

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

659L0619

HOUSE BILL NO. 1254

Introduced by: Representatives Garnos, Bradford, Elliott, and Hennies and Senator Bartling

1 FOR AN ACT ENTITLED, An Act to create the investment in South Dakota's future program
2 and to make an appropriation therefor.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Account," an account established as prescribed in this Act;

6 (2) "Contribution," any payment directly allocated to an account for the benefit of a
7 designated beneficiary;

8 (3) "Contributor," any parent or legal guardian of a designated beneficiary making a
9 contribution to an account;

10 (4) "Council," the South Dakota Investment Council;

11 (5) "Designated beneficiary," the individual designated at the time the account is
12 established as the individual whose postsecondary education expenses are expected
13 to be paid from the account;

14 (6) "Eligible education institution," any accredited institution of higher education,
15 including a university, college, or technical school, located within the state;

16 (7) "Financial institution," any bank, commercial bank, national bank, savings bank,



1 savings and loan association, credit union, an insurance company, brokerage firm, or
2 other similar entity that is authorized to do business in this state;

3 (8) "Program," the investment in South Dakota's future program established pursuant to
4 this Act; and

5 (9) "Qualified postsecondary education expenses," tuition, fees, books, supplies, and
6 other equipment required for enrollment or attendance and room and board of a
7 designated beneficiary at an eligible education institution.

8 Section 2. There is hereby created the investment in South Dakota's future program which
9 shall be developed and implemented by the South Dakota Investment Council pursuant to this
10 Act. The program shall operate through the use of accounts. An account may be established by
11 any qualifying parent or legal guardian who desires to save to pay the qualified higher education
12 expenses of a child.

13 Section 3. To be eligible to establish an account, a person shall:

14 (1) Be a South Dakota resident;

15 (2) Be the parent or legal guardian of a child who is less than six months of age and who
16 will be the designated beneficiary on the account; and

17 (3) Have countable income at or below the federal poverty level as updated annually by
18 the United States Department of Health and Human Services and published in the
19 Federal Register.

20 Section 4. To apply to establish an account, an eligible parent or legal guardian shall
21 complete an application in the form prescribed by the council. The application shall include the
22 name, address, and social security number of both the contributor and the designated beneficiary
23 along with any other information that the council may require.

24 Section 5. In addition to meeting the eligibility requirements in section 3 of this Act, a

1 person establishing an account shall contribute a sum of at least five hundred dollars into the
2 account. The contributor may contribute the money at any time until the designated beneficiary
3 reaches eighteen years of age. The funds contributed by a contributor to an account shall be
4 matched by the state up to a maximum of five hundred dollars. The state's portion of the money
5 shall be deposited in the account at the time the account is established. Any contributions that
6 a contributor makes to an account in excess of five hundred dollars are strictly voluntary, and
7 those funds are not matched by the state. Contributions to accounts may be made only in cash.

8 Section 6. No contributor or designated beneficiary of any account may direct the investment
9 of any contributions to an account or earnings from the account. The council may, however,
10 offer participants a choice of several investment options.

11 Section 7. The council may implement the program through the use of one or more financial
12 institutions to act as the depositories and managers. Under the program, a person may establish
13 an account through the program at a depository. The council may solicit proposals from
14 financial institutions to act as the depositories and managers of the program. Financial
15 institutions must describe the financial instruments that will be held in accounts. Any program
16 depositories and managers selected by the council shall be selected from among bidding
17 financial institutions that demonstrate the most advantageous combination of the following
18 factors:

- 19 (1) Financial stability and integrity;
- 20 (2) The safety of the investment instruments being offered, taking into account any
21 insurance provided with respect to these instruments;
- 22 (3) The ability of the financial institutions directly or through a subcontract, to satisfy
23 record-keeping and reporting requirements; and
- 24 (4) The financial institution's plan for promoting the program and the investment it is

1 willing to make to promote the program.

2 Section 8. The council shall enter into a contract with any financial institution selected to
3 serve as a program manager and depository for the program. The council may select more than
4 one financial institution if the council concludes that it is in the best interest of the designated
5 beneficiaries and will not interfere with the promotion of the program.

6 Section 9. Any financial institution selected to serve as a program manager shall:

- 7 (1) Take all action required to keep the program in compliance with the requirements of
8 this Act, the rules promulgated by the council pursuant to chapter 1-26, and any
9 contract with the council to manage the program;
- 10 (2) Keep adequate records of each account, and keep each account segregated from each
11 other account;
- 12 (3) Prepare reports detailing any distributions made from any account to the account
13 contributor or designated beneficiary and report to the Internal Revenue Service and
14 to the account contributor or beneficiary;
- 15 (4) Provide statements to each account contributor at least once each year within thirty
16 days after the twelve-month period to which they relate identifying any contributions
17 made during the period, the value of the account as of the end of the period, any
18 distributions made during the period, and other matters that the council requires be
19 reported to the account contributor; and
- 20 (5) Prepare all statements and information returns relating to accounts as required by
21 federal or state tax law.

22 Section 10. The designated beneficiary of a program account may withdraw funds from the
23 account if the contributor has made the required contribution pursuant to section 5 of this Act,
24 and if the beneficiary is:

- 1 (1) Less than twenty-five years of age;
- 2 (2) A high school graduate; and
- 3 (3) Currently enrolled at an eligible education institution.

4 Section 11. No funds withdrawn from an account by a designated beneficiary may be used
5 for any purpose other than for qualified postsecondary education expenses.

6 Section 12. An account contributor may withdraw funds from an account as authorized by
7 the council. However, no account contributor may withdraw funds from a program account
8 which are in excess of the contributor's total contribution plus any interest that contribution has
9 earned up to the time of the withdrawal.

10 Section 13. Once the designated beneficiary of an account reaches the age of twenty-five, the
11 beneficiary is no longer entitled to benefit from the account. Therefore, any funds remaining in
12 an account at that time, after the account contributor has received any funds to which the
13 contributor is entitled, shall be deposited in the investment in South Dakota's future program
14 fund to provide matching funds for future accounts.

15 Section 14. The council may promulgate rules pursuant to chapter 1-26 to establish
16 procedures to determine program eligibility, conduct the application process, accept
17 contributions, select and oversee a program manager, maintain adequate records, administer the
18 program fund, and to develop guidelines for withdrawals and other account transactions.

19 Section 15. There is hereby appropriated from the state general fund, after the transfer of
20 earnings from the education enhancement trust fund created in Article XII, Section 6 of the South
21 Dakota Constitution, pursuant to § 4-5-29.2, the sum of one million five hundred thousand
22 dollars (\$1,500,000), or so much thereof as may be necessary, to the investment in South
23 Dakota's future program fund which is hereby created in the state treasury and administered by
24 the state investment officer for providing matching funds for program accounts.

1 Section 16. The state treasurer shall approve vouchers and the state auditor shall draw
2 warrants to pay expenditures authorized by this Act.