

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

767N0585

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 157** - 02/28/2007

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 and to create a
2 teacher compensation assistance program.

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

12 ~~— (1A) Nonresident students who are in the care and custody of the Department of Social~~
13 ~~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 "Fall enrollment," the~~
16 ~~number of kindergarten through twelfth grade students enrolled in all schools~~
17 ~~operated by the school district on the last Friday of September of the previous~~
18 ~~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~~
20 ~~agency and are attending a public school and students for whom tuition is~~
21 ~~being paid pursuant to § 13-28-42.1, plus the number of students for whom the~~
22 ~~district pays tuition. No student who is partially enrolled in a school may be~~
23 ~~counted in the fall enrollment for that school unless the partial enrollment~~
24 ~~exceeds fifty percent. When computing state aid to education for a school~~

1 district under the foundation program pursuant to § 13-13-73, the secretary of
2 the Department of Education shall use either the school district's fall
3 enrollment or the average of the school district's fall enrollment and the school
4 district's fall enrollment from the prior year, whichever is higher;

5 (1A) "Current fall enrollment," the number of kindergarten through twelfth grade students
6 enrolled in all schools operated by the school district on the last Friday of September
7 of the current school year minus the number of students for whom the district
8 receives tuition except nonresident students who are in the care and custody of a state
9 agency and are attending a public school and students for whom tuition is being paid
10 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
11 tuition. No student who is partially enrolled in a school may be counted in the current
12 fall enrollment for that school unless the partial enrollment exceeds fifty percent;

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

14 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times
15 the fall enrollment and multiply the product times \$4,237.72;

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

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

23 (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal
24 year thereafter, the per student allocation is the previous fiscal year's per student

1 allocation increased by the index factor;

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

3 (a) The per student allocation multiplied by the ~~adjusted average daily~~
4 membership fall enrollment; and

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

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

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

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

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

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

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

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

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

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

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

10 Section 2. There is hereby created the teacher compensation assistance program within the
11 Department of Education to provide funds to school districts for the purpose of assisting them
12 with teacher compensation. The department shall provide four-fifths of the funds for the teacher
13 compensation assistance program to each participating school district.

14 Section 3. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create
15 an oversight board appointed by the secretary of education for approval of applications as well
16 as guidelines for district applications based on district instructional goals or market
17 compensation. Participation in the program is discretionary. District applications shall be
18 approved by the local board of education. The applications shall be reviewed by the oversight
19 board and shall be recommended to the Board of Education for final approval.

20 Section 4. The Teacher Compensation Assistance Program Oversight Board shall annually
21 monitor the progress of participating school districts with their teacher compensation assistance
22 plans, and submit its findings to the Board of Education.

23 Section 5. That § 13-6-92 be amended to read as follows:

24 13-6-92. If two or more school districts consolidate ~~after July 1, 2001~~, the new school

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

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

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

20 Section 7. That § 13-13-1.4 be amended to read as follows:

21 13-13-1.4. If two or more school districts consolidate, for a period of four years after
22 consolidation, the ~~adjusted average daily membership~~ local need for the newly formed district
23 shall be based upon the ~~average daily membership as defined in § 13-13-10.1~~ fall enrollment
24 as defined in this Act of those school districts that have not previously benefited from this

1 section as they existed prior to consolidation. In years two to four, inclusive, after the
2 consolidation, the relationship between the ~~adjusted average daily membership~~ local need and
3 ~~average daily membership~~ fall enrollment shall be proportional to the relationship that existed
4 for the first year.

5 Section 8. That § 13-13-1.5 be amended to read as follows:

6 13-13-1.5. In years five to eight, inclusive, after the consolidation of two or more school
7 districts, the ~~adjusted average daily membership~~ local need for the newly formed district shall
8 be calculated as follows:

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

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

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

1 Section 10. That § 13-13-73 be amended to read as follows:

2 13-13-73. The secretary of the Department of Education shall compute state aid to education
3 for each school district under the foundation program according to the following calculations:

- 4 (1) Determine each school district's ~~average daily membership~~ fall enrollment;
- 5 (2) To arrive at the local need per district:
 - 6 (a) Multiply the per student allocation by the ~~adjusted average daily membership~~
7 to arrive at the local need per district fall enrollment;
 - 8 (b) Multiply the small school adjustment, if applicable, by the fall enrollment; and
 - 9 (c) Add the product of subsection (a) to the product of subsection (b);
- 10 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
11 negative number;
- 12 (4) If the state aid appropriation for the general support of education is in excess of the
13 entitlement provided for in this section, the excess shall be used to fund any shortfall
14 of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary
15 shall report to the Governor by January seventh of each year, the amount of state aid
16 necessary to fully fund the general aid formula in the current year. If a shortfall in the
17 state aid appropriation for general education exists that cannot be covered by § 13-
18 37-45, the Governor shall inform the Legislature and provide a proposal to eliminate
19 the shortfall.

