

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

767N0585

## CONFERENCE COMMITTEE ENGROSSED NO. **SB** **157** - 03/05/2007

Introduced by: Senators Knudson, Abdallah, Albers, Bartling, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Hauge, Heidepriem, Hunhoff, Jerstad, Koetzle, McCracken, Nesselhuf, Olson (Ed), and Peterson (Jim) and Representatives McLaughlin, Ahlers, Cutler, Gassman, Gillespie, Glenski, Halverson, Hargens, Jerke, Kirkeby, Krebs, Miles, Moore, Olson (Russell), Peters, Pitts, Steele, Tidemann, Vehle, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the funding for K-12 education.

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

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

4 13-13-10.1. Terms used in this chapter mean:

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

11 (1A) Nonresident students who are in the care and custody of the Department of Social  
12 Services, the Unified Judicial System, the Department of Corrections, or other state



1 agencies and are attending a public school may be included in the average daily  
2 membership of the receiving district when enrolled in the receiving district. When  
3 counting a student who meets these criteria in its general enrollment average daily  
4 membership, the receiving district may begin the enrollment on the first day of  
5 attendance. The district of residence prior to the custodial transfer may not include  
6 students who meet these criteria in its general enrollment average daily membership  
7 after the student ceases to attend school in the resident district;

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

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

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

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

16 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled  
17 in all schools operated by the school district on the last Friday of September of the  
18 previous school year minus the number of students for whom the district receives  
19 tuition, except nonresident students who are in the care and custody of a state agency  
20 and are attending a public school and students for whom tuition is being paid  
21 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
22 tuition. When computing state aid to education for a school district under the  
23 foundation program pursuant to § 13-13-73, the secretary of the Department of  
24 Education shall use either the school district's fall enrollment or the average of the

1 school district's fall enrollment and the school district's fall enrollment from the prior  
2 year, whichever is higher;

3 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students  
4 enrolled in all schools operated by the school district on the last Friday of September  
5 of the current school year minus the number of students for whom the district  
6 receives tuition except nonresident students who are in the care and custody of a state  
7 agency and are attending a public school and students for whom tuition is being paid  
8 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
9 tuition;

10 (2C) "Small school adjustment," calculated as follows:

11 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
12 \$4,237.72;

13 (b) For districts with a fall enrollment of greater than two hundred, but less than  
14 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
15 result; and multiply the sum obtained times \$4,237.72;

16 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
17 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
18 the United States Department of Labor for the year before the year immediately  
19 preceding the year of adjustment or three percent, whichever is less;

20 (4) "Per student allocation," for school fiscal year ~~2006 is \$4,237.72~~ 2008 is \$4,528.80.  
21 Each school fiscal year thereafter, the per student allocation is the previous fiscal  
22 year's per student allocation increased by the index factor;

23 (5) "Local need," ~~the~~ is the sum of:

24 (a) The per student allocation multiplied by the ~~adjusted average daily~~

1 membership fall enrollment; and

2 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;  
3 and

4 (c) The payment distributed pursuant to section 9, if applicable;

5 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
6 applying the levies established pursuant to § 10-12-42;

7 (7) "General fund balance," the unreserved fund balance of the general fund, less general  
8 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
9 out of the general fund for the previous school fiscal year;

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

13 (9) "General fund base percentage," is the lesser of:

14 (a) The general fund balance percentage as of June 30, 2000; or

15 (b) The maximum allowable percentage for that particular fiscal year as stated in  
16 this subsection.

17 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for  
18 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year  
19 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five  
20 percent. However, the general fund base percentage ~~can never increase and~~ can never  
21 be less than ~~twenty~~ twenty-five percent;

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

24 (11) "~~Imputed interest rate,~~" the average prime rate for the preceding fiscal year ~~minus 2.5~~

1 percentage points;

2 ~~—(12)—~~"General fund exclusions," revenue a school district has received from the imposition  
3 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
4 from gifts, contributions, grants, or donations; revenue a school district has received  
5 under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received  
6 as compensation for being a sparse school district under the terms of §§ 13-13-78 and  
7 13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable  
8 judgment.

