



# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

709L0438

## HOUSE ENGROSSED NO. **HCR 1002** - 01/20/2005

Introduced by: Representatives Hanks, Brunner, Buckingham, Davis, Faehn, Hackl, Howie, Jensen, Kraus, Krebs, McCoy, McLaughlin, Nelson, Rave, Rhoden, Sebert, and Van Etten and Senators Duniphan, McCracken, and McNenny

1 A CONCURRENT RESOLUTION, Expressing legislative support for the preservation of the  
2 words, under God, in the pledge of allegiance.

3 WHEREAS, the first amendment to the United States Constitution, which guarantees  
4 religious freedom to all Americans, is the literal keystone of our nation's political edifice; and

5 WHEREAS, the just and proper convictions of the Founding Fathers were not limited to a  
6 perpetual prohibition against the establishment of any one religion, but were predicated upon  
7 a fervent desire to foster an abiding spirit of tolerance not only for all religions, but for all  
8 religious philosophies; and

9 WHEREAS, much of the contentious recent first amendment litigation has been premised  
10 on the mistaken theory that the first amendment was designed to establish an areligious or even  
11 an antireligious context for religious worship in America instead of an America deeply  
12 committed to the respectful toleration of all religious consciences:

13 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eightieth  
14 Legislature of the State of South Dakota, the Senate concurring therein, that the Legislature  
15 deplores all litigation motivated by any misguided determination to substitute restrictive



1 minority viewpoints for traditional American religious tolerance; and

2 BE IT FURTHER RESOLVED, that the Legislature supports the retention of all traditional,

3 nondenominational references to God or the concept of divinity as incorporated in the national

4 pledge of allegiance, the national motto, many state mottos, and various oaths of office and

5 similar legal formulations.

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

717L0057

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 1 - 01/19/2005**

Introduced by: Senators Peterson (Jim), Dempster, Greenfield, Hundstad, Kloucek, Knudson, and Lintz and Representatives Hargens, Deadrick, Fryslie, Murschel, Rhoden, and Weems at the request of the Interim Committee on Property Assessment

1 FOR AN ACT ENTITLED, An Act to revise the method used to determine the capacity of land  
2 to produce agricultural products.

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

4 Section 1. That § 10-6-33.2 be amended to read as follows:

5 10-6-33.2. ~~Capacity~~ The capacity of agricultural land ~~in agricultural use~~ to produce  
6 agricultural products shall be based on average yields under natural conditions; ~~in the case of~~  
7 for land producing crops or plants; and on the average "acres per animal unit," ~~in the case of for~~  
8 grazing land; ~~said.~~ The average shall affect each operating unit and shall be based on the  
9 ten-year period immediately preceding the tax year in issue. In determining ~~such~~ the capacity  
10 to produce, the county director of equalization ~~and/or~~ and the county board of equalization ~~must~~  
11 ~~take into consideration~~ shall consider yields, ~~and/or~~ the extent to which the land is able to be  
12 tilled or is nontillable based upon soil type, terrain, topographical, and surface conditions, and  
13 animal unit carrying capacity, as determined by the ~~soil conservation service, the agricultural~~  
14 ~~stabilization and conservation service~~ natural resources conservation service, farm credit system,



- 1 farm service agency, the extension service, ~~federal land bank~~ and private lending agencies
- 2 dealing with land production capacities.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0316      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. SB 42 - 01/19/2005**

Introduced by: The Committee on State Affairs at the request of the Department of Game,  
Fish and Parks

1    FOR AN ACT ENTITLED, An Act to revise the areas where the Game, Fish and Parks  
2        Commission may require a park license.

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

4        Section 1. That § 41-17-13 be amended to read as follows:

5        41-17-13. A park license may be required to permit a motor vehicle and the occupants  
6    entrance to any state park (except Bear Butte when used by persons participating in religious  
7    activities) and to any of the following state recreation areas or state lakeside use areas: Lake  
8    Poinsett; the Yankton unit, the Midway unit, and the Gavins Point unit of Lewis and Clark Lake;  
9    Sandy Shore; Farm Island; Mina Lake; Richmond Lake; Lake Louise; Pickerel Lake; Angostura;  
10   Lake Vermillion; Shadehill; Llewellyn Johns; Burke Lake; Lake Cochrane; West Whitlock;  
11   Swan Creek; West Bend; Snake Creek; Walker's Point; Platte Creek; Lake Alvin; Pelican Lake;  
12   Bush's Landing; Little Bend; Lake Hiddenwood; East Whitlock; Sutton Bay; Dodge Draw; Lake  
13   Thompson; Indian Creek; Downstream (below Oahe Dam); North Point; American Creek;  
14   Randall Creek; Chief White Crane; Pierson Ranch; Spring/Cow Creek; Okobojo Point; Walth  
15   Bay; Spillway (Fort Randall Dam); Pease Creek; North Wheeler; Whetstone Bay; East Shore;



