive result, such physician,
8 physician assistant, nurse practitioner, or health care provider shall provide educational
9 materials to the patient on prenatal care. The Department of Health shall offer educational
10 materials and guidance to such physicians, physician assistants, nurse practitioners, and health
11 care providers for the purpose of assuring accurate and appropriate patient education.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

264J0512

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1247** - 02/07/2004

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

Introduced by: Representatives Hargens, Begalka, Klaudt, and Peterson (Jim) and Senators Napoli, Duenwald, and Kloucek

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to concealed handguns
2 in certain vehicles.

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

4 Section 1. That § 22-14-10 be amended to read as follows:

5 22-14-10. ~~Section 22-14-9 does~~ The provisions of § 22-14-9 do not apply to persons any
6 person who ~~carry~~ carries one or more ~~unloaded~~ pistols or revolvers for the purpose of, or in
7 connection with, any lawful use, if the ~~unloaded~~ weapon or weapons are carried:

8 (1) In the trunk or other closed compartment of a vehicle; or

9 (2) In a closed container which is too large to be effectively concealed on the person or
10 within ~~his~~ the person's clothing. The container may be carried in a vehicle or in any
11 other manner.

12 Any person who complies with this section may not be required to obtain a permit for the
13 lawful uses herein described.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

177J0117

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1248** - 02/07/2004

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

Introduced by: Representatives Rounds, Olson (Ryan), and Pederson (Gordon) and Senators de Hueck and Koskan

1 FOR AN ACT ENTITLED, An Act to permit counties, in the absence of an organized township,
2 to maintain, and improve certain public rights-of-way.

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

4 Section 1. That § 31-13-51 be amended to read as follows:

5 31-13-51. The township board of supervisors or, in the case of any township which is no
6 longer organized, the board of county commissioners, prior to the assessment of real property
7 within the township for the next fiscal year, may levy annually for the purpose of maintaining
8 or repairing street surfaces, whether of a permanent type or not, a special front foot assessment
9 not to exceed eighty cents per front foot upon the real property fronting and abutting the
10 roadway. Such assessment shall be apportioned on a front foot basis and shall be levied pursuant
11 to § 31-13-52.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

508J0132

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1273 - 02/07/2004

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

Introduced by: Representatives Rave, Bartling, Burg, Cradduck, Glenski, Hunhoff, Klaudt, Lintz, Michels, Miles, and Van Etten and Senators Knudson, Abdallah, and de Hueck

1 FOR AN ACT ENTITLED, An Act to allow emergency medical technicians to be included in
2 peer review committees.

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

4 Section 1. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, a peer review committee is one or more persons, including an
7 emergency medical technician at any level as described in this chapter, acting as an
8 administrative or medical committee of a licensed health care facility or a licensed ambulance
9 service, that engages in peer review activity. There is no monetary liability on the part of, and
10 no cause of action for damages may arise against, any member of a peer review committee or
11 against any consultant to that committee engaging in peer review activity as provided in this
12 Act, if the committee member or consultant acts without malice, has made a reasonable effort
13 to obtain the facts of the matter under consideration, and acts in a reasonable belief that the
14 action taken is warranted by those facts. The provisions of this section do not affect the official



1 immunity of an officer or employee of a public corporation.

2 Section 2. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The proceedings, records, reports, statements, minutes, or any other data whatsoever of any
5 committee described in section 1 of this Act relating to peer review activities defined in section
6 4 of this Act, are not subject to discovery or disclosure under chapter 15-6 or any other provision
7 of law, and are not admissible as evidence in any action of any kind in any court or arbitration
8 forum, except as provided in this section. No person in attendance at any meeting described in
9 section 1 of this Act is required to testify as to what transpired at such meeting. The prohibition
10 relating to discovery of evidence does not apply to deny an emergency medical technician at any
11 level access to, or use of, information upon which a decision regarding the person's staff
12 privileges or employment are based. The prohibition relating to discovery of evidence does not
13 apply to deny any person or the person's counsel in defense of an action against that person
14 access to the materials covered under this section.