9 Section 2. That chapter 13-6 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any school district that has a fall enrollment, as defined in § 13-13-10.1, of less than one  
12 hundred and is not a sparse school district, as defined in § 13-13-78, shall reorganize with  
13 another school district or school districts to create a newly reorganized school district with a fall  
14 enrollment of one hundred or greater. Any school district that is not sparse and has a fall  
15 enrollment of one hundred or less on July 1, 2007, shall prepare a plan for reorganization by  
16 June 30, 2009. After July 1, 2007, if the fall enrollment of any school district that is not sparse  
17 falls to one hundred or below, that school district shall prepare a plan for reorganization within  
18 two years. If any such district fails to prepare a plan for reorganization by the deadline, the  
19 Board of Education shall prepare a reorganization plan for the district. However, the provisions  
20 of this section do not apply to any school district that contracts with a school district in another  
21 state pursuant to § 13-15-11 to provide for the education of children in grades seven through  
22 twelve who reside within the district, that receives no foundation program state aid distributed  
23 pursuant to chapter 13-13, and that is located at least twenty-five miles from the nearest high  
24 school in an adjoining school district in the state.

1 Section 3. That § 13-6-92 be amended to read as follows:

2 13-6-92. If two or more school districts consolidate after July 1, 2001 and prior to July 1,  
3 2007, the new school district is entitled to an additional three hundred dollars per average daily  
4 membership as defined in § 13-13-10.1, up to a maximum of four hundred average daily  
5 membership from each school district or a prorated portion thereof from a partial school district  
6 as it existed prior to consolidation for the first year after consolidation. If two or more school  
7 districts consolidate after July 1, 2001 and prior to July 1, 2007, the new school district is  
8 entitled to an additional two hundred dollars per average daily membership as defined in § 13-  
9 13-10.1, up to a maximum of four hundred average daily membership from each school district  
10 or a prorated portion thereof from a partial school district as it existed prior to consolidation for  
11 the second year after consolidation. If two or more school districts consolidate after July 1, 2001  
12 and prior to July 1, 2007, the new school district is entitled to an additional one hundred dollars  
13 per average daily membership as defined in § 13-13-10.1, up to a maximum of four hundred  
14 average daily membership from each school district or a prorated portion thereof from a partial  
15 school district as it existed prior to consolidation for the third year after consolidation.

16 If two or more school districts consolidate after July 1, 2007, the new school district is  
17 entitled to an additional six hundred dollars per fall enrollment as defined in this Act, up to a  
18 maximum of four hundred fall enrollment from each school district or a prorated portion thereof  
19 from a partial school district as it existed prior to consolidation for the first year after  
20 consolidation. If two or more school districts consolidate after July 1, 2007, the new school  
21 district is entitled to an additional four hundred dollars per fall enrollment, up to a maximum  
22 of four hundred fall enrollment from each school district or a prorated portion thereof from a  
23 partial school district as it existed prior to consolidation for the second year after consolidation.  
24 If two or more school districts consolidate after July 1, 2007, the new school district is entitled

1 to an additional two hundred dollars per fall enrollment, up to a maximum of four hundred fall  
2 enrollment from each school district or a prorated portion thereof from a partial school district  
3 as it existed prior to consolidation for the third year after consolidation.

4 Section 4. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The consolidation incentives provided for in §§ 13-13-1.4 to 13-13-1.7, inclusive, apply only  
7 to those school districts whose consolidations are completed prior to July 1, 2007.

