

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

808P0305

## HOUSE BILL NO. 1110

Introduced by: The Committee on Government Operations and Audit at the request of the  
Interim Committee on Government Operations and Audit

1 FOR AN ACT ENTITLED, An Act to restrict municipal membership in the public entity pool  
2 for liability.

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

4 Section 1. That § 3-22-1 be amended to read as follows:

5 3-22-1. There is hereby established the South Dakota public entity pool for liability effective  
6 March 1, 1987. The purpose of this program is to provide a fund as the sole source for payment  
7 of valid tort claims against all member public entities of the state and their officers and  
8 employees for all liability they may incur based upon negligence in the operation of motor  
9 vehicles or negligence in performing other acts within an employee's scope of employment and  
10 federal claims including 42 U.S.C. § 1983 which are not avoidable under the Tenth or Eleventh  
11 Amendment of the United States Constitution. This chapter does not extend coverage to  
12 municipalities and their officers and employees for payment of valid tort claims incurred after  
13 the effective date of this Act. Excluded from coverage under this chapter are claims involving  
14 employee grievances and awards for back pay, workers' compensation, employee health  
15 programs, single point-source pollution damage, asbestos related injuries, and claims arising



1 from engineering and design of any public roadway in this state by any employee of any entity.  
2 Nothing in this chapter shall be determined to be an abrogation, change, or modification of the  
3 doctrine of governmental or sovereign immunity created by any statute, judicial opinion,  
4 ordinance, resolution, or tort claims act nor shall this chapter create any cause of action in  
5 federal court or under federal law. No claim for indemnity or contribution by the United States,  
6 arising directly or indirectly from the acts or omissions of the South Dakota National Guard, its  
7 agents, officers, members, or employees, which is cognizable under the Federal Tort Claims Act  
8 may be prosecuted under this chapter. Pursuant to S.D. Const., Art. III, § 27 no tort action may  
9 be maintained in any court in this state against any member public entity except actions  
10 cognizable and recoverable under this chapter. For reporting purposes only, the PEPL, its fund,  
11 and employees are attached to the Office of the Bureau of Administration.

12 Section 2. That § 3-22-2 be amended to read as follows:

13 3-22-2. Terms used in this chapter mean:

- 14 (1) "Budget," a public entity's total prior year expenditures excluding capital outlay or  
15 bond redemption expenditures;
- 16 (2) "Bureau," the Bureau of Administration;
- 17 (3) "Claim," any final judgment of a court of competent jurisdiction of this state. Any  
18 final judgment of a court of competent jurisdiction of any sister state and of the  
19 United States unless such judgment is avoidable pursuant to the eleventh amendment  
20 of the United States Constitution or the laws of the United States. The term does not  
21 include tribal court judgments. In addition, the term includes any agreement in  
22 settlement and satisfaction of a claim agreed to by the bureau, the director and the  
23 member;
- 24 (4) "Director," the director of the PEPL appointed by the commissioner of administration

- 1           pursuant to this chapter;
- 2       (5)   "Employee," all current and former employees and elected and appointed officers of
- 3           any public entity whether classified, unclassified, licensed or certified, permanent or
- 4           temporary whether compensated or not. The term includes employees of all branches
- 5           of government including the judicial and legislative branches and employees of
- 6           constitutional, statutory and executive order boards, commissions and offices. The
- 7           term does not include independent contractors;
- 8       (6)   "Fiscal year," as defined in § 4-10-10;
- 9       (7)   "Fund," the public entity pool for liability fund established pursuant to this chapter;
- 10      (8)   "Master contract," any contract of insurance providing coverage, or partial coverage,
- 11           for a class of members, or the state, of one or more areas covered by this chapter;
- 12      (9)   "Member," the state, to the extent it elects to participate if it so elects, or any public
- 13           entity other than the state that has made its initial contribution and is current in its
- 14           subsequent contributions under this chapter;
- 15      (10)  "Nominating authority," ~~in the case of municipalities, the South Dakota Municipal~~
- 16           ~~League;~~ in the case of school districts, the Associated School Boards of South
- 17           Dakota; and in the case of the counties, the South Dakota County Commissioner
- 18           Association;
- 19      (11)  "PEPL," the public entity pool for liability established by this chapter;
- 20      (12)  "Public entities," the State of South Dakota, all of its branches and agencies, boards
- 21           and commissions. The term also includes all public entities established by law
- 22           exercising any part of the sovereign power of the state, including, but not limited to
- 23           ~~municipalities;~~ counties, school districts, townships, water districts established
- 24           pursuant to Title 46A, sewer, sanitary, and conservation districts, and all other legal

1 entities that public entities are authorized by law to establish;

2 (13) "Scope of employment," any activity that an employee performs or incidental to any  
3 activity to be performed regardless of the time and place of performance and  
4 regardless of whether the action in question could have, prior to the effective date of  
5 this chapter, subjected a public entity to liability and regardless of whether the  
6 activity is construed or defined as ministerial, discretionary or proprietary; and

7 (14) "Sub-pool," a vehicle for risk sharing among members of PEPL or public agencies  
8 of other states authorized by the bureau.