



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0214

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 28** - 02/20/2004

Introduced by: The Committee on State Affairs at the request of the Department of Revenue  
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the conditions where the state may enter into  
2 compacts with Indian tribes.

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

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

5 10-12A-4. The department may enter into tax collection agreements with any Indian tribe  
6 under the provisions of this chapter and chapter 1-24. These agreements may provide for the  
7 collection of any of the following state taxes and any tribal taxes imposed by a tribe that are  
8 identical to the following state taxes:

- 9 (1) The retail sales and service tax imposed by chapter 10-45;
- 10 (2) The use tax imposed by chapter 10-46;
- 11 (3) The contractors' excise tax imposed by chapter 10-46A;
- 12 (4) The alternate contractors' excise tax imposed by chapter 10-46B;
- 13 (5) The cigarette tax imposed by chapter 10-50;
- 14 (6) The motor vehicle excise tax imposed by chapter 32-5B; ~~or~~
- 15 (7) The fuel excise tax imposed by chapter 10-47B;



1       (8)   The wholesale tax on tobacco products imposed by chapter 10-50; or

2       (9)   The amusement device tax imposed by chapter 10-58.

3       The agreement may provide for the retention by the department of an agreed-upon

4   percentage of the gross revenue as an administrative fee.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

409J0138

## HOUSE ENGROSSED NO. **SB 85** - 02/23/2004

Introduced by: Senators Bogue, Albers, Kleven, and McCracken and Representatives Rhoden, LaRue, and Smidt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the approval of  
2 airports.

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

4 Section 1. That § 50-5-1 be amended to read as follows:

5 50-5-1. ~~All owners and operators of all airports, landing fields, air schools, and flying clubs~~  
6 ~~and the owners and operators of all air beacons and other air navigation facilities shall make~~  
7 ~~application~~ Any owner or operator of a public airport shall apply to the South Dakota  
8 Aeronautics Commission for its approval for such ~~airports, landing fields, air schools, flying~~  
9 ~~clubs, air beacons, and other air navigation facilities and the~~ public airport prior to its use. Any  
10 owner or operator of a private airport located within two miles of the nearest boundary of any  
11 approved public airport shall apply to the South Dakota Aeronautics Commission for approval  
12 for such private airport prior to its use. The commission shall immediately consider and pass  
13 upon such applications either approve or reject an application within sixty days of receipt of the  
14 completed application.

15 Section 2. That chapter 50-5 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 The approval requirements of § 50-5-1 do not apply to temporary airports, landing fields,  
3 or landing strips used only by aircraft while engaged in providing emergency medical services  
4 or other emergency services.

5 Section 3. That § 50-1-1 be amended by adding thereto two NEW SUBDIVISIONS to read  
6 as follows:

7 "Private airport," any airport, landing field, or landing strip that is open to and available for  
8 use only by the owner and the owner's invitees;

9 "Public airport," any airport, landing field, or landing strip, whether publicly or privately  
10 owned, that is open to and available for use by the flying public.

11 Section 4. That § 50-5-2 be repealed.

12 ~~50-5-2. All proposed airports, landing fields, air schools, flying clubs, air beacons, or other~~  
13 ~~air navigation facilities shall first be approved by the Aeronautics Commission before they, or~~  
14 ~~any of them, shall be so used or operated. A violation of this section is a Class 2 misdemeanor.~~

15 Section 5. That § 50-5-3 be amended to read as follows:

16 50-5-3. The Aeronautics Commission is hereby authorized to may issue a certificate of its  
17 approval ~~in each case under~~ pursuant to § 50-5-1 ~~or 50-5-2~~ and to ~~make~~ may set a reasonable  
18 charge therefor by rules ~~or regulations issued~~ promulgated pursuant to chapter 1-26.

19 Section 6. That § 50-5-4 be amended to read as follows:

20 50-5-4. It is a Class 2 misdemeanor to use or operate ~~an~~ a public airport, landing field, air  
21 ~~school, flying club, air beacon, or other air navigation facility~~ or a private airport located within  
22 two miles of the nearest boundary of an approved public airport without the prior approval of  
23 the Aeronautics Commission.

