



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

820M0166

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1071** -

01/26/2006

Introduced by: Representatives Tidemann, Brunner, Davis, Dennert, Fryslie, Gassman, Hackl, Halverson, Hargens, Haverly, Heineman, Howie, Hunhoff, Jensen, Klaudt, Lange, Nelson, O'Brien, Peters, Rausch, Rave, Rounds, Sigdestad, and Street and Senators Hanson (Gary), Bartling, Duenwald, Earley, Gray, Kloucek, Koskan, Lintz, McNenny, Moore, Peterson (Jim), Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to amend the composition, supervision, and functioning of  
2 the State Seed Certification Board.

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

4 Section 1. That § 38-11-2 be amended to read as follows:

5 38-11-2. All members of the State Seed Certification Board shall be electors of the state; ~~one~~  
6 two shall be ~~a person~~ persons recommended for appointment by the South Dakota Crop  
7 Improvement Association; ~~one shall be a person recommended for appointment by the South~~  
8 ~~Dakota Horticultural Society~~; one shall be a representative of the State Department of  
9 Agriculture; ~~one two member~~ shall be ~~a person~~ persons recommended by the dean of agriculture  
10 at South Dakota State University; ~~one shall be a person recommended for appointment by the~~  
11 ~~South Dakota Potato Growers' Association; the~~. The members of the board shall be appointed  
12 so as to represent all areas of the state. The secretary of agriculture shall make these



1 appointments from a ~~list~~ lists of two or more names submitted for each position on the board.

2 Section 2. That § 38-11-1.1 be amended to read as follows:

3 38-11-1.1. The Seed Certification Board shall be administered under the direction and  
4 supervision of the ~~Department of Agriculture and the secretary thereof~~ College of Agriculture  
5 and Biological Sciences at South Dakota State University and the dean of the college, but shall  
6 retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special  
7 budgetary functions (~~as defined in § 1-32-1~~), otherwise vested in it and shall exercise those  
8 functions independently of the ~~secretary of agriculture~~ dean and the college.

9 Section 3. That § 38-11-4 be amended to read as follows:

10 38-11-4. The State Seed Certification Board shall hold its meetings ~~at the seat of~~  
11 ~~government~~ at such times and places as it designates, ~~but there shall not be~~. The board shall hold  
12 at least one, but not more than four regular meetings each year, including the annual meeting  
13 ~~which shall be held on the last Tuesday of January of each year, at which~~. At the annual meeting  
14 the president, vice-president, and secretary shall be elected for the ensuing year; ~~provided that~~  
15 ~~the~~. The president of the board ~~shall have power to~~ may call special meetings whenever ~~in his~~  
16 ~~judgment he finds~~ the president judges it necessary.

17 Section 4. That § 38-11-6 be amended to read as follows:

18 38-11-6. The ~~State Seed Certification Board is~~ secretary of agriculture and the dean of the  
19 College of Agriculture and Biological Sciences at South Dakota State University shall designate  
20 the official seed certifying agency for the state. The ~~board~~ State Seed Certification Board may  
21 designate one or more public or private entities to perform necessary seed certification activities  
22 under the supervision of the board. The board may designate separate official certification  
23 agencies for various types or classifications of seed or propagating materials. The board shall  
24 notify the secretary and the dean of any designations made pursuant to this section.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

597M0049

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1075 - 02/08/2006**

Introduced by: Representatives Buckingham, Boomgarden, Brunner, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Gassman, Gillespie, Glover, Hackl, Halverson, Hanks, Hargens, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Kroger, Lange, McCoy, McLaughlin, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Peters, Putnam, Rausch, Rave, Rhoden, Roberts, Rounds, Schafer, Sebert, Sigdestad, Street, Tidemann, Turbiville, Van Etten, Vehle, Weems, Wick, and Willadsen and Senators McCracken, Bogue, Duniphan, Gray, Hansen (Tom), Koetzle, Kooistra, Lintz, McNenny, Moore, Napoli, Olson (Ed), Schoenbeck, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the disposition of  
2 confiscated weapons and firearms.

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

4 Section 1. That § 23A-37-13 be amended to read as follows:

5 23A-37-13. Any controlled weapon or firearm used in violation of chapter 22-14 shall be  
6 disposed of as follows:

7 (1) If it is stolen, it shall be returned to the lawful owner upon proof of ownership; or

8 (2) If it is illegal, it shall be destroyed pursuant to law; or

9 (3) If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the  
10 direction of the attorney general, to the South Dakota Forensic Laboratory for



1 scientific examination purposes, for lawful use or disposal.