20 Section 11. That § 13-13-73.2 be amended to read as follows:

21 13-13-73.2. A school district's state aid for general education as calculated pursuant to § 13-
22 13-73 shall be reduced by the ~~following calculation~~:

- 23 (1) ~~Subtract the allowable general fund balance from the general fund balance. If the~~
24 ~~result is less than zero, (1) equals zero;~~

- 1 ~~(2) Determine the lower of the general fund base percentage or the general fund balance~~
- 2 ~~percentage;~~
- 3 ~~(3) Subtract twenty percent (0.2) from the result of (2). If the result is less than zero, (3)~~
- 4 ~~equals zero;~~
- 5 ~~(4) Multiply the result of (3) by the district's general fund expenditures in the previous~~
- 6 ~~school fiscal year;~~
- 7 ~~(5) Multiply the result of (4) by the imputed interest rate;~~
- 8 ~~(6) Add the result of (1) and the result of (5) amount calculated by subtracting the~~
- 9 ~~allowable general fund balance from the general fund balance. If the result is less~~
- 10 ~~than zero, the result equals zero.~~

11 Section 12. That § 13-13-73.3 be amended to read as follows:

12 13-13-73.3. The secretary of education shall determine the reduction in state aid to education
13 pursuant to § 13-13-73.2. The secretary of education shall distribute the amount of money so
14 determined to school districts that received state aid pursuant to chapter 13-13 on a pro rata
15 basis according to the district's ~~average daily membership~~ fall enrollment compared to the total
16 ~~average daily membership~~ fall enrollment of all districts eligible for this distribution.

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

18 13-13-78. Terms used in § 13-13-79 mean:

- 19 (1) "Sparse school district," a school district that meets each of the following criteria:
- 20 (a) Has ~~an average daily membership~~ a fall enrollment per square mile of 0.50 or
- 21 less;
- 22 (b) Has ~~an average daily membership~~ a fall enrollment of five hundred or less;
- 23 (c) Has an area of four hundred square miles or more;
- 24 (d) Has at least fifteen miles between its secondary attendance center or centers

1 and that of an adjoining district;

2 (e) Operates a secondary attendance center;

3 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
4 or more; and

5 (g) Has a general fund balance percentage of thirty percent or less excluding
6 revenue received from opting out of property tax limitations pursuant to
7 chapter 10-12;

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

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

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

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

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

20 (3) "~~Sparsity adjusted average daily membership~~ fall enrollment," ~~calculated as follows:~~
21 ~~For any sparse school district with an adjusted average daily membership as defined~~
22 ~~in subdivision 13-13-10.1(2) of no less than one hundred, but no more than two~~
23 ~~hundred seventy-five, the sparsity adjusted average daily membership is two hundred~~
24 ~~seventy-five~~ for sparse school districts with a fall enrollment as defined in this Act

1 of at least eighty-three, but no more than two hundred thirty-two, subtract the fall
2 enrollment from two hundred thirty-two.

3 Section 14. That § 13-13-79 be amended to read as follows:

4 13-13-79. At the same time that foundation program state aid is distributed to school
5 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of
6 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~
7 ~~average daily membership calculation or the sparsity adjusted average daily membership~~
8 ~~calculation in § 13-13-78~~ the result of the calculation in either subdivision 13-13-78(2) or
9 subdivision 13-13-78(3) by the per student allocation as defined in § 13-13-10.1. However, no
10 sparse school district may receive a sparsity benefit in any year that exceeds ~~two hundred fifty~~
11 one hundred sixty-five thousand dollars.

12 Section 15. That § 13-13-1.2 be amended to read as follows:

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

16 Section 16. That § 13-13-1.3 be amended to read as follows:

17 13-13-1.3. If, in the department's examination of ~~average daily membership~~ fall enrollment,
18 it is determined that the data was overreported, the department shall recover the amount of state
19 aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the department
20 shall deposit the overpayment into the state general fund. If the overreporting occurred with the
21 intent to increase the amount of state aid received by overreporting, the ~~individual~~ person
22 responsible for the overreporting may be charged with a Class 1 misdemeanor as provided in
23 § 13-8-44, with the maximum penalty as defined in § 22-6-2.

24 Section 17. That § 13-13-1.8 be amended to read as follows:

1 13-13-1.8. ~~Students~~ No student attending the Black Hills Forest High School in Lawrence
2 County may ~~not~~ be included by any school district in its ~~average daily membership~~ fall
3 enrollment for purposes of state aid to education.