24 Section 7. That § 50-5-6 be amended to read as follows:

1        50-5-6. ~~In any case where~~ If the Aeronautics Commission rejects an application for  
2 permission to operate or establish an airport, ~~landing field, air school, flying club, air beacon,~~  
3 ~~or other air navigation facility, or in any case where~~ or if the commission ~~shall issue~~ issues any  
4 order requiring certain things to be done, ~~it~~ the commission shall set forth its reasons therefor  
5 and shall state the requirements to be met before such approval will be given or such order  
6 modified or changed.

7        Section 8. That § 50-5-9 be amended to read as follows:

8        50-5-9. The South Dakota Aeronautics Commission ~~shall at all times maintain on file in its~~  
9 ~~office a list of airport landing fields and landing strips which have been approved for public use~~  
10 ~~by aircraft setting forth the legal descriptions of the real property occupied~~ and any state, county,  
11 or municipal officer charged with the duty of enforcing this chapter, may inspect and examine,  
12 at reasonable hours, any premises, and any building and any other structure thereon, where any  
13 airport approved by the commission is operated.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

646J0671

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 99** - 02/20/2004

Introduced by: Senator Knudson and Representative McCaulley

1 FOR AN ACT ENTITLED, An Act to revise certain statutes governing trusts and powers of  
2 attorney.

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

4 Section 1. That chapter 59-7 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 All acts done by an agent pursuant to a durable power of attorney have the same effect and  
7 inure to the benefit of and bind the principal and the principal's successors in interest as if done  
8 by the principal. Unless the instrument states a time of termination, the authority of the agent  
9 is exercisable notwithstanding the lapse of time since the execution of the instrument.

10 Section 2. That chapter 59-6 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 A durable power of attorney that purports to be signed by the principal named in the durable  
13 power of attorney is presumed valid. Another person may rely on the presumption of validity  
14 unless the person has actual knowledge that the power was not validly executed or that the  
15 power was revoked.



1        Except as provided in this section, any person who refuses to accept the authority of the  
2 agent to exercise a power granted under the durable power of attorney is liable to the principal  
3 and to the principal's heirs, assigns, and the personal representative or successor in interest of  
4 the principal's estate in the same manner as the person would be liable had the person refused  
5 to accept the authority of the principal to act on the principal's own behalf. The person found  
6 liable for refusing to accept the authority of an agent is liable for damages and costs, including  
7 reasonable attorney's fees.

8        A person who refuses to accept the authority of an agent to exercise a power granted under  
9 a durable power of attorney is not liable pursuant to this section if:

- 10        (1)    The person has actual knowledge of the revocation of the durable power of attorney  
11                before the exercise of the power;
- 12        (2)    The duration of the durable power of attorney specified in the durable power of  
13                attorney has expired;
- 14        (3)    The person has actual knowledge of the death of the principal;
- 15        (4)    The person reasonably believes that the durable power of attorney is not valid under  
16                the law of this state;
- 17        (5)    The person reasonably believes that the durable power of attorney does not grant the  
18                agent authority to perform the transaction requested; or
- 19        (6)    The person reasonably believes that a course of conduct or refusal to act as proposed  
20                by the agent is contrary to the wishes of the principal as expressed to the person.

21        This section does not negate the liability that a person would have to the principal or the  
22 agent under another form of power of attorney, under the common law, or otherwise.

23        Section 3. That chapter 59-3 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 An agent may request, receive, and review any information regarding the principal's physical  
2 or mental health, including legal, medical, and hospital records, execute any release or other  
3 documents that may be required in order to obtain such information, and disclose such  
4 information to such persons, organizations, firms, or corporations as the agent shall deem  
5 appropriate.

6 Section 4. That chapter 51A-6A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 In addition to the powers granted to the director and the commission in §§ 51A-6A-35 to  
9 51A-6A-46, inclusive, the powers granted to the director and commission pursuant to §§ 51A-  
10 15-11 to 51A-15-44, inclusive, and 51A-2-25 to 51A-2-27, inclusive, may be utilized by the  
11 director and the commission with regard to trust companies. The powers granted by §§ 51A-15-  
12 11 to 51A-15-44, inclusive, and 51A-2-25 to 51A-2-27, inclusive, may be used by the director  
13 and the commission in connection with a trust company as a supplement to or as an independent  
14 alternative to the powers granted in §§ 51A-6A-35 to 51A-6A-46, inclusive.

