

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

519P0019

HOUSE STATE AFFAIRS ENGROSSED NO. **HB** **1005** - 1/28/2008

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

Introduced by: Representatives Rhoden, Boomgarden, Dennert, Juhnke, Noem, Sigdestad, and Vanneman and Senators Knudson, Hansen (Tom), Lintz, and Peterson (Jim) at the request of the Interim Property Tax Assessment Study Committee

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the assessment of
2 real property, to assess agricultural land based on its agricultural income value, to create an
3 implementation and oversight advisory task force, to repeal certain provisions regarding the
4 assessment of property, and to repeal the nonagricultural acreage classification.

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

6 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Notwithstanding the provisions of § 10-6-74, if any nonagricultural or owner-occupied
9 property sells for more than one hundred fifty percent of its assessed value after November 1,
10 2008, the sale of such property shall be used to value other real property if the sale is an arms-
11 length transaction. However, for the taxable valuation for the taxes payable in 2011, 2012, 2013,
12 2014, and 2015, no nonagricultural or owner-occupied property's valuation may increase more
13 than five percent per year because of such sales. The sales of nonagricultural and owner-



1 occupied property may only be used in a sales ratio study as allowed by this section.

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

4 For the taxes payable in 2011, 2012, and 2013, the total taxable value of agricultural land
5 within any county may not increase more than fifteen percent in any year.

6 Section 3. That sections 1 and 2 of this Act be repealed on July 1, 2015.

7 Section 4. That § 10-6-74 be repealed on July 1, 2014.

8 Section 5. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Notwithstanding the provisions of § 10-6-33, beginning on July 1, 2009, agricultural land
11 shall be assessed based on its agricultural income value on a per acre basis. The agricultural
12 income value of agricultural land shall be determined on the basis of productivity and the annual
13 earnings capacity of the agricultural land. The productivity of agricultural land and its annual
14 earning capacity shall be based on data collected and analyzed pursuant to sections 5 to 10,
15 inclusive, of this Act.

16 Agricultural income value is defined as the capitalized average annual earning capacity on
17 a per acre basis which has been adjusted by an amount that reflects the landowner's share of the
18 gross return. The capacity of cropland to produce agricultural products shall be based on the
19 income from crops or plants produced on the land. The capacity of noncropland to produce
20 agricultural products shall be based on the animal unit carrying capacity of the land. For the
21 purpose of this section, annual earning capacity for:

- 22 (1) Cropland is twenty-four percent of the annual gross income capacity of the land; and
23 (2) Noncropland is twenty-five percent of the annual gross income capacity of the land.

24 The annual earning capacity shall be capitalized at a rate of six percent to determine the

1 agricultural income value.

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

4 The secretary of revenue and regulation shall enter into contracts with South Dakota State
5 University and, if necessary, the South Dakota Agricultural Statistics Service for the purpose
6 of creating a database to determine the agricultural income value of agricultural land by county.

7 The cropland data shall include: acres planted, acres harvested, yield per acre, and locally
8 adjusted crop prices. Locally adjusted crop prices shall be established by adjusting statewide
9 prices. The noncropland data shall include: rangeland acres, pastureland acres, rangeland AUM's
10 per acre, pastureland AUM's per acre, grazing season data, and statewide cow and calf prices.

11 The secretary shall have such data collected for 2001, which will serve as the first year of the
12 database, and each year thereafter. The database shall consist of the most recent eight years of
13 data that have been collected and the two years, one year representing the highest agricultural
14 income value and one year representing the lowest agricultural income value, shall be discarded
15 from the database. The database for the 2010 assessment for taxes payable in 2011 shall consist
16 of data from 2001 to 2008, inclusive, and the database for each assessment year thereafter shall
17 be adjusted accordingly. The economics department shall provide the data for each county to
18 the secretary of revenue and regulation by June first of each year.

19 Section 7. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The economics department of South Dakota State University shall submit recommendations
22 to the Agricultural Land Assessment Implementation and Oversight Advisory Task Force by
23 November 1, 2008, regarding factors to use for the percentage of annual earning capacity to be
24 used to determine the agricultural income value of the land pursuant to section 5 of this Act and

1 other provisions used to assess agricultural land that will provide the least amount of shift
2 between cropland and noncropland on a statewide basis. Thereafter, the economics department
3 shall submit such recommendations, if any, to the task force by September first of each year.

