

AN ACT

ENTITLED, An Act to revise the funding for K-12 education.

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

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

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

- (1) "Average daily membership," the average number of resident and nonresident kindergarten through twelfth grade pupils enrolled in all schools operated by the school district during the previous regular school year, minus average number of pupils for whom the district receives tuition, except pupils described in subdivision (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the average number of pupils for whom the district pays tuition;
- (1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the average daily membership of the receiving district when enrolled in the receiving district. When counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;
- (2) "Adjusted average daily membership," calculated as follows:
 - (a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;
 - (b) For districts with an average daily membership of less than six hundred, but greater

than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

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

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

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

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

- (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times \$4,237.72;
- (b) For districts with a fall enrollment of greater than two hundred, but less than six

hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that result;
and multiply the sum obtained times \$4,237.72;

- (3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;
- (4) "Per student allocation," for school fiscal year 2008 is \$4,528.80. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;
- (5) "Local need," is the sum of:
 - (a) The per student allocation multiplied by the fall enrollment; and
 - (b) The small school adjustment, if applicable, multiplied by the fall enrollment; and
 - (c) The payment distributed pursuant to section 9, if applicable;
- (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42;
- (7) "General fund balance," the unreserved fund balance of the general fund, less general fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers out of the general fund for the previous school fiscal year;
- (8) "General fund balance percentage," is a school district's general fund balance divided by the school district's total general fund expenditures for the previous school fiscal year, the quotient expressed as a percent;
- (9) "General fund base percentage," is the lesser of:
 - (a) The general fund balance percentage as of June 30, 2000; or
 - (b) The maximum allowable percentage for that particular fiscal year as stated in this

subsection.

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

- (10) "Allowable general fund balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school fiscal year;
- (11) "General fund exclusions," revenue a school district has received from the imposition of the excess tax levy pursuant to § 10-12-43; revenue a school district has received from gifts, contributions, grants, or donations; revenue a school district has received under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received as compensation for being a sparse school district under the terms of §§ 13-13-78 and 13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable judgment.

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

Any school district that has a fall enrollment, as defined in § 13-13-10.1, of less than one hundred and is not a sparse school district, as defined in § 13-13-78, shall reorganize with another school district or school districts to create a newly reorganized school district with a fall enrollment of one hundred or greater. Any school district that is not sparse and has a fall enrollment of one hundred or less on July 1, 2007, shall prepare a plan for reorganization by June 30, 2009. After July 1, 2007, if the fall enrollment of any school district that is not sparse falls to one hundred or below, that school district shall prepare a plan for reorganization within two years. If any such district fails to prepare a plan for reorganization by the deadline, the Board of Education shall prepare a reorganization plan for the district. However, the provisions of this section do not apply to any school district that contracts with a school district in another state pursuant to § 13-15-11 to

provide for the education of children in grades seven through twelve who reside within the district, that receives no foundation program state aid distributed pursuant to chapter 13-13, and that is located at least twenty-five miles from the nearest high school in an adjoining school district in the state.

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

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

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

hundred dollars per fall enrollment, up to a maximum of four hundred fall enrollment from each school district or a prorated portion thereof from a partial school district as it existed prior to consolidation for the second year after consolidation. If two or more school districts consolidate after July 1, 2007, the new school district is entitled to an additional two hundred dollars per fall enrollment, up to a maximum of four hundred fall enrollment from each school district or a prorated portion thereof from a partial school district as it existed prior to consolidation for the third year after consolidation.

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

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

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

13-13-1.4. If two or more school districts consolidate, for a period of four years after consolidation, the small school adjustment for the newly formed district shall be calculated by subtracting the sum of the average daily membership of the consolidating districts as they existed prior to consolidation from the sum of the adjusted average daily membership of the consolidated districts as they existed prior to consolidation, and dividing the difference by the sum of the average daily membership of the consolidated districts as they existed prior to consolidation. The resulting quotient is multiplied by \$4,237.72. Only school districts who have not previously benefited from this section may be included in this calculation.