1 Peoria Flats; West Shore; West Chamberlain; South Shore; Tailrace (Fort Randall Dam);  
2 Revheim Park; Springfield; Buryanek; West Pollock; Bob's Landing; Rocky Point; and Big  
3 Sioux. The Game, Fish and Parks Commission shall, by rules promulgated pursuant to chapter  
4 1-26, set annual and daily park entrance fees. The Game, Fish and Parks Commission shall, by  
5 rules promulgated pursuant to chapter 1-26, establish a system by which owners of two or more  
6 vehicles may purchase an additional license each year for each vehicle registered to the same  
7 owner for one-half the price of the annual license. All fees collected pursuant to this section  
8 shall be deposited in the parks and recreation fund established in § 41-17-21.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0360

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 45** - 01/19/2005

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

1 FOR AN ACT ENTITLED, An Act to authorize the Bureau of Administration to donate the  
2 former Governor's residence for a public purpose and to declare an emergency.

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

4 Section 1. Notwithstanding any other provisions of state law, the Bureau of Administration  
5 is authorized to donate the former Governor's residence, which was constructed as a Works  
6 Progress Administration project beginning in 1936 and removed from the site of 119 North  
7 Washington in Pierre, South Dakota, in November of 2003, to a public or private entity in South  
8 Dakota to be used for a public purpose approved by a committee to be appointed by the  
9 Governor. No state moneys may be expended for the removal of this building or for the public  
10 purpose for which it is removed.

11 Section 2. Whereas, this Act is necessary for the support of the state government and its  
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
13 full force and effect from and after its passage and approval.



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0245

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 50** - 01/20/2005

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

1 FOR AN ACT ENTITLED, An Act to remove certain references regarding conversion from the  
2 requirements for continuation of group health coverage.

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

4 Section 1. That § 58-18-7 be amended to read as follows:

5 58-18-7. Any group health policy which contains provisions for the payment by the insurer  
6 of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services  
7 shall provide for the continuation ~~or conversion~~ of benefit provisions, or any part or parts  
8 thereof, without evidence of insurability. ~~Sections~~ The provisions of §§ 58-18-7.4 to 58-18-7.15,  
9 inclusive, apply to employers that have fewer than twenty employees employed.

10 Section 2. That § 58-18C-3 be amended to read as follows:

11 58-18C-3. Continuation ~~and conversion shall only be~~ is only available to an employee who  
12 has been continuously insured under the group policy and for similar benefits under any group  
13 policy which it replaced during the entire six-month period ending with such termination.

14 Section 3. That § 58-18C-5 be amended to read as follows:

15 58-18C-5. Any employee may exercise the right to continuation ~~or conversion~~ within thirty



1 days of receipt of due notice of termination of coverage of the group and upon payment of  
2 premiums from the date of termination.

3 Section 4. That § 58-18C-7 be amended to read as follows:

4 58-18C-7. No insurer may be required to offer or renew a continuation ~~or conversion~~ policy  
5 covering any person if:

6 (1) The person is covered for similar benefits by another individual or group policy;

7 (2) Similar benefits are provided for or available to such person, by reason of any state  
8 or federal law;

9 (3) The benefits under sources of the kind referred to in subdivision (1) for such person  
10 or benefits provided or available under sources of the kind referred to in subdivision

11 (2) for such person, together with the continued ~~or converted~~ policy's benefits, would  
12 result in overinsurance according to the insurer's standards for overinsurance;

13 (4) There has been fraud or material misrepresentation in applying for any benefits under  
14 continued or converted policy;

15 (5) The person failed to pay any required contribution; or

16 (6) Cancellation of all similar insurance policies in the entire state.