4 Section 8. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Before July first each year, the secretary of revenue and regulation shall annually provide
7 each director of equalization the agricultural income value for each county as computed
8 pursuant to section 5 of this Act. The director of equalization shall annually determine the
9 assessed value of agricultural land. The assessed value of agricultural land may be adjusted by
10 the following factors:

- 11 (1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2;
- 12 and
- 13 (2) The location, size, soil survey statistics, terrain, and topographical condition of the
- 14 land including the climate, accessibility, and surface obstructions which can be
- 15 documented.

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

18 Agricultural land shall be divided by the director of equalization into categories, including
19 cropland and noncropland. Each category shall be divided into classes based on soil
20 classification standards developed by the United States Department of Agriculture Natural
21 Resources Conservation Service.

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

24 Buildings and structures, other than normally occupied dwellings on agricultural land and

1 automobile garages or portions of buildings used as automobile garages, which are used
2 exclusively for agricultural purposes and situated on agricultural land, are hereby specifically
3 classified for tax purposes as agricultural property and shall be assessed as similar
4 nonagricultural property.

5 Section 11. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The agricultural income value for agricultural land as determined by sections 5 to 10,
8 inclusive, of this Act represents the market value of agricultural land, and the Department of
9 Revenue and Regulation shall provide the director of equalization of each county the factor of
10 adjustment necessary for the computation required pursuant to §§ 10-3-41, 10-12-31.1,
11 10-12-42, and 10-13-37.

12 Section 12. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 There is hereby established the Agricultural Land Assessment Implementation and Oversight
15 Advisory Task Force. The task force shall consist of the following twelve members:

16 (1) The speaker of the House of Representatives shall appoint four members of the
17 House of Representatives, no more than two of whom may be from one political
18 party;

19 (2) The speaker of the House of Representatives shall appoint two members of the
20 general public;

21 (3) The president pro tempore of the Senate shall appoint four members of the Senate,
22 no more than two of whom may be from one political party; and

23 (4) The president pro tempore of the Senate shall appoint two members of the general
24 public.

1 The initial appointments shall be made no later than July 1, 2008, and shall serve until
2 January 12, 2009. The speaker of the House of Representatives and president pro tempore of the
3 Senate before the close of each regular session of the Legislature held in odd-numbered years
4 shall appoint members to the task force for a term of two years. If there is a vacancy on the task
5 force, the vacancy shall be filled in the same manner as the original appointment.

6 The task force shall advise the department regarding the rules promulgated by the
7 department to administer the provisions concerning the assessment and taxation of agricultural
8 lands and shall review the implementation of the provisions of law concerning the assessment
9 and taxation of agricultural land. The task force shall report to the Senate and House of
10 Representatives and may submit a copy of its report to the Governor. The task force may present
11 draft legislation and policy recommendations to the Legislative Research Council Executive
12 Board.

13 The task force shall make recommendations in the following areas:

- 14 (1) The proper percentage of annual earning capacity to be used to determine the
15 agricultural income value for subdivisions (1) and (2) of section 5 of this Act; and
16 (2) The proper capitalization rate in order to have total taxable valuation for the taxes
17 payable in 2011 from agricultural property be not more than total taxable valuation
18 for the taxes payable in 2010 from agricultural property plus the estimated growth in
19 agricultural property value in 2010.

20 Section 13. That § 10-6-33.13 be amended to read as follows:

21 10-6-33.13. The secretary of revenue and regulation may promulgate rules pursuant to
22 chapter 1-26 concerning the:

- 23 (1) Collection and tabulation of information required to determine median appraisal or
24 sales assessment ratio, and coefficient of dispersion;

- 1 (2) Criteria to be included in a compliance audit of assessment practices; ~~and~~
- 2 (3) Conditions under which a certificate of compliance may be issued to a county;
- 3 (4) Procedures for determining the valuation of agricultural buildings and structures;
- 4 (5) Procedures for determining the valuation of dwellings on agricultural land and
- 5 automobile garages or portions of buildings used as automobile garages;
- 6 (6) Application of cropland and noncropland income values;
- 7 (7) Application of soil classification standards; and
- 8 (8) Procedures for making adjustments to the value of agricultural land pursuant to
- 9 sections 5 to 10, inclusive, of this Act.

10 Before the secretary promulgates any rules pursuant to subdivision (4) to (8), inclusive, the
 11 secretary shall present the proposed rules to the Agricultural Land Assessment Implementation
 12 and Oversight Advisory Task Force established pursuant to section 12 of this Act.

13 Section 14. That § 10-12-31.1 be amended to read as follows:

14 10-12-31.1. Notwithstanding other provision of law, when applying the levies for school
 15 purposes, the county director of equalization of each county shall adjust the level of assessment
 16 in that district so that the level of assessment as indicated by the most recent assessment to sales
 17 ratio as provided for in § 10-11-55 and the most recent ~~assessment to full agricultural land value~~
 18 ~~ratio~~ agricultural income value as provided for in ~~§ 10-11-57~~ sections 5 to 10, inclusive, of this
 19 Act in that district are equal to eighty-five percent of market value or agricultural income value.