2 In the case of a disposition pursuant to subdivision (3), the arresting agency or forensic  
3 laboratory may use, trade-in, ~~or~~ destroy, or sell, as provided in § 5-23-32, 5-24-9.2 or 6-13-6,  
4 the controlled weapon or firearm.

5 Section 2. That chapter 23A-37 be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 Any moneys derived by the South Dakota Forensic Laboratory from the sale of weapons or  
8 firearms pursuant to section 1 of this Act shall be deposited in the law enforcement officers  
9 training fund.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

165M0379      **SENATE AGRICULTURE AND NATURAL RESOURCES**  
**COMMITTEE ENGROSSED NO. HB 1082 -**  
**02/07/2006**

Introduced by: Representatives Deadrick, Brunner, Dykstra, Halverson, Hargens, Jensen, Nelson, Rhoden, Sigdestad, and Tidemann and Senators Bogue, Dempster, Duenwald, Hansen (Tom), Hanson (Gary), Koskan, McNenny, Peterson (Jim), Schoenbeck, and Sutton (Dan)

1    FOR AN ACT ENTITLED, An Act to provide for uniform jurisdiction in the regulation of  
2        certain seed, commercial fertilizer, commercial feed, animal remedies, and pesticide.

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

4        Section 1. The provisions of South Dakota law and rules preempt any local legislation  
5    adopted by any political subdivision of the state that is related to the production, use,  
6    advertising, sale, distribution, storage, transportation, formulation, packaging, labeling,  
7    certification, registration, application, planting, or disposal of seed as defined in § 38-12A-1,  
8    commercial fertilizer as defined in § 38-19-1, commercial feed as defined in § 39-14-39, animal  
9    remedies as defined in § 39-18-1, and pesticide as defined in § 38-20A-1. No political  
10   subdivision may adopt or continue in effect any such local legislation regardless of whether a  
11   statute or a rule adopted by the state specifically preempts the local legislation. Local legislation  
12   in violation of this section is void and unenforceable. For purposes of this section, the term,  
13   local legislation, means any ordinance, motion, resolution, amendment, regulation, or rule



1 adopted by a political subdivision of the state.

2 Nothing in this section preempts or otherwise limits the authority of any county or  
3 municipality to adopt and enforce zoning regulations, fire codes, building codes, or waste  
4 disposal restrictions.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

357M0254

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**HB 1112 - 01/26/2006**

Introduced by: Representatives Deadrick, Boomgarden, Buckingham, Davis, Dykstra, Frost, Garnos, Glover, Hackl, Hills, Howie, Hunt, Jensen, Jerke, Nelson, Novstrup, Rhoden, Rounds, Sigdestad, Turbiville, Van Etten, and Willadsen and Senators Lintz, Bartling, Greenfield, McNenny, Moore, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to exempt certain real property owned by local industrial  
2 development corporations from property taxation.

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

4 Section 1. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 One hundred thousand dollars of the full and true value of the total amount of real property  
7 or portion thereof owned by a local industrial development corporation defined pursuant to § 5-  
8 14-23 is exempt from property taxation. The full and true value of the real property that is in  
9 excess of one hundred thousand dollars shall be taxed as other property of the same class is  
10 taxed.

11 Section 2. That § 10-4-15 be amended to read as follows:

12 10-4-15. Any person, organization, corporation, or association claiming a property tax  
13 exemption status for any property under section 1 of this Act or §§ 10-4-9 to 10-4-14, inclusive,  
14 or as may otherwise be provided by law, shall apply for such exemption to the county director



- 1 of equalization on forms prescribed by the secretary of revenue and regulation prior to
- 2 November first of the tax year.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

336M0588

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1113** - 02/09/2006

Introduced by: Representatives Deadrick and Rhoden and Senators Earley and Bogue

1 FOR AN ACT ENTITLED, An Act to exempt claims related to wildland fire operations outside  
2 the state from certain workers' compensation provisions and to declare an emergency.

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

4 Section 1. That § 62-1-5.2 be amended to read as follows:

5 62-1-5.2. Any firefighter who is a member of any county, municipal, special purpose district,  
6 township, or private nonprofit corporation operating as a fire department that has on file a  
7 cooperative fire suppression agreement with the South Dakota Department of Agriculture, and  
8 has been approved by the governing body for assignment to the state, is eligible for workers'  
9 compensation benefits from the state if injured during a period of time commencing from the  
10 time dispatched by the secretary of agriculture ~~or the secretary's designee~~ until the time the  
11 firefighter returns to the location from which the firefighter was originally dispatched by the  
12 secretary of agriculture ~~or the secretary's designee~~. In the event of injury or death, the firefighter  
13 shall, for the purpose of computing compensation, be considered to be earning a wage that  
14 would entitle that person to the maximum compensation for death or injury allowable under this  
15 title; but in no event may payments to any firefighter exceed the maximum limitations for



1 benefits as set out in this title.