15 Section 3. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The provisions of section 2 of this Act do not apply to any observation made at the time of
18 treatment by a health care professional present during a patient's treatment or to patient records
19 prepared during the treatment and care rendered to a patient who is personally or by personal
20 representative a party to an action or proceeding, the subject matter of which is the care and
21 treatment of the patient. Furthermore, no member of any committee covered by section 1 of this
22 Act who has participated in deliberations under that section involving the subject matter of the
23 action, may testify as an expert witness for any party in any action for personal injury or
24 wrongful death, the subject matter of which is the care and treatment of the patient.

1 Notwithstanding membership on any committee covered by section 1 of this Act, a health care
2 professional observing or participating in the patient's treatment and care may testify as a fact
3 or expert witness concerning that treatment and care, but may not be required to testify as to
4 anything protected by section 1 of this Act.

5 Section 4. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
6 follows:

7 For the purposes of this Act, peer review activity is the procedure by which a peer review
8 committee monitors, evaluates, and recommends actions to improve the delivery and quality of
9 services within its respective facility, agency, and profession, including any recommendation,
10 consideration of recommendations, action with regard to recommendations, and implementation
11 of actions. Peer review activity and acts or proceedings undertaken or performed within the
12 scope of the functions of a peer review committee include:

- 13 (1) Matters affecting employment and terms of employment of an emergency medical
14 technician at any level by a health care facility or a licensed ambulance service;
- 15 (2) Matters affecting the membership and terms of membership in a health professional
16 association composed of emergency medical technicians at any level, including
17 decisions to suspend membership privileges, expel from membership, reprimand, or
18 censure a member, or other disciplinary actions;
- 19 (3) Review and evaluation of qualifications, competency, character, experience,
20 activities, conduct, or performance of an emergency medical technician at any level
21 by a licensed health care facility or a licensed ambulance service; and
- 22 (4) Review of the quality, type, or necessity of services provided by any emergency
23 medical technician at any level employed by a licensed health care facility or a
24 licensed ambulance service.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

184J0094

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1275 - 02/04/2004

Introduced by: Representatives Kraus, Adelstein, Gillespie, Hennies, McCaulley, Michels, Novstrup, Olson (Mel), Peterson (Bill), Sebert, Teupel, and Van Etten and Senators Abdallah, Bogue, de Hueck, Duenwald, Duniphan, Ham-Burr, McCracken, and Moore

1 FOR AN ACT ENTITLED, An Act to require chemical tests of drivers involved in accidents
2 resulting in serious bodily injury.

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

4 Section 1. That § 32-23-10 be amended to read as follows:

5 32-23-10. Any person who operates any vehicle in this state is considered to have given
6 consent to the withdrawal of blood or other bodily substance and chemical analysis of the
7 person's blood, breath, or other bodily substance to determine the amount of alcohol in the
8 person's blood and to determine the presence of marijuana or any controlled drug or substance.

9 The person shall be requested by the officer to submit to the withdrawal of blood or other
10 bodily substance for chemical analysis or chemical analysis of the person's breath and shall be
11 advised by the officer that:

12 (1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal
13 or chemical analysis may be required unless the person has been arrested for a third,
14 fourth, or subsequent violation of § 32-23-1, constituting a felony offense under



1 § 32-23-4 or 32-23-4.6 ~~or~~ has been arrested for vehicular homicide under § 22-16-41
2 or vehicular battery under § 22-16-42; or has been involved in an accident resulting
3 in death or serious bodily injury of another person;

4 (2) If the person refuses to submit to the withdrawal or chemical analysis, the person's
5 driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the
6 person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation
7 order being issued; and

8 (3) The person has the right to have a chemical analysis performed by a technician of the
9 person's own choosing at the person's own expense, in addition to the test requested
10 by the officer.