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

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

- (1) Calculate local need pursuant to § 13-13-73;

- (2) Notwithstanding the four-year time limit, calculate local need pursuant to § 13-13-1.4;
- (3) Subtract the results of subdivision (1) from the results of subdivision (2);
- (4) Multiply the results of subdivision (3) by eighty percent in the fifth year, sixty percent in the sixth year, forty percent in the seventh year, and twenty percent in the eighth year;
- (5) Add the results of subdivision (1) and the results of subdivision (4).

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

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

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

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

- (1) Determine each school district's fall enrollment;
- (2) To arrive at the local need per district:
 - (a) Multiply the per student allocation by the fall enrollment;
 - (b) Multiply the small school adjustment, if applicable, by the fall enrollment; and
 - (c) Add the product of subsection (a) to the product of subsection (b) plus the amount of any payments received pursuant to section 9 of this Act;
- (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a negative number;
- (4) If the state aid appropriation for the general support of education is in excess of the

entitlement provided for in this section, the excess shall be used to fund any shortfall of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the general aid formula in the current year. If a shortfall in the state aid appropriation for general education exists that cannot be covered by § 13-37-45, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Section 9. That § 13-13-73.2 be amended to read as follows:

13-13-73.2. A school district's state aid for general education as calculated pursuant to § 13-13-73 shall be reduced by the amount calculated by subtracting the allowable general fund balance from the general fund balance. If the result is less than zero, the result equals zero.

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

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

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

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

- (1) "Sparse school district," a school district that meets each of the following criteria:
 - (a) Has a fall enrollment per square mile of 0.50 or less;
 - (b) Has a fall enrollment of five hundred or less;
 - (c) Has an area of four hundred square miles or more;
 - (d) Has at least fifteen miles between its secondary attendance center or centers and that of an adjoining district;

- (e) Operates a secondary attendance center;
 - (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42 or more; and
 - (g) Has a general fund balance percentage of thirty percent or less excluding revenue received from opting out of property tax limitations pursuant to chapter 10-12;
- (2) "Sparsity fall enrollment," for sparse school districts with a fall enrollment as defined in this Act of less than eighty-three or greater than two hundred thirty-two, is calculated as follows:
- (a) Divide the fall enrollment as defined in this Act by the area of the school district in square miles;
 - (b) Multiply the quotient obtained in subsection (a) times negative 0.125;
 - (c) Add 0.0625 to the product obtained in subsection (b); and
 - (d) Multiply the sum obtained in subsection (c) times the fall enrollment;
- (3) "Sparsity adjusted fall enrollment," for sparse school districts with a fall enrollment as defined in this Act of at least eighty-three, but no more than two hundred thirty-two, subtract the fall enrollment from two hundred thirty-two.

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

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

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

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

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

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

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

13-13-1.8. No student attending the Black Hills Forest High School in Lawrence County may be included by any school district in its fall enrollment for purposes of state aid to education.

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

13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11 and sends over fifty percent of its resident students enrolled in grades for which it contracts to an adjoining school district or districts located in South Dakota shall reorganize the school district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes of this section, the number of students attending adjoining districts shall be based on fall enrollment as defined in this Act. This section does not apply to a school district located wholly within the boundaries of an Indian reservation.

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

13-28-40. An enrollment options program is established to enable any South Dakota kindergarten through twelfth grade student to attend any public school that serves the student's grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-28-47, inclusive. For

purposes of determining state aid to education as it relates to the provisions of §§ 13-28-40 to 13-28-47, inclusive, fall enrollment as defined in this Act is used to compute foundation aid and special education average daily membership as defined in § 13-37-35 is used to determine funding for special education.

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

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

- (1) Determine the nonresident district's local need pursuant to subdivision 13-13-73(2);
- (2) Divide the result of (1) by the nonresident district's fall enrollment as defined in this Act;
- (3) Multiply the result of (2) by the number of days the student was enrolled in the nonresident district;
- (4) Divide the result of (3) by the number of days the nonresident district was in session.

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

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

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

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

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

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

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

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

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

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

An Act to revise the funding for K-12 education.

I certify that the attached Act
originated in the

SENATE as Bill No. 157

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 157

File No. _____

Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State