2 For purposes of determining compensation any remuneration received by a member who  
3 voluntarily serves the department may not be considered.

4 No firefighter under this section may be deemed a state employee for any purpose other than  
5 eligibility to receive workers' compensation from the state under this section.

6 No workers' compensation benefits may be provided by the state if the claim arises while  
7 dispatched to a wildland fire outside the state, unless the fire is a threat to resources within  
8 South Dakota.

9 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,  
10 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
11 effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

462M0626

## HOUSE ENGROSSED NO. **HB 1178** - 02/01/2006

Introduced by: Representatives Elliott, Frost, and Novstrup and Senators Koetzle, Hundstad, Napoli, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of certain honorary trusts  
2 and of certain trusts for animals.

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

4 Section 1. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Subject to the provisions of section 3 of this Act, a trust may be performed by the trustee for  
7 twenty-one years but no longer, whether or not the terms of the trust contemplate a longer  
8 duration if the trust is for a specific lawful noncharitable purpose or for lawful noncharitable  
9 purposes to be selected by the trustee.

10 Section 2. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Subject to the provisions of section 3 of this Act, a trust for the care of a designated animal  
13 is valid. The trust terminates when no living animal is covered by the trust. A governing  
14 instrument shall be liberally construed to bring the transfer within this section, to presume  
15 against the merely precatory or honorary nature of the disposition, and to carry out the general



1 intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

2 Section 3. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any trust provided for by sections 1 and 2 of this Act is subject to the following provisions:

5 (1) Except as expressly provided otherwise in the trust instrument, no portion of the  
6 principal or income may be converted to the use of the trustee or to any use other  
7 than for the trust's purposes or for the benefit of a covered animal;

8 (2) Upon termination, the trustee shall transfer the unexpended trust property in the  
9 following order:

10 (a) As directed in the trust instrument;

11 (b) If the trust was created in a nonresiduary clause in the transferor's will or in a  
12 codicil to the transferor's will, then under the residuary clause in the  
13 transferor's will; and

14 (c) If no beneficiary results from the application of subsection (a) or (b) of this  
15 subdivision, then to the transferor's heirs under § 29A-2-711;

16 (3) For the purposes of § 29A-2-707, the residuary clause is treated as creating a future  
17 interest under the terms of a trust;

18 (4) The intended use of the principal or income may be enforced by a person designated  
19 for that purpose in the trust instrument or, if none, by an individual appointed by a  
20 court upon application to it by that person;

21 (5) Except as ordered by the court or required by the trust instrument, no filing, report,  
22 registration, periodic accounting, separate maintenance of funds, appointment, or fee  
23 is required by reason of the existence of the fiduciary relationship of the trustee;

24 (6) A court may reasonably reduce the amount of the property transferred if it determines

1           that that amount substantially exceeds the amount required for the intended use. The  
2           amount of the reduction, if any, passes as unexpended trust property under  
3           subdivision (2) of this section;

4       (7)   If no trustee is designated or no designated trustee is willing or able to serve, a court  
5           shall name a trustee. A court may order the transfer of the property to another trustee  
6           if required to ensure that the intended use is carried out and if no successor trustee  
7           is designated in the trust instrument or if no designated successor trustee agrees to  
8           serve or is able to serve. A court may also make such other orders and determinations  
9           as are advisable to carry out the intent of the transferor and the purpose of this Act.

10       Section 4. Nothing in this Act may be construed to reinstate the rule against perpetuities in  
11       South Dakota as to any trust except trusts specifically defined in this Act as honorary trusts or  
12       trusts for the care of specific animals.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

609M0247

SENATE TAXATION COMMITTEE ENGROSSED NO.

**HB 1206** - 02/08/2006

Introduced by: Representatives Garnos, Bradford, Hennies, Hills, and Turbiville and  
Senators Adelstein, Dempster, and Lintz

1 FOR AN ACT ENTITLED, An Act to provide contractors' excise, sales, and use tax refunds for  
2 the filming of certain motion pictures, documentaries, television advertisements, or  
3 television films.