11 Section 2. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 For purposes of § 32-23-10, serious bodily injury is such injury as is grave and not trivial,
14 and gives rise to apprehension of danger to life, health, or limb.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

459J0618

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1298 - 02/04/2004

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

Introduced by: Representatives Olson (Ryan), Cutler, Kraus, and Rave and Senators Ham-Burr, Abdallah, de Hueck, Jaspers, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding implied consent for
2 withdrawal of bodily substances and chemical tests when operating a motor vehicle.

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

4 Section 1. That § 32-23-10 be repealed.

5 ~~— 32-23-10. Any person who operates any vehicle in this state is considered to have given~~
6 ~~consent to the withdrawal of blood or other bodily substance and chemical analysis of the~~
7 ~~person's blood, breath, or other bodily substance to determine the amount of alcohol in the~~
8 ~~person's blood and to determine the presence of marijuana or any controlled drug or substance.~~

9 ~~— The person shall be requested by the officer to submit to the withdrawal of blood or other~~
10 ~~bodily substance for chemical analysis or chemical analysis of the person's breath and shall be~~
11 ~~advised by the officer that:~~

12 ~~— (1) — If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~
13 ~~or chemical analysis may be required unless the person has been arrested for a third,~~
14 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~



1 ~~§ 32-23-4 or 32-23-4.6 or has been arrested for vehicular homicide under § 22-16-41~~
2 ~~or vehicular battery under § 22-16-42;~~

3 ~~(2) If the person refuses to submit to the withdrawal or chemical analysis, the person's~~
4 ~~driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the~~
5 ~~person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation~~
6 ~~order being issued, and~~

7 ~~(3) The person has the right to have a chemical analysis performed by a technician of the~~
8 ~~person's own choosing at the person's own expense, in addition to the test requested~~
9 ~~by the officer.~~

10 Section 2. That § 32-23-10.1 be repealed.

11 ~~32-23-10.1. If a person refuses to submit to chemical analysis of the person's blood, urine,~~
12 ~~breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for~~
13 ~~chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for~~
14 ~~violation of § 32-23-1 or 32-23-21, such refusal may be admissible into evidence at the trial.~~

15 Section 3. That § 32-23-11 be repealed.

16 ~~32-23-11. Any person subject to license revocation for failure to submit to the withdrawal~~
17 ~~and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall~~
18 ~~demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the~~
19 ~~secretary of public safety finds that the law enforcement officer complied with the law and the~~
20 ~~refusal was made by the person, the secretary shall revoke that person's license to drive and any~~
21 ~~nonresident operating privileges for one year. The secretary shall determine if the person is~~
22 ~~eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter~~
23 ~~1-26 for determining that eligibility.~~

24 ~~The secretary of public safety may promulgate rules for restricted licenses as follows:~~

- 1 ~~—(1)— Eligibility;~~
- 2 ~~—(2)— Application;~~
- 3 ~~—(3)— Determination;~~
- 4 ~~—(4)— Limitations; and~~
- 5 ~~—(5)— Grounds for revocation.~~

6 Section 4. That § 32-23-11.1 be repealed.

7 ~~—32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11~~
8 ~~or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating~~
9 ~~§ 32-23-1 is dismissed by the state prior to the departmental hearing and the person is not~~
10 ~~convicted of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a~~
11 ~~revocation order being issued.~~

12 Section 5. That § 32-23-13 be repealed.

13 ~~—32-23-13. If any operator of a motor vehicle in this state who has been requested to submit~~
14 ~~to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to~~
15 ~~submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test~~
16 ~~shall constitute consent and authority to administer a test notwithstanding the age of the operator~~
17 ~~of the motor vehicle.~~