15 Section 5. That chapter 51A-6A be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 The provisions of §§ 51A-6A-2 and 51A-6A-39 do not apply to the disclosure of  
18 information by the director or the commission in connection with the institution and prosecution  
19 of an action against a trust company under §§ 51A-15-11 to 51A-15-44, inclusive, or 51A-2-25  
20 to 51A-2-27, inclusive, or 51A-6A-35 to 51A-6A-46, inclusive. Disclosure of confidential  
21 information may be made only to formal governmental regulatory bodies which have a need for  
22 the confidential information.

23 Section 6. That § 55-3-39 be amended to read as follows:

24 55-3-39. A general law or a state jurisdiction provision stating that the laws of this state

1 govern is valid, effective, and conclusive for the trust if all of the following are true:

2 (1) Some or all of the trust assets are deposited in this state or physical evidence of such  
3 assets is held in this state and the trust is being administered by a qualified person;  
4 in this subdivision, deposited in this state, includes being held in a checking account,  
5 time deposit, certificate of deposit, brokerage account, trust company fiduciary  
6 account, or other similar account or deposit that is located in this state including  
7 South Dakota investments;

8 (2) A trustee is a qualified person who is designated as a trustee under the governing  
9 instrument, a successor trusteeship, or designated by a court having jurisdiction over  
10 the trust; and

11 (3) The administration, for example, physically maintaining trust records in this state and  
12 preparing or arranging for the preparation of, on an exclusive basis or a nonexclusive  
13 basis, an income tax return that must be filed by the trust, occurs wholly or partly in  
14 this state.

15 The State of South Dakota and its courts have jurisdiction over a trust created in a foreign  
16 jurisdiction if the administration of the trust meets the three requirements set forth in this  
17 section.

18 Nothing in this section may be construed to be the exclusive means of providing a valid  
19 effective and conclusive state jurisdiction provision.

20 Section 7. That § 55-15-6 be amended to read as follows:

21 55-15-6. The unitrust amount shall be determined as follows:

22 (1) For the first three accounting periods of the trust, the unitrust amount for a current  
23 valuation year of the trust shall be three percent, or such higher percentage specified  
24 by the terms of the governing instrument or by the election of the trustee, the

1 disinterested person, or the court, of the net fair market value of the assets held in the  
2 trust on the first business day of the current valuation year;

3 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a  
4 current valuation year of the trust shall be three percent, or such higher percentage  
5 specified by the terms of the governing instrument or by the election of the trustee,  
6 the disinterested person, or the court, of the average of the net fair market value of  
7 the assets held in the trust on the first business day of the current valuation year and  
8 the net fair market value of the assets held in the trust on the first business day of  
9 each prior valuation year, as defined in subdivision 55-15-1(10);

10 (3) The percentage that may be elected in determining the unitrust amount shall be a  
11 reasonable current return from the trust, taking into account the intentions of the  
12 trustor of the trust as expressed in the governing instrument, the needs of the  
13 beneficiaries, general economic conditions, projected current earnings and  
14 appreciation for the trust, and projected inflation and its impact on the trust.  
15 However, if such percentage is three percent or greater, or if no percentage is  
16 specified, then that percentage shall be three percent;

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

24 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount

1 on a daily basis;

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

8 (7) In determining the net fair market value of the assets held in trust, the determination  
9 may not include the value of any residential property or any tangible personal  
10 property that, as of the first business day of the current valuation year, one or more  
11 income beneficiaries of the trust have or had the right to occupy, or have or had the  
12 right to possess or control, other than in a capacity as trustee, and instead the right of  
13 occupancy or the right of possession or control shall be deemed to be the unitrust  
14 amount with respect to the residential property or the tangible personal property; or  
15 any asset specifically given to a beneficiary under the terms of the trust and the return  
16 on investment on that asset, which return on investment shall be distributed to the  
17 beneficiary.

18 Section 8. That § 55-3-35 be amended to read as follows:

19 55-3-35. If a party to the proceeding has the same interest as a person under disability, it is  
20 not necessary to serve the person under a disability. If there is no party to the proceeding who  
21 has the same interest as a person under disability, notice shall be served on that person's  
22 conservator, if a conservator has been appointed. If the person under disability is a minor and  
23 no conservator has been appointed, notice shall be served on a guardian of the minor if one has  
24 been appointed, or if no guardian has been appointed, then on the natural parents, or if there are

1 no natural parents alive, then upon the adoptive parent or parents of the minor. If there are no  
2 adoptive parents of a minor, then notice shall be served upon any person responsible for or who  
3 has assumed responsibility for the minor's care or custody. If the person under a disability is an  
4 adult and no conservator has been appointed, notice shall be served on an agent under a durable  
5 power of attorney, a guardian of the adult person, a trustee responsible for the management of  
6 all or a portion of the adult person's estate, or any person responsible for or who has assumed  
7 responsibility for the adult person's care or custody.