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

5 Section 1. Terms used in this Act mean:

6 (1) "Department," the Department of Revenue and Regulation;

7 (2) "Film," any portion of a commercial production of a motion picture, documentary,  
8 television advertisement, or television film;

9 (3) "Filming date," the first date a person commits to the Department of Tourism and  
10 State Development that South Dakota will be the primary location for shooting  
11 footage for a film;

12 (4) "Person," any individual, firm, copartnership, joint venture, association, limited  
13 liability company, limited liability partnership, corporation, estate, trust, business  
14 trust, receiver, unit of government, political subdivision of any state, or any group or  
15 combination acting as a unit;



1 (5) "Project," the building of sets, purchase of materials, and other costs associated with  
2 the filming or production of a motion picture, documentary, television advertisement,  
3 or television film;

4 (6) "Project cost," the amount paid in money, credits, property, or other money's worth  
5 for a project;

6 (7) "Secretary," the secretary of the Department of Revenue and Regulation.

7 Section 2. As provided in this Act, any person holding a permit issued pursuant to this Act  
8 may apply for and obtain a refund or credit for sales or use tax imposed and paid by such person  
9 under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid  
10 under the provisions of chapter 10-46A or 10-46B on the project costs.

11 Section 3. The refund of taxes for a motion picture, documentary, television advertisement,  
12 or television film pertains only to project costs incurred and paid after July 1, 2006, and within  
13 thirty-six months of the approval of the application required by this Act. No refund may be  
14 made unless:

15 (1) The project cost that are occurred in South Dakota exceeds the sum of two hundred  
16 fifty thousand dollars in taxable costs; and

17 (2) The person applying for the refund obtains a permit from the secretary as set forth in  
18 this Act.

19 Section 4. If the project cost for a new motion picture, documentary, television  
20 advertisement, or television film exceeds two hundred fifty thousand dollars in taxable costs,  
21 the refund shall be one hundred percent of the taxes attributed to the taxable project costs in  
22 excess of two hundred fifty thousand dollars.

23 Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit  
24 from the secretary at least thirty days prior to the shooting of the motion picture, documentary,

1 television advertisement, or television film. The application for a permit shall be submitted on  
2 a form prescribed by the secretary. A separate application shall be made and submitted for each  
3 project. Upon approval of the application, the secretary shall issue a permit entitling the  
4 applicant to submit refund claims as provided by this Act. Such permit or refund claims are not  
5 assignable or transferable except as collateral or security pursuant to chapter 57A-9.

6 Section 6. Any claim for refund shall be submitted on forms prescribed by the secretary and  
7 shall be supported by such documentation as the secretary may require. The secretary may deny  
8 any claim where the claimant has failed to provide information or documentation requested or  
9 considered necessary by the secretary to determine the validity of the claim.

10 Section 7. Any person issued a permit pursuant to this Act shall submit a return to the  
11 department no more frequently than on or before the last day of each month and no less  
12 frequently than on or before the last day of each month following each calendar quarter. The  
13 secretary shall determine and pay the amount of the tax refund within thirty days of receipt of  
14 the return. Ninety-five percent of the amount of refund shall be paid to the claimant in  
15 accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the  
16 department. No interest may be paid on the refund amount. If electronic funds transfer is  
17 available to the secretary, the secretary shall pay the refund by electronic funds transfer if  
18 requested by the claimant.

19 Section 8. The amounts withheld by the department in accordance with this Act shall be  
20 retained until the project has been completed and the claimant has met all the conditions of this  
21 Act, at which time all sums retained shall be paid to the claimant.

22 Section 9. If any claim has been fraudulently presented or supported as to any item in the  
23 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be  
24 rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt

1 to the state and a lien in favor of the state upon all property and rights to property whether real  
2 or personal belonging to the claimant and may be recovered in an action of debt.

3 Section 10. Any person, aggrieved by the denial in whole or in part of a refund claimed  
4 under this Act, may, within thirty days after service of the notice of such denial by the secretary,  
5 demand a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant  
6 to chapter 1-26.

7 Section 11. Any person, aggrieved by a decision of the secretary under this Act, may, within  
8 thirty days of receipt of written notice of the secretary's decision, make written application to  
9 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be  
10 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of  
11 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be  
12 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,  
13 accepts the final decision of the hearing examiner, no appeal from a final decision of the  
14 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by  
15 the secretary is paid or a bond filed to insure payment of the amount. However, if the final  
16 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the  
17 hearing examiner regarding the amount due, an appeal may be taken without payment of the  
18 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed  
19 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the  
20 secretary is paid or a bond is filed to insure payment of such amount.

21 Section 12. Any amount refunded pursuant to this Act for a project that is not completed  
22 within the time frames prescribed by this Act, including any extensions granted by the secretary,  
23 shall be returned to the state without interest. Any refunded amounts not returned pursuant to  
24 this section and all sums previously refunded to the claimant constitute a debt to the state and

1 a lien in favor of the state upon all property and rights to property whether real or personal  
2 belonging to the claimant and may be recovered in an action of debt.