20 The Department of Revenue and Regulation shall provide the director of equalization of each
 21 county all of the factors of adjustment necessary for the computations required in this section.

22 Section 15. That § 10-6-33.3 be amended to read as follows:

23 10-6-33.3. Land or improvement on land within an operating unit which is not used incident
 24 to an agricultural pursuit shall be separately listed and assessed ~~and the income therefrom shall~~

1 ~~not be used in determining the values for the purposes of §§ 10-6-33.1 and 10-6-33.2.~~

2 Section 16. That § 10-6-33.5 be amended to read as follows:

3 10-6-33.5. The assessment, valuation, equalization, and taxation of school and endowment
4 lands shall be at the same level and on the same basis as lands assessed, valued, and equalized
5 according to §§ ~~10-6-33.1 to 10-6-33.4, inclusive~~ sections 5 to 10, inclusive, of this Act.

6 Section 17. That § 10-6-33.7 be amended to read as follows:

7 10-6-33.7. Agricultural land in each county shall be divided into the eight classes defined
8 by the United States Department of Agriculture's soil conservation service as published in its
9 soil survey for each county. The county director of equalization shall, based on the agricultural
10 lands soil survey classification, determine a value for each soil type. ~~The value for each soil type~~
11 ~~shall be determined from sales of similar land based upon its soil survey classification, and as~~
12 ~~adjusted for the factors contained in subdivision 10-6-33.1(2). The sales used shall be sales of~~
13 ~~agricultural land that are sold for agricultural purposes.~~

14 Section 18. That § 10-6-31.3 be amended to read as follows:

15 10-6-31.3. For tax purposes, land is agricultural land if it meets two of the following three
16 criteria:

- 17 (1) At least thirty-three and one-third percent of the total family gross income of the
18 owner is derived from the pursuit of agriculture as defined in subdivision (2) of this
19 section or it is a state-owned public shooting area or a state-owned game production
20 area as identified in § 41-4-8 and it is owned and managed by the Department of
21 Game, Fish and Parks;
- 22 (2) Its principal use is devoted to the raising and harvesting of crops or timber or fruit
23 trees, the rearing, feeding, and management of farm livestock, poultry, fish, or
24 nursery stock, the production of bees and apiary products, or horticulture, all for

1 intended profit pursuant to subdivision (1) of this section. Agricultural real estate also
 2 includes woodland, wasteland, and pasture land, but only if the land is held and
 3 operated in conjunction with agricultural real estate as defined and it is under the
 4 same ownership;

5 (3) It consists of not less than twenty acres of unplatted land or is a part of a contiguous
 6 ownership of not less than eighty acres of unplatted land. The same acreage
 7 specifications apply to platted land, excluding land platted as a subdivision, which
 8 is in an unincorporated area. However, the board of county commissioners may
 9 increase the minimum acre requirement up to one hundred sixty acres.

10 ~~However, for tax purposes, land is not agricultural land if the land is classified pursuant to~~
 11 ~~§ 10-6-33.14 as a nonagricultural acreage.~~

12 Section 19. That § 10-13-37.1 be amended to read as follows:

13 10-13-37.1. For purposes of ~~§ 10-6-33.24 and~~ §§ 10-3-41, 10-12-31.1, and 10-13-37, the
 14 secretary of revenue and regulation shall calculate a factor for each county for the agricultural
 15 ~~and~~ nonagricultural valuations. The factor shall be calculated by using the sales of arms-length
 16 transactions and the assessments from the preceding assessment year. The secretary shall take
 17 into consideration any reappraisals completed by the director of equalization. If there are less
 18 fewer than fifteen sales of either class, the secretary shall use the preceding year's sales of that
 19 class with current assessments. ~~In the case of agricultural land, sales may also be bridged in~~
 20 ~~from adjoining counties if there are less than fifteen sales.~~

21 Section 20. That § 13-11-10 be amended to read as follows:

22 13-11-10. In implementing the terms of § 13-11-9, a separate weighted average tax levy of
 23 the receiving districts shall be calculated for agricultural property, ~~nonagricultural acreage~~
 24 ~~property~~, owner-occupied single-family dwelling property, and for nonagricultural property for

1 each sending school district as follows:

2 (1) The levy per thousand dollars of taxable valuation for agricultural property for each
3 receiving school district shall be multiplied by the number of children from the
4 sending school district to whom the receiving school district is providing educational
5 services;