8 Section 9. That § 55-3-24 be amended to read as follows:

9 55-3-24. An irrevocable trust may be modified or terminated upon the consent of all of the  
10 beneficiaries if continuance of the trust on its existing terms is not necessary to carry out a  
11 material purpose. Whether or not continuance of the trust on its existing terms is necessary to  
12 carry out a material purpose, an irrevocable trust may be modified or terminated upon the  
13 consent of the trustor and all of the beneficiaries. Upon termination of a trust under this section,  
14 the trustee shall distribute the trust property in accordance with the trustor's probable intention  
15 or in any other manner as agreed by all the beneficiaries. The trustor's powers with respect to  
16 termination or modification may be exercised by an agent under a power of attorney only to the  
17 extent the power of attorney expressly so authorizes. A conservator may exercise the trustor's  
18 powers under this section only if approved by the court supervising the conservatorship. If the  
19 consent of a person under disability is required, such consent may be given by any person upon  
20 whom notice may be served pursuant to § 55-3-35.

21 Section 10. That § 21-22-9 be amended to read as follows:

22 21-22-9. Any trustee or beneficiary of any other trust may, if the trustee is a resident of this  
23 state or if any of the trust estate has its situs in this state, at any time petition the circuit court,  
24 the county where such petition is to be filed to be determined the same as in the case of a court

1 trust, to exercise supervision. Upon such petition being filed the court must fix a time and place  
2 for hearing thereon, notice to be given as provided by this chapter and upon such hearing shall  
3 enter an order assuming supervision unless good cause to the contrary is shown. Thereupon the  
4 trustee shall within thirty days, file the information required pursuant to § 21-22-3 by a trustee  
5 under a court trust, and at all times thereafter the court shall have the same powers as over a  
6 court trust. If the petition for court supervision includes the information required pursuant to  
7 § 21-22-3, the trustee or beneficiary may in the same petition request court action as to any  
8 matter relevant to the administration of the trust, including the termination of court supervision.  
9 Upon the hearing on the petition, the court shall enter an order assuming supervision unless  
10 good cause to the contrary is shown and further shall make such order or give such directions  
11 to the trustee as the court shall determine.

12 Section 11. That § 55-3-29 be amended to read as follows:

13 55-3-29. Without approval of court and except as otherwise provided by the terms of the  
14 trust, a trustee may combine two or more trusts into a single trust or divide a trust into two or  
15 more separate trusts, if the combination or division does not impair the rights of any of the  
16 beneficiaries or substantially affect the accomplishment of the trust purposes. On petition by a  
17 trustee or beneficiary, the court may affirm or prevent a proposed combination or division; and,  
18 if the terms of the trust instruments creating the trusts are inconsistent, the court shall resolve  
19 such inconsistencies in its order by establishing the terms of the trust that will survive the  
20 combination or division.

21 Section 12. That § 55-3-27 be amended to read as follows:

22 55-3-27. Except as otherwise provided by the terms of the trust, if the value of the trust  
23 property of a noncharitable trust is less than ~~thirty~~ fifty thousand dollars, the trustee may  
24 terminate the trust. On petition by a trustee or beneficiary, the court may modify or terminate

1 a noncharitable trust or appoint a new trustee if it determines that the value of the trust property  
2 is insufficient to justify the cost of administration involved. Upon termination of a trust under  
3 this section, the trustee shall distribute the trust property in accordance with the trustor's  
4 probable intention. The existence of spendthrift or similar protective provisions in a trust does  
5 not make this section inapplicable. The court, when considering the termination of a trust  
6 containing spendthrift or similar protective provisions, shall consider the feasibility of  
7 appointing a new trustee to continue the trust.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

862J0338

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 108** - 02/20/2004

Introduced by: Senators Schoenbeck, de Hueck, and Koskan and Representatives Garnos and Juhnke

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions concerning the residency  
2 requirements for state's attorneys in certain small counties.