3 Section 13. The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the  
4 procedures for filing refund claims and the requirements necessary to qualify for a refund.

5 Section 14. This Act is repealed on June 30, 2011.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0653

## HOUSE ENGROSSED NO. **HB 1226** - 02/02/2006

Introduced by: The Committee on Taxation at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to expand the tax refund for agricultural processing  
2 facilities to include expansions to existing facilities and to revise the time period in which  
3 an application must be submitted.

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

5 Section 1. That § 10-45B-1 be amended to read as follows:

6 10-45B-1. Terms used in this chapter mean:

- 7 (1) "Construction date," the first date earth is excavated for the purpose of constructing  
8 a project;
- 9 (2) "Department," the Department of Revenue and Regulation;
- 10 (3) "Nameplate capacity," the number of kilowatts a power unit can produce according  
11 to the nameplate assigned to the power unit generator by the manufacturer;
- 12 (4) "New agricultural processing facility," a new building or structure, or the expansion  
13 of an existing building or structure, the construction of which is subject to  
14 contractors' excise tax pursuant to chapter 10-46A or 10-46B. A new agricultural  
15 processing facility is any new building or structure, or the expansion of an existing  
16 building or structure, constructed for the initial or subsequent processing of any form



1 of agricultural commodity, product, or by-product. A new agricultural processing  
 2 facility does not include any building or structure constructed for raising or feeding  
 3 of livestock or the expansion of an existing agricultural processing facility except as  
 4 provided in § 10-45B-1.2;

5 (5) "Person," any individual, firm, copartnership, joint venture, association, limited  
 6 liability company, limited liability partnership, corporation, estate, trust, business  
 7 trust, receiver, unit of government, political subdivision of any state, rural electric  
 8 cooperative, consumers power district or any group or combination acting as a unit;

9 (6) "Power generation facility," a facility with one power unit that generates electricity  
 10 with a nameplate capacity of no less than five hundred megawatts;

11 (7) "Project," the construction of a new agricultural processing facility or a new business  
 12 facility at a single site;

13 (8) "Project cost," the amount paid in money, credits, property, or other money's worth  
 14 for a project;

15 (9) "Secretary," the secretary of the Department of Revenue and Regulation.

16 Section 2. That § 10-45B-1.2 be repealed.

17 ~~10-45B-1.2. For purposes of this chapter, a new agricultural processing facility as defined~~  
 18 ~~in § 10-45B-1 includes an expansion to an existing soybean processing facility if the expansion~~  
 19 ~~will be used for the production of biodiesel.~~

20 Section 3. That § 10-45B-4 be amended to read as follows:

21 10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to  
 22 project costs incurred and paid after April 1, 1997, and within thirty-six months of the approval  
 23 of construction date as stated on the application required by § 10-45B-6. No refund may be  
 24 made unless:

- 1 (1) The project cost exceeds the sum of four million five hundred thousand dollars; and
- 2 (2) The person applying for the refund obtains a permit from the secretary as set forth in
- 3 § 10-45B-6.

4 Section 4. That § 10-45B-6 be amended to read as follows:

5 10-45B-6. Any person desiring to claim a refund pursuant to this chapter shall apply for a  
6 permit from the secretary ~~at least thirty days~~ prior to or within one hundred eighty days after the  
7 construction date. However, any project with a construction date between ~~February 1, 2005~~  
8 January 1, 2006, and July 1, ~~2005~~ 2006, that would otherwise qualify for a refund shall apply  
9 for a permit by August 1, ~~2005~~ 2006. The application for a permit shall be submitted on a form  
10 prescribed by the secretary. A separate application shall be made and submitted for each project.  
11 Upon approval of the application, the secretary shall issue a permit entitling the applicant to  
12 submit refund claims as provided by §§ 10-45B-7 and 10-45B-8. Such permit or refund claims  
13 are not assignable or transferable except as collateral or security pursuant to chapter 57A-9.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

456M0563

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 121** - 02/08/2006

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

Introduced by: Senators Bogue, Koskan, Lintz, and Olson (Ed) and Representatives Dykstra, Deadrick, and Rhoden

1 FOR AN ACT ENTITLED, An Act to clarify provisions regarding the use of railroad rights-of-  
2 way by utility companies.

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

4 Section 1. Recognized electric utilities, public utilities, telecommunication companies, and  
5 rural water systems duly organized under the laws of South Dakota have the right to traverse the  
6 railroad right-of-way with underground facilities, subject to reasonable railroad regulation and  
7 terms and conditions as to prevention of present and future railroad operational interference,  
8 placement, safety, liability, maintenance, reclamation, administrative costs, and compensation.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

227M0553

SENATE EDUCATION COMMITTEE ENGROSSED NO.