18 Section 6. That § 32-23-18 be repealed.

19 ~~—32-23-18. The Department of Public Safety shall revoke the license of any person arrested~~
20 ~~for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed~~
21 ~~by a law enforcement officer pursuant to § 32-23-10.~~

22 Section 7. That § 32-23-19 be repealed.

23 ~~—32-23-19. A law enforcement officer shall serve the notice of intent to revoke, on behalf of~~
24 ~~the Department of Public Safety and shall take possession of any driver's license issued by this~~

1 ~~state held by the person if the arrested driver refuses to submit to a chemical analysis as directed~~
2 ~~by the officer pursuant to § 32-23-10. A copy of the completed notice of intent to revoke form,~~
3 ~~and any South Dakota driver's license taken into possession shall be forwarded to the~~
4 ~~department by the officer. If a valid South Dakota driver's license is surrendered, the notice of~~
5 ~~intent to revoke shall function as a temporary license which is valid for one hundred twenty~~
6 ~~days. Upon receipt of a petition for a hearing, the department may extend the temporary license~~
7 ~~thirty days following the scheduled date of the hearing.~~

8 Section 8. That § 32-23-20 be repealed.

9 ~~— 32-23-20. The department shall revoke the person's license to drive and any nonresident~~
10 ~~operating privileges pursuant to § 32-23-11.~~

11 Section 9. That § 19-13-28.1 be repealed.

12 ~~— 19-13-28.1. Notwithstanding the provisions of § 19-13-28, when a person stands trial for~~
13 ~~driving while under the influence of alcohol or drugs, as provided under § 32-23-1, and that~~
14 ~~person has refused chemical analysis, as provided in § 32-23-10, such refusal is admissible into~~
15 ~~evidence. Such person may not claim privilege against self-incrimination with regard to~~
16 ~~admission of refusal to submit to chemical analysis.~~

17 Section 10. That § 32-12A-36 be amended to read as follows:

18 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period
19 of not less than one year:

20 (1) If convicted of a first violation of driving or being in actual physical control of a
21 commercial motor vehicle while under the influence of alcohol, or any controlled
22 drug or substance, in violation of § 32-23-1;

23 (2) If convicted of a first violation of driving or being in actual physical control of a
24 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol

1 in that person's blood as shown by chemical analysis of that person's breath, blood
2 or other bodily substance, in violation of § 32-12A-44;

3 (3) If convicted of a first violation of leaving the scene of an accident while operating a
4 commercial motor vehicle, in violation of § 32-34-5 or 32-34-6;

5 (4) If convicted of a first violation of using a commercial motor vehicle in the
6 commission of any felony; or

7 (5) For refusing to submit to a chemical analysis for purposes of determining the amount
8 of alcohol in that person's blood while driving a commercial motor vehicle in
9 violation of § ~~32-23-11~~, 32-12A-43; or 32-12A-46.

10 If any of these violations or refusal occurred while transporting hazardous material required
11 to be placarded, the person is disqualified for a period of not less than three years.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

394J0073

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 1 - 01/21/2004

Introduced by: Senators Schoenbeck, Abdallah, Ham, Kelly, Moore, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Fryslie, Garnos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to provide for a Criminal Code Revision Commission and
2 to declare an emergency.

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 establish a
5 Criminal Code Revision Commission during the 2004 legislative interim. The commission shall
6 consist of fifteen members. Thirteen members shall be appointed by the Executive Board. Three
7 shall be state senators, no more than two of whom shall be members of the same party. Six shall
8 be state representatives, no more than four of whom shall be members of the same party. Two
9 shall be distinguished current members of the State Bar of South Dakota with extensive
10 experience as a state's attorney or criminal prosecutor. Two shall be distinguished current
11 members of the State Bar of South Dakota with extensive experience as a public defender,
12 court-appointed attorney for indigent defendants, or criminal defense attorney. No more than
13 three of the nonlegislator members of the commission, who are appointed by the Executive
14 Board, shall be from the same party. Before making the appointments of the nonlegislators, the



1 Executive Board shall solicit the advice and recommendations of the State Bar of South Dakota,
2 the South Dakota Trial Lawyers Association, the South Dakota States Attorney's Association,
3 and other organizations that may wish to participate in the appointment process.