17 Section 5. That § 58-18C-8 be amended to read as follows:

18 58-18C-8. ~~The premium for the conversion policy shall be determined in accordance with~~

19 ~~the insurer's table of premium rates applicable to the age and class of risk for each person to be~~  
20 ~~covered under that policy and to the type and amount of insurance provided.~~ The premium for

21 a continuation policy may not be greater than one hundred twenty-five percent of the group rate  
22 under which a person is covered.

23 Section 6. That § 58-18C-9 be amended to read as follows:

24 58-18C-9. A notification of the continuation ~~and conversion~~ rights shall be included in each

1 certificate of coverage.

2 Section 7. That § 58-18C-2 be repealed.

3 ~~58-18C-2. Every policy stated in § 58-18C-1 shall also provide an employee with the right,~~  
4 ~~upon the employer ceasing operations and the termination of the policy or contract, to an~~  
5 ~~individual conversion policy or contract without additional underwriting restrictions. The~~  
6 ~~conversion policy shall consist of a plan of individual coverage that closely approximates the~~  
7 ~~coverage provided under the group, and shall be renewable at the option of the insured.~~

8 Section 8. That § 58-18C-6 be repealed.

9 ~~58-18C-6. The conversion policy shall cover the employee who was covered by the group~~  
10 ~~policy on the date of termination of insurance. At the option of the insurer, a separate conversion~~  
11 ~~policy may be issued to cover any dependent.~~

12 Section 9. That § 58-18C-10 be repealed.

13 ~~58-18C-10. The insurer may elect to provide group insurance coverage in lieu of the~~  
14 ~~issuance of a converted individual policy.~~

15 Section 10. That § 58-18C-1 be amended to read as follows:

16 58-18C-1. Every policy of group health insurance providing benefits for hospital or medical  
17 expenses delivered or issued for delivery in this state, by a commercial health insurance  
18 company, by a nonprofit medical and surgical service plan corporation, by a nonprofit hospital  
19 service plan corporation, by a health maintenance organization, or by any other similar  
20 mechanism shall, in addition to the provisions required by law, include the right of each  
21 employee, upon their employer ceasing operations and the termination of the policy or contract,  
22 to have the coverage continue for themselves and their eligible dependents, effective as of the  
23 date of loss of the previous group coverage, for a period of twelve months for which the  
24 employee shall be financially responsible. In addition, if an employer either fails to submit

1 premium payment to the insurance company resulting in loss of coverage to its employees or  
2 cancels the coverage and does not notify the employees of such loss of coverage, the employees  
3 and their dependents are then eligible for continuation pursuant to this section if election is  
4 made within sixty days of the date of their being notified of the loss of coverage. The employer  
5 shall provide notice of any nonpayment of premiums or cancellation of coverage to employees  
6 as soon as reasonably possible but no later than ten days after the date of cancellation. If the  
7 employer fails to notify the employees and their dependents of the termination of coverage  
8 within ten days, the employees and dependents may not be denied coverage by the insurer  
9 provided timely election is made after actual receipt of notice. Whether notice is provided or  
10 not, the election period for continuation of coverage may expire ninety days from the date the  
11 group coverage terminated. Any premiums due for the continuation of coverage may be required  
12 to be paid by the employee or dependent as a condition of providing continuation coverage.

13 Any former employee who is under continuation coverage at the time an employer ceases  
14 operation and terminates the policy, or fails to make premium payments resulting in loss of  
15 coverage, or cancels the insurance without notice, is eligible to remain on continuation coverage  
16 for the remainder of the continuation term or twelve months, whichever is less, if timely election  
17 is made and continuation payments received.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0358

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 61** - 01/19/2005

Introduced by: The Committee on State Affairs at the request of the Department of Tourism  
and State Development

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Science and Technology  
2 Authority to use eminent domain for certain limited purposes.

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

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

6 For the purpose of this Act, the term, subsurface property, means complete fee title to real  
7 property located one hundred feet or more below the surface, including the right to use such real  
8 property to construct, operate, support and maintain underground facilities, for scientific and  
9 technological experimentation and exploration, for the commercial exploitation of the  
10 subsurface for purposes other than mineral extraction, and for any other lawful purpose. The  
11 term, subsurface property, does not include ownership or the right to occupancy of the surface.