8 Section 5. That § 13-13-1.4 be amended to read as follows:

9 13-13-1.4. If two or more school districts consolidate, for a period of four years after  
10 consolidation, the ~~adjusted average daily membership~~ small school adjustment for the newly  
11 formed district shall be ~~based upon the average daily membership as defined in § 13-13-10.1~~  
12 ~~of those school districts that have not previously benefited from this section as they existed prior~~  
13 ~~to consolidation. In years two to four, inclusive, after the consolidation, the relationship between~~  
14 ~~the adjusted average daily membership and average daily membership shall be proportional to~~  
15 ~~the relationship that existed for the first year~~ calculated by subtracting the sum of the average  
16 daily membership of the consolidating districts as they existed prior to consolidation from the  
17 sum of the adjusted average daily membership of the consolidated districts as they existed prior  
18 to consolidation, and dividing the difference by the sum of the average daily membership of the  
19 consolidated districts as they existed prior to consolidation. The resulting quotient is multiplied  
20 by \$4,237.72. Only school districts who have not previously benefited from this section may be  
21 included in this calculation.

22 Section 6. That § 13-13-1.5 be amended to read as follows:

23 13-13-1.5. In years five to eight, inclusive, after the consolidation of two or more school  
24 districts, the ~~adjusted average daily membership~~ local need for the newly formed district shall

1 be calculated as follows:

- 2 (1) Calculate ~~adjusted average daily membership~~ local need pursuant to ~~§ 13-13-10.1~~  
3 § 13-13-73;
- 4 (2) Notwithstanding the four-year time limit, calculate ~~adjusted average daily~~  
5 ~~membership~~ local need pursuant to § 13-13-1.4;
- 6 (3) Subtract the results of subdivision (1) from the results of subdivision (2);
- 7 (4) Multiply the results of subdivision (3) by eighty percent in the fifth year, sixty  
8 percent in the sixth year, forty percent in the seventh year, and twenty percent in the  
9 eighth year;
- 10 (5) Add the results of subdivision (1) and the results of subdivision (4).

11 Section 7. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 If a school district's current fall enrollment, as defined in this Act, increases by at least five  
14 percent or by a minimum of twenty-five students over the fall enrollment, that school district  
15 shall receive a one-time payment equal to fifty percent of the per student allocation times the  
16 number of students by which the current fall enrollment exceeds the fall enrollment. The  
17 payment shall be made to the district prior to the first of December in the current school year.

18 Section 8. That § 13-13-73 be amended to read as follows:

19 13-13-73. The secretary of the Department of Education shall compute state aid to education  
20 for each school district under the foundation program according to the following calculations:

- 21 (1) Determine each school district's ~~average daily membership~~ fall enrollment;
- 22 (2) To arrive at the local need per district:
  - 23 (a) Multiply the per student allocation by the ~~adjusted average daily membership~~  
24 ~~to arrive at the local need per district~~ fall enrollment;



1 ~~(5) Multiply the result of (4) by the imputed interest rate;~~

2 ~~(6) Add the result of (1) and the result of (5) amount calculated by subtracting the~~  
3 ~~allowable general fund balance from the general fund balance. If the result is less~~  
4 ~~than zero, the result equals zero.~~

5 Section 10. That § 13-13-73.3 be amended to read as follows:

6 13-13-73.3. The secretary of education shall determine the reduction in state aid to education  
7 pursuant to § 13-13-73.2. The secretary of education shall distribute the amount of money so  
8 determined to school districts that received state aid pursuant to chapter 13-13 on a pro rata  
9 basis according to the district's ~~average daily membership~~ fall enrollment compared to the total  
10 ~~average daily membership~~ fall enrollment of all districts eligible for this distribution.

11 Section 11. That § 13-13-78 be amended to read as follows:

12 13-13-78. Terms used in § 13-13-79 mean:

- 13 (1) "Sparse school district," a school district that meets each of the following criteria:
- 14 (a) Has ~~an average daily membership~~ a fall enrollment per square mile of 0.50 or
- 15 less;
- 16 (b) Has ~~an average daily membership~~ a fall enrollment of five hundred or less;
- 17 (c) Has an area of four hundred square miles or more;
- 18 (d) Has at least fifteen miles between its secondary attendance center or centers
- 19 and that of an adjoining district;
- 20 (e) Operates a secondary attendance center;
- 21 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
- 22 or more; and
- 23 (g) Has a general fund balance percentage of thirty percent or less excluding
- 24 revenue received from opting out of property tax limitations pursuant to