6 (2) Add together the products from subdivision (1) for each receiving school district;

7 (3) Divide the sum from subdivision (2) by the total number of students that the
8 contracting school district is sending to the receiving school districts pursuant to
9 § 13-15-1.3. The quotient is the weighted average tax levy per one thousand dollars
10 of taxable valuation for agricultural property;

11 (4) The weighted average tax levy per thousand dollars of taxable valuation for
12 ~~nonagricultural acreage~~, owner-occupied single-family dwellings, and nonagricultural
13 property shall be obtained by repeating the procedure outlined in subdivisions (1) to
14 (3), inclusive, for each class of property; and

15 (5) The sum of the levies assessed for all funds in the sending district shall be equal to
16 or greater than the sum of all levies for all funds in the receiving district.

17 The above calculations do not include students receiving educational services from an
18 out-of-state school district nor the tax levy of any out-of-state school district.

19 Section 21. That § 10-12-42 be amended to read as follows:

20 10-12-42. For taxes payable in ~~2008~~ 2011 and each year thereafter, the levy for the general
21 fund of a school district shall be as follows:

22 (1) The maximum tax levy shall be nine dollars and eleven cents per thousand dollars of
23 taxable valuation subject to the limitations on agricultural property as provided in
24 subdivision (2) of this section, and owner-occupied property as provided for in

1 subdivision (3) of this section, ~~and nonagricultural acreage property as provided for~~
2 ~~in subdivision (4) of this section;~~

3 (2) The maximum tax levy on agricultural property for such school district shall be two
4 dollars and seventy-one cents per thousand dollars of taxable valuation. If the
5 district's levies are less than the maximum levies as stated in this section, the levies
6 shall maintain the same proportion to each other as represented in the mathematical
7 relationship at the maximum levies; and

8 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in
9 § 10-13-40, for such school district may not exceed four dollars and twenty-six cents
10 per thousand dollars of taxable valuation. If the district's levies are less than the
11 maximum levies as stated in this section, the levies shall maintain the same
12 proportion to each other as represented in the mathematical relationship at the
13 maximum levies; ~~and~~

14 ~~(4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-~~
15 ~~33.14, for such school district shall be three dollars and seventy-one cents per~~
16 ~~thousand dollars of taxable valuation. If the district's levies are less than the~~
17 ~~maximum levies as stated in this section, the levies shall maintain the same~~
18 ~~proportion to each other as represented in the mathematical relationship at the~~
19 ~~maximum levies.~~

20 All levies in this section shall be imposed on valuations where the median level of
21 assessment represents eighty-five percent of market value as determined by the Department of
22 Revenue and Regulation. These valuations shall be used for all school funding purposes. If the
23 district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same
24 proportion to each other as represented in the mathematical relationship at the maximum levies

1 in this section. The school district may elect to tax at less than the maximum amounts set forth
2 in this section.

3 Section 22. That § 10-6-33.25 be amended to read as follows:

4 10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be
5 determined using capitalized annual cash rent. The annual cash rent is the annual cash rent,
6 excluding the per acre tax on agricultural land, determined through an analysis of arms-length
7 rental agreements collected within the county in the three years prior to the year for which the
8 agricultural income value is being determined. The agricultural income value of cropland shall
9 be based on average rents over a three-year period for cropland under natural conditions. The
10 agricultural income value of noncropland shall be based on average rents over a three-year
11 period for noncropland under natural conditions. However, no arms-length rental agreements
12 for irrigated land may be used to determine the annual cash rent pursuant to this section. The
13 annual cash rent shall be capitalized at ~~seven and three-fourths~~ six and fifteen hundredths
14 percent.

15 The secretary of revenue and regulation may enter into a contract for the collection of cash
16 rent information by county. Cash rent information shall be adjusted by soil survey statistics, if
17 available, and pursuant to § 10-6-33.26.

18 Section 23. That §§ 10-6-33.1, 10-6-33.4, 10-6-33.6, §§ 10-6-33.14 to 10-6-33.20, inclusive,
19 and §§ 10-6-33.23 to 10-6-33.27, inclusive, be repealed.