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

4 Section 1. That chapter 7-16 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 In any county with a population of less than five thousand persons, no state's attorney is  
7 disqualified from holding office for failure to be a resident of that county if the state's attorney  
8 is a resident of a county which is contiguous to the county in which the state's attorney holds  
9 such office.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

456J0185

## HOUSE ENGROSSED NO. **SB 123** - 02/23/2004

Introduced by: Senators de Hueck, Brown, Kooistra, and Symens and Representatives  
Pederson (Gordon), Bartling, Frost, Hennies, Konold, and Rounds

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the county wheel tax.

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

3 Section 1. That § 32-5A-6 be repealed.

4 ~~— 32-5A-6. If a county imposes a wheel tax pursuant to § 32-5A-1 in excess of two dollars per~~  
5 ~~wheel, all of the revenue from the tax that is in excess of two dollars per wheel shall be used to~~  
6 ~~replace property taxes the county imposes for highway purposes.~~

7 Section 2. If a county imposes a wheel tax pursuant to § 32-5A-1 in excess of two dollars  
8 per wheel, the ordinance shall be published within ten days of the decision by the board of  
9 county commissioners. Notwithstanding the provisions of § 7-18A-5, publication shall be made  
10 at least twice in the legal newspapers designated by the board pursuant to § 7-18-3, with no  
11 fewer than five days between publication dates, before the increase takes effect. The  
12 announcement shall consist of a reproduction of the ordinance, a statement of the right to refer  
13 the decision of the board to a vote of the people as provided in chapter 7-18A, and notification  
14 that a referendum petition form, prepared by the county and ready for circulation, for such  
15 ordinance may be obtained from the office of the county auditor.



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

490J0471

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 154 - 02/20/2004**

Introduced by: Senators Knudson and de Hueck and Representatives Madsen, Cutler,  
Deadrick (Thomas), and Engels

1 FOR AN ACT ENTITLED, An Act to revise certain filing fees collected by the secretary of  
2 state.

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

4 Section 1. That § 47-34-54 be amended to read as follows:

5 47-34-54. The secretary of state shall charge and collect ~~for~~:

6 (1) ~~Filing~~ For filing the original articles of organization and issuing certificates of  
7 organization, in the case of a domestic limited liability company ~~or filing, a filing fee~~  
8 of one hundred twenty-five dollars. For filing, registering, and issuing a certificate  
9 of authority in the case of a foreign liability company; if the total agreed  
10 contributions of the limited liability company are, a filing fee of five hundred fifty  
11 dollars;

12	<del>—————</del> \$25,000 or less	\$100
13	<del>—————</del> Over \$25,000 and not exceeding 100,000	—125
14	<del>—————</del> Over \$100,000 and not exceeding 500,000	—200
15	<del>—————</del> Over \$500,000 and not exceeding 1,000,000	—300



1	<del>Over \$1,000,000 and not exceeding 1,500,000</del>	<del>—400</del>
2	<del>Over \$1,500,000 and not exceeding 2,000,000</del>	<del>—500</del>
3	<del>Over \$2,000,000 and not exceeding 2,500,000</del>	<del>—600</del>
4	<del>Over \$2,500,000 and not exceeding 3,000,000</del>	<del>—700</del>
5	<del>Over \$3,000,000 and not exceeding 3,500,000</del>	<del>—800</del>
6	<del>Over \$3,500,000 and not exceeding 4,000,000</del>	<del>—900</del>
7	<del>Over \$4,000,000 and not exceeding 4,500,000</del>	<del>1,000</del>
8	<del>Over \$4,500,000 and not exceeding 5,000,000</del>	<del>1,100</del>
9	<del>For each additional \$500,000, \$250 in addition to \$1,100.</del>	

10       (2) For amending the articles of organization in the case of a domestic limited liability  
 11           company ~~or, a filing fee of fifty dollars. For amending the registration in the case of~~  
 12           a foreign limited liability company, a filing fee of ~~fifty dollars; together with the~~  
 13           appropriate fee set out in subdivision (1) of this section if the amendment is to  
 14           increase the amount of capital two hundred dollars;

15       (3) For filing articles of dissolution, issuing a certificate of dissolution, and canceling the  
 16           certificate of organization, ten dollars;

17       (4) For filing a statement of change of address of registered office or change of registered  
 18           agent, or both, ten dollars;

19       (5) For filing articles of merger or consolidation, fifty dollars;

20       (6) An annual tax of fifty dollars, due and payable January second of each year. This tax  
 21           is delinquent if not paid by February first and a penalty of fifty dollars shall also be  
 22           assessed.