4 Section 2. Two members of the commission shall be appointed by the Chief Justice of the
5 Supreme Court. Each shall be either a current or retired circuit court judge or a retired Supreme
6 Court Justice. Each shall have extensive experience in criminal law.

7 Section 3. The Criminal Code Revision Commission shall carefully examine the crimes, the
8 elements of crimes, and the punishment of crimes, with special reference to legislative revisions
9 made since the conclusion of the work of the previous Criminal Code Revision Commission,
10 to ensure that the elements of each crime are clearly and precisely described, that each crime is
11 necessary and appropriate to the maintenance of public order and a well regulated society, and
12 that the punishment prescribed for each crime is just and proportionate. The scope of authority
13 of the commission is not limited to Title 22, but specifically includes all drug offenses and
14 driving under the influence offenses. Moreover, the commission may, at its discretion, examine
15 any offense, whether inherently criminal, procedural, or administrative, if the offense is
16 punishable as a felony or misdemeanor, or by the imposition of any fine or civil penalty.

17 Section 4. The Criminal Code Revision Commission shall embody its recommendations for
18 amendment of the criminal code in draft legislation and submit its recommendations to the
19 Executive Board no later than the Executive Board's final interim meeting.

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

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0444

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 42** - 01/27/2004

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding railroad tax credits
2 and to provide a process for administrating the tax credits.

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

4 Section 1. That § 10-28-21.2 be amended to read as follows:

5 10-28-21.2. Any publicly operated railroad or railway corporation operating over rail lines
6 owned by the publicly operated railroad or railway corporation located within this state may
7 claim a credit against the tax levied on such rail lines for amounts that the railroad or railway
8 corporation has certified as having been expended in the replacement, improvement, and repair
9 of such rail lines. Only those expenses of a capital nature may be certified as an expense eligible
10 for a credit pursuant to this section. The certification required by this section shall be on forms
11 provided by the Department of Revenue and Regulation. The labor and material expenses
12 certified pursuant to this section shall be itemized separately by rail line and mile post locations.
13 The credit provided in this section shall be applied proportionally across the railroad's entire
14 mainline within this state. The credit shall be applied to tax liability over a three-year period in
15 an amount equal to thirty-three and one-third percent the first year following certification;



1 thirty-three and one-third percent of such an amount shall carry forward into the second year
2 following certification; and thirty-three and one-third percent shall carry forward into the third
3 year following certification. Each year's carryover shall be accumulated as a tax credit with other
4 years' annual tax credits. No credit may be given for the repair or replacement of railway line
5 necessitated by washout, fire, or train derailment. No credit may be given for that portion of a
6 project that is funded with state or federal grant funds or paid for by any third party. If any rail
7 line goes over ten million gross ton miles of revenue freight per mile annually in a calendar year,
8 the rail line may not receive a credit pursuant to this section in the following calendar year.

9 Section 2. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Expenses of a capital nature contained in § 10-28-21.2 are as defined in CFR 49 Parts 1200
12 through 1219 Subpart A Uniform Systems of Accounts for Railroad Companies, as amended
13 through January 1, 2004, for Class 1 railroads or as defined in accordance with generally
14 accepted accounting principles for regulated industries for Class 2 and Class 3 railroads.

15 Section 3. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Each year the railroad or railroad corporation requesting tax credits shall prepare a capital
18 improvement plan detailing the proposed mainline and secondary line capital improvement
19 projects including the project scope, estimated value, approximate scheduling of the projects,
20 and the current category of the line on the railroad's system diagram map as provided in 49 CFR
21 § 1152.10 as of January 1, 2004. The plan shall be presented to the Department of
22 Transportation by March first of each year for any capital improvement project for which a tax
23 credit will be requested.