1 chapter 10-12;

2 (2) "~~Sparsity average daily membership~~ fall enrollment," for sparse school districts with  
3 a fall enrollment as defined in this Act of less than eighty-three or greater than two  
4 hundred thirty-two, is calculated as follows:

5 (a) ~~For sparse school districts with an adjusted average daily membership as~~  
6 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~  
7 ~~two hundred seventy-five, divide the average daily membership as defined in~~  
8 ~~subdivision 13-13-10.1(1)~~ Divide the fall enrollment as defined in this Act by  
9 the area of the school district in square miles;

10 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;

11 (c) Add 0.0625 to the product obtained in subsection (b); and

12 (d) Multiply the sum obtained in subsection (c) times the ~~average daily~~  
13 ~~membership~~ fall enrollment;

14 (3) "~~Sparsity adjusted average daily membership~~ fall enrollment," calculated as follows:  
15 ~~For any sparse school district with an adjusted average daily membership as defined~~  
16 ~~in subdivision 13-13-10.1(2) of no less than one hundred, but no more than two~~  
17 ~~hundred seventy-five, the sparsity adjusted average daily membership is two hundred~~  
18 ~~seventy-five~~ for sparse school districts with a fall enrollment as defined in this Act  
19 of at least eighty-three, but no more than two hundred thirty-two, subtract the fall  
20 enrollment from two hundred thirty-two.

21 Section 12. That § 13-13-79 be amended to read as follows:

22 13-13-79. At the same time that foundation program state aid is distributed to school  
23 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of  
24 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~

1 ~~average daily membership calculation or the sparsity adjusted average daily membership~~  
2 ~~calculation in § 13-13-78~~ the result of the calculation in either subdivision 13-13-78(2) or  
3 subdivision 13-13-78(3) by the per student allocation as defined in § 13-13-10.1. However, no  
4 sparse school district may receive a sparsity benefit in any year that exceeds ~~two hundred fifty~~  
5 one hundred sixty-five thousand dollars.

6 Section 13. That § 13-13-1.2 be amended to read as follows:

7 13-13-1.2. Any records related to the reporting of ~~average daily membership~~ fall enrollment  
8 of a public school district shall be subject to examination by the Department of Education at all  
9 times.

10 Section 14. That § 13-13-1.3 be amended to read as follows:

11 13-13-1.3. If, in the department's examination of ~~average daily membership~~ fall enrollment,  
12 it is determined that the data was overreported, the department shall recover the amount of state  
13 aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the department  
14 shall deposit the overpayment into the state general fund. If the overreporting occurred with the  
15 intent to increase the amount of state aid received by overreporting, the ~~individual~~ person  
16 responsible for the overreporting may be charged with a Class 1 misdemeanor as provided in  
17 § 13-8-44, with the maximum penalty as defined in § 22-6-2.

18 Section 15. That § 13-13-1.8 be amended to read as follows:

19 13-13-1.8. ~~Students~~ No student attending the Black Hills Forest High School in Lawrence  
20 County may ~~not~~ be included by any school district in its ~~average daily membership~~ fall  
21 enrollment for purposes of state aid to education.

22 Section 16. That § 13-15-28 be amended to read as follows:

23 13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11  
24 and sends over fifty percent of its resident students enrolled in grades for which it contracts to

1 an adjoining school district or districts located in South Dakota shall reorganize the school  
2 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes  
3 of this section, the number of students attending adjoining districts shall be based on ~~average~~  
4 ~~daily membership pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this Act.  
5 This section does not apply to a school district located wholly within the boundaries of an Indian  
6 reservation.