23       Section 2. That § 47-34A-212 be amended to read as follows:

24       47-34A-212. The secretary of state shall charge and collect for:

25       (a) Filing the first annual report ~~if the total agreed contribution of the limited liability~~

1            ~~company are: in the case of a domestic limited liability company, a filing fee of one~~  
 2            ~~hundred twenty-five dollars. Filing the first annual report in the case of a foreign~~  
 3            ~~limited liability company, a filing fee of five hundred fifty dollars;~~

4	<del>—————</del> \$25,000 or less	\$ 100
5	<del>—————</del> Over \$25,000 and not exceeding 100,000	—125
6	<del>—————</del> Over \$100,000 and not exceeding 500,000	—200
7	<del>—————</del> Over \$500,000 and not exceeding 1,000,000	—300
8	<del>—————</del> Over \$1,000,000 and not exceeding 1,500,000	—400
9	<del>—————</del> Over \$1,500,000 and not exceeding 2,000,000	—500
10	<del>—————</del> Over \$2,000,000 and not exceeding 2,500,000	—600
11	<del>—————</del> Over \$2,500,000 and not exceeding 3,000,000	—700
12	<del>—————</del> Over \$3,000,000 and not exceeding 3,500,000	—800
13	<del>—————</del> Over \$3,500,000 and not exceeding 4,000,000	—900
14	<del>—————</del> Over \$4,000,000 and not exceeding 4,500,000	1,000
15	<del>—————</del> Over \$4,500,000 and not exceeding 5,000,000	1,100
16	<del>—————</del> For each additional \$500,000, \$250 in addition to \$1,100.	

17 ~~—————~~ The maximum amount charged under this subsection together with any subsequent  
 18            ~~payments under subsection (b) may not exceed sixteen thousand dollars. The filing~~  
 19            ~~fee required pursuant to this subsection is not applicable if the limited liability~~  
 20            ~~company has previously paid the fee required pursuant to subdivision 47-34-54(1).~~

21            (b) ~~Filing any subsequent annual report that reflects additional contribution in excess of~~  
 22            ~~those stated in the last prior report, any additional fee necessary to make the~~  
 23            ~~cumulative fee match the cumulative agreed contributions as provided in subsection~~  
 24            ~~(a); above the agreed contributions as set forth in the last previous annual report~~  
 25            ~~consistent with subsection (a).~~

26            (c) A reporting fee of fifty dollars, due and payable with the filing of all annual report,

1 after the first annual report required in § 47-34A-211(c).

2 Section 3. That § 47-34A-1206 be amended to read as follows:

3 47-34A-1206. The secretary of state may charge the following fees:

4 (a) For amending or restating the articles of organization in the case of a domestic  
5 limited liability company ~~or, a filing fee of fifty dollars.~~ For amending the registration  
6 in the case of a foreign limited liability company, a filing fee of fifty five hundred  
7 fifty dollars;

8 (b) For filing articles of termination, ten dollars;

9 (c) For filing articles of merger, fifty dollars;

10 (d) For filing a statement of dissociation, ten dollars;

11 (e) For filing an application to reserve a name, twenty dollars;

12 (f) For issuing a certificate of existence, fifteen dollars;

13 (g) For filing an application for registration of name, one dollar for each month, or  
14 fraction thereof, between the date of filing such application and December thirty-first  
15 of the calendar year in which such application is filed;

16 (h) For filing an annual renewal of registration, a limited liability company which has in  
17 effect a registration of its name, may renew such registration from year to year by  
18 annually filing an application for renewal setting forth the facts required to be set  
19 forth in an original application for registration and a certificate of good standing as  
20 required for the original registration and by paying a fee of ten dollars. A renewal  
21 application may be filed between the first day of October and the thirty-first day of  
22 December in each year; and shall extend the registration for the following year;

23 (i) For acting as agent for service of process the secretary of state shall charge and  
24 collect at the time of such service twenty-five dollars which may be recoverable as

1 taxable costs by the party to the suit or action causing the service to be made if the  
2 party prevails in the suit or action.

3 Each limited liability company, domestic or foreign, that fails or refused to file its annual  
4 report for any year within the time prescribed is subject to a penalty of fifty dollars to be  
5 assessed by the secretary of state.