24 Section 4. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The railroad shall annually notify the Department of Transportation of completion of any
3 capital project. However, if the cost of the capital project exceeds three hundred thousand
4 dollars, the railroad shall notify the department immediately upon completion. The department
5 may conduct a verification inspection of capital improvement project completion and may audit
6 the capital improvement project according to South Dakota Department of Transportation Audit
7 guidelines and the Federal-Aid Policy Guide 23 CFR Chapter 1, Subchapter B, Part 140,
8 Subpart 1, as amended through January 1, 2004, to determine project value. The department
9 shall report its findings to each county where the railroad has requested a tax credit. Only those
10 capital expenses that have been claimed on the railroad's certification and verified by the
11 department are eligible for a credit pursuant to § 10-28-21.2. Any railroad aggrieved by the
12 decision of the department concerning the eligibility of a claimed capital expenditure for the tax
13 credit authorized by § 10-28-21.2 is entitled to an administrative hearing conducted in
14 accordance with the provisions of chapter 1-26.

15 Section 5. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The State Railroad Board shall, in accordance with chapter 1-26, promulgate rules
18 establishing the form upon which a railroad shall submit verification information for capital
19 expenses being claimed as tax credits authorized by § 10-28-21.2, when the information is to
20 be submitted, and the manner in which the certification is submitted.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0328

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 43** - 02/07/2004

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

1 FOR AN ACT ENTITLED, An Act to authorize acquisition of utility corridors and to authorize
2 the use of such property to be regulated by administrative rule.

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

4 Section 1. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Department of Transportation may acquire by gift, devise, purchase, or condemnation,
7 an easement or fee interest in real estate, other than a right-of-way, for the purpose of providing
8 a suitable location for the relocation of utility lines and facilities displaced as a result of a
9 highway construction project. After all displaced utility lines and facilities have been
10 appropriately relocated, the department may allow the use of such property by additional utilities
11 under the terms and conditions established by the department. The South Dakota Transportation
12 Commission may provide, by rules promulgated pursuant to chapter 1-26, for the terms and
13 conditions for use of such property by utilities.

14 Section 2. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
15 follows:



1 No owner or operator of utility lines or facilities displaced as a result of a highway
2 construction project may be compelled to relocate those utility lines or facilities to either an
3 easement or a fee interest acquired pursuant to section 1 of this Act.

4 Section 3. That § 31-19-2 be amended to read as follows:

5 31-19-2. Before acquiring land or material ~~for rights-of-way and borrow pit, either by~~
6 ~~purchase or by~~ condemnation, the Department of Transportation shall, by resolution, declare the
7 necessity for acquiring the land or material and file a copy of the resolution with the office of
8 right-of-way in the department of Transportation.

9 Section 4. That § 31-19-3 be amended to read as follows:

10 31-19-3. If land or material ~~for right-of-way and borrow pit~~ is to be acquired by
11 condemnation, the Department of Transportation, on behalf of the state and in its name, shall
12 file a petition in the circuit court for the county in which the property to be taken or damaged
13 is situated, praying that the just compensation be made and such property be ascertained by a
14 jury and shall name the Department of Transportation as the department of the state government
15 desiring to take or damage ~~said~~ the property on behalf of the state as plaintiff. All persons
16 having an interest in or a lien upon the property affected by the proceedings shall be named as
17 defendants so far as they ~~shall~~ may be known at the time of the filing of ~~same~~ the petition. It
18 shall contain a description of the property to be taken or damaged and shall contain a copy of
19 the related resolution of necessity; that was passed by the Transportation Commission ~~in relation~~
20 ~~thereto~~. The purpose for which the property is to be taken or damaged shall be clearly set forth
21 in the petition. It ~~shall~~ is not ~~be~~ necessary to specify the interest or claim of the several
22 defendants in the land or property affected by the proceedings. ~~Said~~ The petition shall be signed
23 and verified in the manner and as provided by § 15-6-11 relating to the signing of pleadings in
24 the circuit courts.