4 Section 18. That § 13-15-28 be amended to read as follows:

5 13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11
6 and sends over fifty percent of its resident students enrolled in grades for which it contracts to
7 an adjoining school district or districts located in South Dakota shall reorganize the school
8 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes
9 of this section, the number of students attending adjoining districts shall be based on ~~average~~
10 ~~daily membership pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this Act.

11 This section does not apply to a school district located wholly within the boundaries of an Indian
12 reservation.

13 Section 19. That § 13-28-40 be amended to read as follows:

14 13-28-40. An enrollment options program is established to enable any South Dakota
15 kindergarten through twelfth grade student to attend any public school that serves the student's
16 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-
17 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions
18 of §§ 13-28-40 to 13-28-47, inclusive, ~~average daily membership as defined in § 13-13-10.1~~
19 fall enrollment as defined in this Act is used to compute foundation aid and special education
20 average daily membership as defined in § 13-37-35 is used to determine funding for special
21 education.

22 Section 20. That § 13-28-49 be amended to read as follows:

23 13-28-49. Notwithstanding the provisions of § 13-28-40, any student who enrolls in another
24 school district pursuant to the provisions contained in §§ 13-28-40 to 13-28-47, inclusive, from

1 a district that does not receive state aid pursuant to chapter 13-13 in the succeeding fiscal year
 2 remains the financial obligation of the resident district. For each student, the resident district
 3 shall pay tuition to the nonresident district in the succeeding fiscal year per the following
 4 calculation:

5 (1) ~~Multiply~~ Determine the nonresident district's ~~adjusted average daily membership~~
 6 ~~calculated pursuant to subdivision 13-13-10.1(2) by the per student allocation as~~
 7 ~~defined in subdivision 13-13-10.1(4)~~ local need pursuant to subdivision 13-13-73(2);

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

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

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

14 Section 21. That § 13-28A-7 be amended to read as follows:

15 13-28A-7. For the purposes of state aid to education distributed pursuant to chapter 13-13,
 16 any student sent to South Dakota from North Dakota is included in the receiving school district's
 17 ~~average daily membership~~ fall enrollment.

18 Section 22. That § 13-28A-8 be amended to read as follows:

19 13-28A-8. For the purposes of state aid to education distributed pursuant to chapter 13-13,
 20 any student sent to North Dakota from South Dakota may not be included in the resident school
 21 district's ~~average daily membership~~ fall enrollment.

22 Section 23. That § 12-25-6.1 be amended to read as follows:

23 12-25-6.1. The provisions of this chapter, except §§ 12-25-27 to 12-25-31, inclusive, do not
 24 apply to any candidate or candidate election for judicial, municipal, or other governmental

1 subdivision offices. However, the governing body of any municipality or other governmental
2 subdivision may adopt an ordinance or resolution to make the provisions of chapter 12-25, with
3 or without amendments, applicable to municipal or other governmental subdivision elections.
4 The provisions of this chapter do apply to any candidate or candidate election for any county
5 office or school board seat in a district with ~~an average daily membership~~ a fall enrollment in
6 excess of two thousand students during the previous academic year.

7 Section 24. That § 42-7B-48.1 be amended to read as follows:

8 42-7B-48.1. Disbursements from the Gaming Commission fund shall be as set forth in § 42-
9 7B-48 until such time as the net municipal proceeds paid to the City of Deadwood equals six
10 million eight hundred thousand dollars for each year, and after payment of commission expenses
11 pursuant to subdivision 42-7B-48(2), and after payment of one hundred thousand dollars to the
12 State Historical Preservation Grant and Loan fund pursuant to subdivision 42-7B-48(4).
13 Thereafter, all remaining funds shall be distributed as follows:

- 14 (1) Seventy percent to the state general fund;
- 15 (2) Ten percent to be distributed to municipalities in Lawrence County, except the City
16 of Deadwood, pro rata according to their population;
- 17 (3) Ten percent to be distributed to school districts, pro rata based upon the previous
18 year's ~~average daily membership~~ fall enrollment, located in whole or in part, in
19 Lawrence County. For any school district located only partly in Lawrence County,
20 only that portion of the district's ~~average daily attendance~~ fall enrollment which
21 represents students residing in Lawrence County shall be considered in calculating
22 the proration required by this subdivision; and
- 23 (4) Ten percent to the City of Deadwood for deposit in the historic restoration and
24 preservation fund.

1 Section 25. 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 may transfer all or any part of a surplus in the capital outlay fund to the general fund. Any
7 unused portion of money that has been transferred into the special education fund may be
8 transferred from the special education fund within the current fiscal year to the fund from which
9 it originated. All or any part of any school district fund may be loaned to any other school
10 district fund for a term not to exceed twenty-four months.