**SB 134** - 02/07/2006

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

Introduced by: Senator Bogue

1 FOR AN ACT ENTITLED, An Act to revise the distribution of state aid to education, to  
2 provide funding for sparse school districts, and to make an appropriation therefor.

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

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the greater of (1) the average number of resident and  
7 nonresident kindergarten through twelfth grade pupils enrolled in all schools operated  
8 by the school district during the previous regular school year, minus average number  
9 of pupils for whom the district receives tuition, except pupils described in  
10 subdivision (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42  
11 and plus the average number of pupils for whom the district pays tuition or (2) the  
12 average of the average number of resident and nonresident kindergarten through  
13 twelfth grade pupils enrolled in all schools operated by the school district during the  
14 previous regular school year and the school year prior to the previous regular school  
15 year, minus the average number of pupils for whom the district receives tuition,



1 except pupils described in subdivision (1A) and pupils for whom tuition is being paid  
2 pursuant to § 13-28-42 and plus the average number of pupils for whom the district  
3 pays tuition;

4 (1A) Nonresident students who are in the care and custody of the Department of Social  
5 Services, the Unified Judicial System, the Department of Corrections, or other state  
6 agencies and are attending a public school may be included in the average daily  
7 membership of the receiving district when enrolled in the receiving district. When  
8 counting a student who meets these criteria in its general enrollment average daily  
9 membership, the receiving district may begin the enrollment on the first day of  
10 attendance. The district of residence prior to the custodial transfer may not include  
11 students who meet these criteria in its general enrollment average daily membership  
12 after the student ceases to attend school in the resident district;

13 (2) "Adjusted average daily membership," calculated as follows:

14 (a) For districts with an average daily membership of two hundred or less,  
15 multiply 1.2 times the average daily membership;

16 (b) For districts with an average daily membership of less than six hundred, but  
17 greater than two hundred, raise the average daily membership to the 0.8293  
18 power and multiply the result times 2.98;

19 (c) For districts with an average daily membership of six hundred or more,  
20 multiply 1.0 times their average daily membership;

21 (2A) "Sparse school district," a school district that meets each of the following criteria:

22 (a) Has an average daily membership per square mile of 0.50 or less;

23 (b) Has an average daily membership of 500 or less;

24 (c) Has an area of four hundred square miles or more;

- 1           (d) Has at least five miles between its secondary attendance center or centers and
- 2                     that of an adjoining district;
- 3           (e) Operates a secondary attendance center; and
- 4           (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
- 5                     or more;
- 6       (2B) "Sparsity average daily membership," calculated as follows:
- 7           (a) For sparse school districts, divide the average daily membership by the area
- 8                     of the school district in square miles;
- 9           (b) Multiply the quotient obtained in subsection (a) times negative 0.25;
- 10          (c) Add 0.125 to the product obtained in subsection (b); and
- 11          (d) Multiply the sum obtained in subsection (c) times the average daily
- 12                     membership;
- 13       (3) "Index factor," is the annual percentage change in the consumer price index for urban
- 14             wage earners and clerical workers as computed by the Bureau of Labor Statistics of
- 15             the United States Department of Labor for the year before the year immediately
- 16             preceding the year of adjustment or three percent, whichever is less;
- 17       (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal
- 18             year thereafter, the per student allocation is the previous fiscal year's per student
- 19             allocation increased by the index factor;
- 20       (5) "Local need," the per student allocation multiplied by the sum of the adjusted average
- 21             daily membership plus the sparsity average daily membership;
- 22       (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
- 23             applying the levies established pursuant to § 10-12-42;
- 24       (7) "General fund balance," the unreserved fund balance of the general fund, less general

1 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
2 out of the general fund for the previous school fiscal year;

3 (8) "General fund balance percentage," is a school district's general fund balance divided  
4 by the school district's total general fund expenditures for the previous school fiscal  
5 year, the quotient expressed as a percent;

6 (9) "General fund base percentage," is the general fund balance percentage as of June 30,  
7 2000. However, the general fund base percentage can never increase and can never  
8 be less than twenty percent;

9 (10) "Allowable general fund balance," the fund base percentage multiplied by the  
10 district's general fund expenditures in the previous school fiscal year;

11 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5  
12 percentage points;

13 (12) "General fund exclusions," revenue a school district has received from the imposition  
14 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
15 from gifts, contributions, grants, or donations; revenue a school district has received  
16 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the  
17 general fund set aside for a noninsurable judgment.