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

14 The authority may condemn private and public subsurface property for public use for the  
15 purposes of acquiring, developing, constructing, maintaining, or operating projects. The



1 authority may only condemn subsurface property upon or through which it already owns or  
2 controls some, but not all, property rights. If the authority deems it necessary to condemn any  
3 subsurface property for such purpose, it shall, by resolution, declare the condemnation  
4 necessary, stating the purposes and extent thereof. Thereupon, proceedings for condemnation  
5 shall be undertaken in the name of the authority, as provided in chapter 21-35 and this chapter.

6 Section 3. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 In any proceeding initiated under this chapter and chapter 21-35, the authority may, at any  
9 time before final judicial determination of the rights of the parties, file a declaration of taking,  
10 signed by the authority, declaring the extent of the subsurface property interest taken for the use  
11 of the authority.

12 The declaration of taking shall contain:

- 13 (1) A statement of the authority under which and the use for which the subsurface  
14 property interest is taken;
- 15 (2) A description of the subsurface property interest taken sufficient for identification  
16 thereof;
- 17 (3) A legal description of the subsurface property subject to or affected by the taking;
- 18 (4) The names of the owners of the property or persons in interest in the subsurface  
19 property, and a description of the interest claimed by each, as are known;
- 20 (5) A statement of the sum of money estimated by the authority to be just compensation  
21 for the subsurface property interest taken and damaged; and
- 22 (6) A detailed appraisal upon which the amount of the authority's estimate is based.

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

1 Title to the subsurface property interest specified in the declaration shall vest in the authority  
2 and the subsurface property interest shall be deemed condemned and taken for the use of the  
3 authority, and the right to just compensation for the subsurface property interest shall vest in the  
4 persons entitled thereto either on the date the decision is rendered pursuant to the hearing  
5 provided for in § 21-35-10.1 or the date the hearing is waived, either by consent in writing or  
6 by failing to make demand for the hearing within the time allowed.

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

9 Upon filing of a declaration of taking pursuant to section 3 of this Act, the court may fix the  
10 time within which, and the terms upon which, the parties in possession are required to surrender  
11 possession to the authority. A notice shall be issued stating that if the defendants do not appear  
12 in or respond to the proceedings with thirty days after service of the notice, exclusive of the day  
13 of service, the authority shall apply to the court for an order of possession. A notice of hearing  
14 shall then be issued by the court and served as provided in section 6 of this Act upon the record  
15 owners of all subsurface property sought to be acquired or damaged. The notice shall state a  
16 time and place for hearing not less than thirty days from the date of service, unless the waiver  
17 of hearing provided by § 21-35-10.1 is filed, in which case the hearing may be held sooner. The  
18 court may make such orders in respect to encumbrances, liens, rents, taxes, assessments,  
19 insurance and other charges, if any, as are just and equitable.

20 Section 6. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 A copy of the declaration of taking filed pursuant to section 2 of this Act and any  
23 amendments thereto shall be served with the condemnation petition or by mailing a copy thereof  
24 to each of the known defendants by registered mail at the defendant's last known post office

1 address.

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

4 If any person who is a proper party defendant or if any affected subsurface property is  
5 omitted from the declaration of taking filed pursuant to section 2 of this Act, the authority may  
6 file amendments to include the person or subsurface property. Any amendment from the time  
7 of filing has the same force and effect as if it were included in the original proceedings. The  
8 misnaming or omission of any defendant's name does not defer the effect of the declaration of  
9 taking.

10 Section 8. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If the authority elects to utilize the procedures set forth in sections 2 to 7, inclusive, of this  
13 Act for possession of subsurface property, the authority shall deposit with the court the money  
14 required by § 21-35-11 as a condition to the exercise of such power. In that case, the court and  
15 the attorneys shall expedite the proceedings for the distribution of the money deposited and for  
16 the ascertainment and payment of just compensation.

17 Section 9. That chapter 1-16H be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Upon application of the parties in interest, the court may order that all of the money  
20 deposited in court pursuant to section 8 of this Act, or any part thereof, be paid for or on account  
21 of the just compensation to be awarded in the proceeding. If the compensation finally awarded  
22 for the subsurface property interest taken, or any part thereof, exceeds the amount of money  
23 received by any person so entitled, the court shall enter judgment against the authority for the  
24 amount of the deficiency.

1           Section 10. That chapter 1-16H be amended by adding thereto a NEW SECTION to read  
2 as follows:

3           The provisions of chapters 45-4 and 45-5A do not apply to subsurface property rights taken  
4 by the authority pursuant to this Act.