

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

645M0245

SENATE ENGROSSED NO. **SB 188** - 02/13/2006

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

Introduced by: Senators Schoenbeck, Adelstein, Bartling, Broderick, Dempster, Duniphan, Gray, Greenfield, Kelly, Knudson, Koetzle, Koskan, Lintz, McCracken, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Sutton (Dan), Sutton (Duane), and Two Bulls and Representatives Dykstra, Faehn, Frost, Haley, Hanks, Haverly, McCoy, McLaughlin, Murschel, Sebert, Turbiville, Valandra, and Vehle

1 FOR AN ACT ENTITLED, An Act to prohibit governmental entities from selling certain
2 goods, commodities, and services to the general public.

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

4 Section 1. The Legislature of South Dakota finds that the involvement of governmental
5 entities in the sale of goods, commodities, and services is an infringement on the free enterprise
6 system. The Legislature recognizes that the free enterprise system supports and pays for
7 governmental services and competition by governmental entities in some cases is detrimental
8 to the best interests of South Dakota.

9 Section 2. Unless authorized by law, no governmental entity, including those adopting home
10 rule pursuant to S.D. Const., Art. IX, § 2 and including the legislative and executive
11 departments may sell goods, commodities, or services to the general public, if those goods,
12 commodities, or services are readily available through a private business or a nongovernmental
13 entity.



1 Section 3. The Legislature may by law provide for exceptions to section 2 of this Act in
2 regard to sales of goods, commodities, and services by the State of South Dakota.

3 Section 4. The provisions of this Act do not apply to industrial parks or utilities, hospitals
4 or nursing homes, institutions governed by the Board of Regents, and public schools, or to the
5 expansion or creation of infrastructure by a governmental entity for the provision of public
6 services, such as roads, bridges, buildings, water and sewer, and other services not suitable for
7 private enterprise to provide.

8 Section 5. Unless authorized by law, if a governmental entity other than the State of South
9 Dakota desires to enter into new or expand existing sales of goods, commodities, or services that
10 the governmental entity is not presently providing on the effective date of this Act, the
11 governmental entity shall:

12 (1) Propose an ordinance, resolution, or other official action describing the goods,
13 commodities, or services to be provided. The ordinance, resolution, or other official
14 action shall also set forth the costs of such goods, commodities, or services and the
15 source of funds to finance the costs of such goods, commodities, or services;

16 (2) Before adoption of such ordinance, resolution, or other official action of the
17 governing body shall hold at least one public hearing. Notice of the time and place
18 of the hearing and a description of the goods, commodities, and services sought to
19 be provided shall be given once at least ten days in advance by publication in an area
20 newspaper of general circulation. Any interested person shall be given a full, fair, and
21 complete opportunity to be heard at the hearing, and the governing body may refuse
22 or adopt the ordinance, resolution, or other official action with or without
23 amendment; and

24 (3) Any ordinance, resolution, or official action finally adopted by the governing body

1 is subject to referendum if authorized by law. The resolution, ordinance, or other
2 official action shall be effective twenty days after the completed publication thereof
3 unless the referendum is invoked. A majority vote of the electorate voting is required
4 to approve the ordinance, resolution, or other official action of the governing body.

5 Section 6. The provisions of this Act shall apply prospectively to the substantial expansion
6 of existing commercial activities or new commercial activities by a governmental entity, unless
7 such activities are authorized by law.

8 Section 7. Actions taken in violation of this Act shall be valid as to any party relying on the
9 action of the governing body but violations of the Act shall be set forth in the audits of the
10 governmental entity. The auditor general shall report these violations to the Government
11 Operations and Audit Committee annually. Any person may report violations of this Act to the
12 Government Operations and Audit Committee of the Legislature.