18 Section 2. That § 4-5-29.2 be amended to read as follows:

19 4-5-29.2. Pursuant to S.D. Const., Art. XII, § 6, the state investment officer shall determine  
20 the market value of the education enhancement trust fund as of December 31, 2003, and each  
21 calendar year thereafter less the investment expenses transferred pursuant to § 4-5-30. The state  
22 investment officer shall calculate an amount equal to four and eight tenths percent of that market  
23 value, without invading principal, as eligible for distribution. For the purpose of this section,  
24 the term, principal, means the sum of all contributions to the fund. Beginning with the

1 distribution in fiscal year 2007, the market value shall be determined by adding the market value  
2 of the trust fund at the end of the sixteen most recent calendar quarters as of December  
3 thirty-first, and dividing the sum by sixteen. Upon notice of that amount by the state investment  
4 officer, the state treasurer shall transfer the amount from the education enhancement trust fund  
5 to the state general fund as soon as practicable after July first of the next fiscal year.

6 Section 3. The state treasurer shall transfer from the state general fund an amount equal to  
7 eight tenths percent of the fair value of the education enhancement trust fund calculated in § 4-  
8 5-29.2 from the education enhancement trust fund to the sparse school district fund which is  
9 hereby created in the state treasury. The purpose of the fund is to provide funding to sparse  
10 school districts as defined in subdivision 13-13-10.1(2A).

11 Section 4. There is hereby appropriated from the sparse school district fund the sum of three  
12 million dollars (\$3,000,000), or so much thereof as may be necessary, to the Department of  
13 Education for distribution to sparse school districts pursuant to this Act.

14 Section 5. The secretary of the Department of Education shall approve vouchers and the  
15 state auditor shall draw warrants to pay expenditures authorized by this Act.

16 Section 6. That § 4-8A-8 be amended to read as follows:

17 4-8A-8. ~~Moneys~~ Except as otherwise provided by this Act, moneys appropriated on a  
18 program basis by the General Appropriation Act may be transferred between program accounts  
19 within or between programs within departments and bureaus or between departments and  
20 bureaus to reflect a reorganization pursuant to Article IV, section 8 of the South Dakota  
21 Constitution only at the written request of a governing body, department secretary, or bureau  
22 commissioner, or designee, in accordance with procedures established by the Bureau of Finance  
23 and Management and only upon written approval of the Bureau of Finance and Management.  
24 Transfer of moneys appropriated by the General Appropriations Act between departments,

1 institutions, and bureaus that is not necessary for a reorganization pursuant to Article IV, section  
2 8 of the South Dakota Constitution may only occur at the written request of a governing body,  
3 department secretary, or bureau commissioner, or designee, only in accordance with procedures  
4 established by the Bureau of Finance and Management and only upon approval by the special  
5 committee created in this chapter. The Bureau of Finance and Management shall keep a record  
6 of all such authorizations of transfers and make them available for public inspection. The bureau  
7 shall also submit an informational report detailing all transfers approved to the special  
8 legislative committee established in § 4-8A-2.

9 Section 7. That chapter 4-8A be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Money appropriated as state aid to general education may not be transferred to other  
12 program accounts. Money appropriated as state aid to general education may be spent for only  
13 general aid to public schools.

14 Section 8. That chapter 4-8 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 If the amount of money appropriated as state aid to general education is in excess of the  
17 amount required to meet the entitlement provided for in chapter 13-13, the secretary of the  
18 Department of Education shall, at such time as the excess is determined, distribute the excess  
19 to all school districts on a pro rata basis according to each school district's average daily  
20 membership as defined in subdivision 13-13-10.1(1).

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

550M0488

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 143** - 02/08/2006

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

Introduced by: Senators Sutton (Duane) and Napoli and Representatives Tidemann, Frost, Haverly, and Peters

1 FOR AN ACT ENTITLED, An Act to make an appropriation to the state fair.

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

3 Section 1. There is hereby appropriated from the state general fund the sum of seven  
4 hundred fifty thousand dollars (\$750,000), or so much thereof as may be necessary, to the  
5 Department of Agriculture for the state fair.

6 Section 2. There is hereby appropriated from the employer's investment in South Dakota's  
7 future fund the sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as  
8 may be necessary, to the Department of Agriculture for the state fair.

9 The money appropriated in this section may be spent only after all other appropriations of  
10 moneys for the state fair for fiscal year 2007 have been fully spent.

11 Section 3. The Secretary of the Department of Agriculture shall approve vouchers and the  
12 state auditor shall draw warrants to pay expenditures authorized by this Act.