7 Section 17. That § 13-28-40 be amended to read as follows:

8 13-28-40. An enrollment options program is established to enable any South Dakota  
9 kindergarten through twelfth grade student to attend any public school that serves the student's  
10 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-  
11 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions  
12 of §§ 13-28-40 to 13-28-47, inclusive, ~~average daily membership as defined in § 13-13-10.1~~  
13 fall enrollment as defined in this Act is used to compute foundation aid and special education  
14 average daily membership as defined in § 13-37-35 is used to determine funding for special  
15 education.

16 Section 18. That § 13-28-49 be amended to read as follows:

17 13-28-49. Notwithstanding the provisions of § 13-28-40, any student who enrolls in another  
18 school district pursuant to the provisions contained in §§ 13-28-40 to 13-28-47, inclusive, from  
19 a district that does not receive state aid pursuant to chapter 13-13 in the succeeding fiscal year  
20 remains the financial obligation of the resident district. For each student, the resident district  
21 shall pay tuition to the nonresident district in the succeeding fiscal year per the following  
22 calculation:

23 (1) ~~Multiply~~ Determine the nonresident district's ~~adjusted average daily membership~~  
24 ~~calculated pursuant to subdivision 13-13-10.1(2)~~ by the per student allocation as

1 ~~defined in subdivision 13-13-10.1(4)~~ local need pursuant to subdivision 13-13-73(2);

2 (2) Divide the result of (1) by the nonresident district's ~~average daily membership~~  
3 ~~calculated pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this  
4 Act;

5 (3) Multiply the result of (2) by the number of days the student was enrolled in the  
6 nonresident district;

7 (4) Divide the result of (3) by the number of days the nonresident district was in session.

8 Section 19. That § 13-28A-7 be amended to read as follows:

9 13-28A-7. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
10 any student sent to South Dakota from North Dakota is included in the receiving school district's  
11 ~~average daily membership~~ fall enrollment.

12 Section 20. That § 13-28A-8 be amended to read as follows:

13 13-28A-8. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
14 any student sent to North Dakota from South Dakota may not be included in the resident school  
15 district's ~~average daily membership~~ fall enrollment.

16 Section 21. That § 12-25-6.1 be amended to read as follows:

17 12-25-6.1. The provisions of this chapter, except §§ 12-25-27 to 12-25-31, inclusive, do not  
18 apply to any candidate or candidate election for judicial, municipal, or other governmental  
19 subdivision offices. However, the governing body of any municipality or other governmental  
20 subdivision may adopt an ordinance or resolution to make the provisions of chapter 12-25, with  
21 or without amendments, applicable to municipal or other governmental subdivision elections.  
22 The provisions of this chapter do apply to any candidate or candidate election for any county  
23 office or school board seat in a district with ~~an average daily membership~~ a fall enrollment in  
24 excess of two thousand students during the previous academic year.

1 Section 22. That § 13-16-26 be amended to read as follows:

2 13-16-26. All or any part of a surplus of any school district fund, except the capital outlay  
3 fund provided by §§ 13-16-6 to 13-16-9, inclusive, and the special education fund provided by  
4 § 13-37-16 may be transferred to any other school district fund. ~~However, any~~ Only a school  
5 district with a plan for reorganization that has been approved by the voters pursuant to § 13-6-47  
6 after July 1, 2007 may transfer within twelve months of the reorganization all or any part of a  
7 surplus in the capital outlay fund to the general fund. Any unused portion of money that has  
8 been transferred into the special education fund may be transferred from the special education  
9 fund within the current fiscal year to the fund from which it originated. All or any part of any  
10 school district fund may be loaned to any other school district fund for a term not to exceed  
11 twenty-four months.

12 Section 23. That § 13-13-72 be amended to read as follows:

13 13-13-72. It is the policy of the Legislature that the appropriation for the state aid to  
14 education foundation program increase on an annual basis by the percentage increase in local  
15 need on an aggregate statewide basis so that the relative proportion of local need paid by local  
16 effort and state aid shall remain constant. However, the increase in the per student allocation on  
17 an annual basis that exceeds three percent shall be paid solely by the state and is not a factor in  
18 this policy.