6 Section 4. That § 47-9-7 be amended to read as follows:

7 47-9-7. The secretary of state shall charge and collect for:

8 (1) Filing articles of incorporation and issuing a certificate of incorporation ~~or filing, a~~  
9 filing fee of one hundred twenty-five dollars. Filing an application of a foreign  
10 corporation for a certificate of authority to transact business in this state and issuing  
11 the certificate, five hundred fifty dollars;

12	<del>Authorized capital stock of \$25,000 or less</del>	<del>\$ 100</del>
13	<del>Over \$25,000 and not exceeding 100,000</del>	<del>-125</del>
14	<del>Over \$100,000 and not exceeding 500,000</del>	<del>-200</del>
15	<del>Over \$500,000 and not exceeding 1,000,000</del>	<del>-300</del>
16	<del>Over \$1,000,000 and not exceeding 1,500,000</del>	<del>-400</del>
17	<del>Over \$1,500,000 and not exceeding 2,000,000</del>	<del>-500</del>
18	<del>Over \$2,000,000 and not exceeding 2,500,000</del>	<del>-600</del>
19	<del>Over \$2,500,000 and not exceeding 3,000,000</del>	<del>-700</del>
20	<del>Over \$3,000,000 and not exceeding 3,500,000</del>	<del>-800</del>
21	<del>Over \$3,500,000 and not exceeding 4,000,000</del>	<del>-900</del>
22	<del>Over \$4,000,000 and not exceeding 4,500,000</del>	<del>-1,000</del>
23	<del>Over \$4,500,000 and not exceeding 5,000,000</del>	<del>-1,100</del>
24	<del>For each additional \$500,000, \$250 in addition to \$1,100.</del>	

25 ~~For purposes only of computing fees under this section, the dollar value of each~~  
26 ~~authorized share having a par value shall be equal to par value and the value of each~~

- 1 ~~authorized share having no par value shall be equal to one hundred dollars per share.~~  
2 ~~The maximum amount charged under this subdivision may not exceed sixteen~~  
3 ~~thousand dollars;~~
- 4 (2) Filing articles of amendment and issuing a certificate of amendment, fifty dollars;  
5 (3) Filing restated articles of incorporation, fifty dollars;  
6 (4) Filing articles of merger or consolidation and issuing a certificate of merger or  
7 consolidation, fifty dollars;  
8 (5) Filing an application to reserve a corporate name, twenty dollars;  
9 (6) Filing a notice of transfer of a reserved corporate name, ten dollars;  
10 (7) Filing a statement of change of address of registered office or change of registered  
11 agent, or both, ten dollars;  
12 (8) Filing a statement of the establishment of a series of shares, fifty dollars;  
13 (9) Filing a statement of cancellation of shares, fifty dollars;  
14 (10) Filing a statement of reduction of stated capital, fifty dollars;  
15 (11) Filing a statement of revocation of voluntary dissolution proceedings, ten dollars;  
16 (12) Filing articles of dissolution, ten dollars;  
17 (13) Filing an application of a foreign corporation for an amended certificate of authority  
18 to transact business in this state and issuing an amended certificate of authority, ~~fifty~~  
19 two hundred dollars;  
20 (14) Filing a copy of an amendment to the articles of incorporation of a foreign  
21 corporation holding a certificate of authority to transact business in this state, ~~fifty~~  
22 two hundred dollars;  
23 (15) Filing a copy of articles of merger of a foreign corporation holding a certificate of  
24 authority to transact business in this state, fifty dollars;

- 1 (16) Filing an application for withdrawal of a foreign corporation and issuing a certificate  
2 of withdrawal, ten dollars;
- 3 (17) Filing any other statement or report except an annual report, of a domestic or foreign  
4 corporation, ten dollars;
- 5 (18) Filing by a domestic corporation of articles of amendment, restated articles of  
6 incorporation, or articles of merger or consolidation in which the surviving  
7 corporation is a domestic corporation, which provides authority to increase the  
8 number of authorized shares of such corporation, in addition to the other fees  
9 imposed by this section, an additional fee shall be charged as shall make, together  
10 with the fee paid at the time of the incorporation, a total sum equal to the fee which  
11 would be required under this section in case the corporation had been incorporated  
12 for such total increased capitalization;
- 13 (19) Filing by a foreign corporation of articles of amendment or articles of merger when  
14 the surviving or new corporation is a foreign corporation, which articles provide  
15 authority to increase the number of authorized shares of such foreign corporation, in  
16 addition to the other fees imposed by this section, an additional fee shall be charged  
17 as shall make, together with the fee paid at the time of authorization based on the fee  
18 schedule in subdivision (1) of this section, a total sum equal to the fee which would  
19 be required under this section in the case the corporation had been authorized for  
20 such total increased capitalization;
- 21 (20) All articles of amendment or articles of merger if the surviving or new corporation  
22 is a foreign corporation shall be filed with the secretary of state within thirty days  
23 after they have been filed with the secretary of state or other proper officer of the  
24 state wherein the corporation is organized. In case of failure to so file within the time