13 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by  
14 June 30, 2007, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

787M0125

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 153** - 02/09/2006

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

Introduced by: Senators Earley, Apa, Gant, Greenfield, and Napoli and Representatives Klautdt, Haverly, Hunhoff, Peters, Putnam, and Rausch

1 FOR AN ACT ENTITLED, An Act to transfer certain moneys from the railroad trust fund to  
2 the property tax reduction fund and to declare an emergency.

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

4 Section 1. The state treasurer shall transfer forty-two million dollars (\$42,000,000) from  
5 the railroad trust fund to the property tax reduction fund.

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



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

645M0245

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 188** - 02/09/2006

**This bill has been extensively amended (houghoused) 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. No governmental entity, including those adopting home rule pursuant to S.D.  
10 Const., Art. IX, § 2 and including the legislative and executive departments may sell goods,  
11 commodities, or services to the general public, if those goods, commodities, or services are  
12 readily available through a private business or a nongovernmental 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, or to the  
4 expansion or creation of infrastructure by a governmental entity for the provision of public  
5 services, such as roads, bridges, buildings, water and sewer, and other services not suitable for  
6 private enterprise to provide.

7 Section 5. If a governmental entity other than the State of South Dakota desires to enter into  
8 the sale of goods, commodities, or services that the governmental entity is not presently  
9 providing on the effective date of this Act, the governmental entity shall:

10 (1) Propose an ordinance describing the goods, commodities, or services to be provided.

11 The ordinance shall also set forth the costs of such goods, commodities, or services  
12 and the source of funds to finance the costs of such goods, commodities, or services;

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

20 (3) Any ordinance finally adopted by the governing body is subject to referendum. The  
21 resolution shall be effective twenty days after the completed publication thereof  
22 unless the referendum is invoked. A majority vote of the electorate voting is required  
23 to approve the ordinance.

24 Section 6. The provisions of this Act shall apply prospectively to the expansion of existing

1 commercial activities or new commercial activities by a governmental entity.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0675

SENATE APPROPRIATIONS COMMITTEE  
ENGROSSED NO. **SB 202** - 02/03/2006

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to increased  
2 energy costs in K-12 school districts and postsecondary vocational education institutions and  
3 to declare an emergency.

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

5 Section 1. There is hereby appropriated from the state general fund the sum of two million  
6 one hundred fifty thousand dollars (\$2,150,000), or so much thereof as may be necessary, to the  
7 Department of Education to be distributed on a one-time basis to approved K-12 school districts  
8 and postsecondary vocational education institutions to help pay for increased heating costs  
9 realized during the 2005-2006 school year.

10 Section 2. To participate and receive funds appropriated in section 1, any public school or  
11 postsecondary vocational education institution shall submit an energy reimbursement form with  
12 supporting information related to heating costs incurred for the 2005-2006 school year and the  
13 2004-2005 school year to the Department of Education. The Department of Education shall  
14 disburse the funds based on the increases in costs from 2004-2005 year to the 2005-2006 year.  
15 The funds shall be distributed on a pro-rata share of the total amount of funds requested. Any



1 school district participating shall submit a statement signed by the school district superintendent,  
2 the school district business manager, and the school district school board president that this  
3 funding is being accepted on a one-time basis. Any postsecondary vocational education  
4 institution participating shall submit a statement signed by the director of the institution, the  
5 business manager for the institution, and the school district school board president that this  
6 funding is being accepted on a one-time basis.

7 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
8 June 30, 2006, shall revert in accordance with § 4-8-21.

9 Section 4. Whereas, this Act is necessary for the support of the state government and its  
10 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
11 full force and effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

913M0526

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SJR 2** - 02/08/2006

Introduced by: Senators Bartling, Apa, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koskan, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, and Sutton (Dan) and Representatives Tornow, Buckingham, Davis, Faehn, Frost, Fryslie, Gillespie, Glenski, Hackl, Haverly, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Lange, McCoy, Michels, Miles, Nelson, Novstrup, Peters, Putnam, Rausch, Rave, Rounds, Schafer, Tidemann, Van Etten, and Weems

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election  
2 an amendment to Article VI of the Constitution of the State of South Dakota, relating to  
3 abortion.

4 BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE  
5 OF REPRESENTATIVES CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendment to  
7 Article VI of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint  
8 Resolution, which is hereby agreed to, shall be submitted to the electors of the state for  
9 approval.

10 Section 2. That Article VI of the Constitution of the State of South Dakota, be amended by  
11 adding thereto a NEW SECTION to read as follows:

12 § 28. This Constitution shall not be construed to grant any right relating to abortion.