1 Section 5. That § 31-19-19 be amended to read as follows:

2 31-19-19. Whenever any land ~~or lands~~, easement in ~~same~~ land or material is necessary for
3 right-of-way in order to make a safe or proper grade, for the relocating of utility facilities, or for
4 widening, changing, relocating, constructing, reconstructing, maintaining, or repairing any
5 portion of the state trunk highway, or ~~whenever~~ if it is necessary for providing cut slopes,
6 borrow pits, channel changes, or to afford unobstructed vision on ~~said~~ any state trunk ~~highways~~
7 highway and at any point of danger to public travel, for right-of-way and borrow pit, the State
8 of South Dakota, through and by its Department of Transportation, or ~~counties which have been~~
9 any county authorized by agreement to acquire on behalf of the state ~~of South Dakota by~~
10 ~~agreement~~, shall acquire and pay for the same out of state highway funds unless it is otherwise
11 agreed. The cost of ~~said~~ the land or material and expense of purchase or condemnation shall be
12 paid as part of the cost of the state trunk highway unless otherwise agreed.

13 Section 6. That § 31-19-20 be amended to read as follows:

14 31-19-20. Whenever any land or material, dirt, sand, or gravel is required for the
15 construction, reconstruction, maintaining, or repairing of any portion of the state trunk highway,
16 ~~which~~ or for the relocating of utility facilities, and if the land or material, dirt, sand, or gravel
17 lies outside the right-of-way of ~~said~~ the highway or adjacent borrow pits, ~~it shall be the duty of~~
18 the state ~~to~~ shall purchase or condemn ~~said~~ the land or material, dirt, sand, or gravel and pay for
19 the same out of the state highway fund. ~~Said~~ The land or material, dirt, sand, or gravel may be
20 acquired either by purchase or condemnation and any cost or expense of purchase or
21 condemnation shall be paid for in the same manner as material, dirt, sand, or gravel or land is
22 paid for. In case of condemnation, the proceedings provided for condemnation ~~of right-of-way~~
23 ~~and borrow pit~~ in §§ 31-19-1 to 31-19-19, inclusive, or the provisions of chapter 21-35 ~~shall be~~
24 are applicable and either proceeding may be used.

1 Section 7. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The acquiring of an easement or fee interest pursuant to section 1 of this Act may not be
4 admitted as evidence in any action under chapter 21-35 brought by any owner or operator of
5 utility lines or facilities displaced as a result of a highway construction project. Any easement
6 or fee interest acquired pursuant to section 1 of this Act may not serve as a basis for a finding
7 of fraud, bad faith, or abuse of discretion under § 21-35-10.1.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

565J0622

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 115 - 01/26/2004

Introduced by: Senators Kelly, Abdallah, Earley, Ham-Burr, Kooistra, and Olson (Ed) and
Representatives Williamson, Cutler, Glenski, Hennies, McCaulley, Murschel,
and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to prohibit the disruption of or interference with traffic
2 signal preemption systems and to provide a penalty therefor.

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

4 Section 1. No person may disrupt or interfere with the traffic signal preemption system
5 installed by any municipality, county, or other unit of local government for use by emergency
6 vehicles to improve traffic movement by temporarily controlling signalized intersections.

7 Any violation of this section is a Class 2 misdemeanor.

8 Section 2. The provisions of section 1 of this Act do not apply to any authorized emergency
9 response employee who is using the system pursuant to such employment at a time when an
10 emergency exists and there is a threat of immediate danger to life or property that reasonably
11 requires the use of the system in order to protect the public peace or safety. Moreover, the
12 provisions of section 1 of this Act do not apply to any person who is performing any authorized
13 inspection, maintenance, or repair work on the system.