1 specified in this subdivision, the corporation shall pay to the secretary of state on the  
2 filing of such articles of amendment or articles of merger a penalty of twenty-five  
3 dollars;

4 (21) Filing an annual report of a domestic or foreign corporation, thirty dollars;

5 (22) Each corporation, domestic or foreign, that fails or refuses to file its annual report for  
6 any year within the time prescribed by this chapter is subject to a penalty of fifty  
7 dollars to be assessed by the secretary of state;

8 (23) Issuing a certificate of existence, fifteen dollars;

9 (24) Filing articles of correction, twenty dollars.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

508J0114

## HOUSE ENGROSSED NO. **SB 185** - 02/23/2004

Introduced by: Senators Schoenbeck, Brown, de Hueck, and Vitter and Representatives O'Brien, Cutler, Deadrick (Thomas), McCaulley, and Michels

1 FOR AN ACT ENTITLED, An Act to authorize counties to employ attorneys with specialized  
2 expertise and to validate prior actions in that regard.

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

4 Section 1. That chapter 7-16 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding any other provision of this chapter, a board of county commissioners may,  
7 if authorized by resolution duly entered upon its minutes, contract with an attorney admitted or  
8 licensed in the state for legal services in any civil matter in which specialized expertise is  
9 required. The attorney may act only in those matters specifically delegated by the board of  
10 county commissioners in writing at the time of appointment. The board of county  
11 commissioners shall, by resolution duly entered upon its minutes, enter into a contract with the  
12 attorney as an independent contractor pursuant to this section. The contract for an attorney  
13 pursuant to this section may not reduce the salary of the state's attorney or any duly appointed  
14 deputy and may not reduce the budget of the office of the state's attorney.

15 Section 2. The board of county commissioners may, if authorized by resolution duly entered



1 upon its minutes, employ its own state's attorney for legal services as described in section 1 of  
2 this Act. Notwithstanding § 7-16-23, the state's attorney may be compensated pursuant to the  
3 resolution described in section 1 of this Act in addition to the compensation of the state's  
4 attorney for the performance of other public duties.

5 Section 3. That § 7-16-23 be amended to read as follows:

6 7-16-23. Other than fees for child support enforcement services made upon the request of  
7 the Department of Social Services to a state's attorney under a cooperative agreement with the  
8 board of county commissioners, fees payable upon request of the Department of Social Services  
9 under a cooperative agreement with the board of county commissioners under the Violence  
10 Against Women Act, 42 USC 3796gg et seq. as of January 1, 1997, ~~and~~ fees payable under  
11 contract for representation of the county or its officers in civil cases and administrative  
12 proceedings outside the county pursuant to § 7-16-6, and fees payable under contract for  
13 specialized legal services pursuant to section 1 of this Act, a board of county commissioners  
14 may not give or pay any fees or costs to a state's attorney as part of a salary or in addition to a  
15 salary. However, each board shall participate in the costs of the prosecution and enforcement  
16 by the state's attorney of support obligations against any responsible parent, whether of a civil  
17 or criminal nature, on a fee for service basis with the Department of Social Services. The fee  
18 is paid to the state's attorney in addition to any other compensation of the state's attorney for the  
19 performance of other public duties. A full-time state's attorney, as defined by § 7-16-19, is not  
20 entitled to receive the fees payable for child support enforcement services or services under the  
21 Violence Against Women Act authorized by this section, or fees payable under contract for  
22 specialized legal services pursuant to section 1 of this Act, nor is a full-time state's attorney  
23 entitled to extra compensation for representation of the county or its officers in civil cases and  
24 administrative proceedings outside the county pursuant to § 7-16-6.

1       Section 4. That chapter 7-16 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Any contracts for legal services made by a board of county commissioners prior to July 1,  
4 2004, are hereby validated, legalized, and cured, notwithstanding any errors, omissions, or  
5 informalities.