20 Section 24. That sections 14 to 21, inclusive, and section 23 are effective on July 1, 2009.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

258P0045

HOUSE STATE AFFAIRS ENGROSSED NO. **HB** **1006** - 1/28/2008

Introduced by: Representatives Rhoden, Boomgarden, Dennert, Juhnke, Noem, Sigdestad, and Vanneman and Senators Knudson, Hansen (Tom), Lintz, and Peterson (Jim) at the request of the Interim Property Tax Assessment Study Committee

1 FOR AN ACT ENTITLED, An Act to revise certain tax levy limitations and property tax levies
2 for school districts.

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

4 Section 1. That § 13-13-72.1 be amended to read as follows:

5 13-13-72.1. Any adjustments in the levies specified in ~~subdivision 13-13-10.1(6)~~ § 10-12-42
6 made pursuant to §§ 13-13-71 and 13-13-72 shall be based on maintaining the relationship
7 between statewide local effort as a percentage of statewide local need in the fiscal year
8 succeeding the fiscal year in which the adjustment is made. In addition to the adjustments in the
9 levies provided by this section, the levies shall also be annually adjusted as necessary to reduce
10 the portion of local need paid by local effort by an amount equal to nine million dollars from
11 those funds transferred into the property tax reduction fund pursuant to § 10-50-52 subsequent
12 to July 1, 2007. In addition to the adjustments in the levies provided by this section, the levies
13 for nonagricultural property and owner-occupied single-family dwellings shall also be adjusted



1 as necessary to account for the additional increase in the total assessed value for nonagricultural
2 property and owner-occupied single-family dwellings pursuant to the phasing out and repeal of
3 the provisions provided in § 10-6-74.

4 Section 2. That § 13-10-6 be amended to read as follows:

5 13-10-6. For the purpose of continuing a fund for the payment of pensions to retired
6 employees of ~~a school districts which shall have~~ district that has established such system, ~~such~~
7 ~~districts~~ the school district may levy an annual tax not exceeding thirty cents per thousand
8 dollars of taxable valuation of ~~such~~ the school district for the current year. ~~Such~~ The levy may
9 not be included in determining the tax levy limitation of ~~such~~ the school district provided by
10 law. Moneys collected from ~~such~~ the tax shall be kept by the business manager in a special
11 pension fund and ~~shall~~ may not be used for any other purpose except upon discontinuance of
12 ~~such~~ the pension system by the school district, in which case any unexpended balance shall be
13 transferred to the general fund.

14 For taxes payable in 2011, the total amount of revenue payable from the levy provided in
15 this section may not increase more than the lesser of three percent or the index factor, as defined
16 in § 10-13-38, over the maximum amount of revenue that could have been generated for the
17 taxes payable in 2010. After applying the index factor, a school district may increase the revenue
18 payable from taxes on real property above the limitations provided by this section by the
19 percentage increase of value resulting from any improvements or change in use of real property,
20 annexation, minor boundary changes, and any adjustments in taxation of real property separately
21 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,
22 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

23 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of revenue payable from
24 the levy provided in this section may not increase more than the lesser of three percent or the

1 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have
2 been generated for the taxes payable in 2010 plus any unused index factor from the previous
3 years. After applying the index factor, a school district may increase the revenue payable from
4 taxes on real property above the limitations provided by this section by the percentage increase
5 of value resulting from any improvements or change in use of real property, annexation, minor
6 boundary changes, and any adjustments in taxation of real property separately classified and
7 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,
8 except § 10-6-31.4, only if assessed the same as property of equal value.

9 Any school district created or reorganized after January 1, 2009, is exempt from the
10 limitation provided by this section for a period of two years immediately following its creation.

11 For taxes payable in 2011, 2012, 2013, 2014, and 2015, the levy limitation of thirty cents
12 per thousand dollars of taxable valuation does not apply to any school district.

13 Section 3. That § 13-16-7 be amended to read as follows:

14 13-16-7. The school board of any school district of this state may at its discretion authorize
15 an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation on
16 the taxable valuation of the district for the capital outlay fund for assets as defined by § 13-16-6
17 or for its obligations under a resolution, lease-purchase agreement, capital outlay certificate, or
18 other arrangement with the Health and Educational Facilities Authority. Taxes collected
19 pursuant to such levy may be irrevocably pledged by the school board to the payment of
20 principal of and interest on installment purchase contracts or capital outlay certificates entered
21 into or issued pursuant to § 13-16-6 or 13-16-6.2 or lease-purchase agreements or other
22 arrangement with the Health and Educational Facilities Authority and, so long as any capital
23 outlay certificates are outstanding, installment agreement payments, lease-purchase agreements,
24 or other arrangements are unpaid, the school board of any district may be compelled by

1 mandamus or other appropriate remedy to levy an annual tax sufficient to pay principal and
2 interest thereon, but not to exceed the three dollars per thousand dollars of taxable valuation in
3 any year authorized to be levied hereby.

4 For taxes payable in 2011, the total amount of revenue payable from the levy provided in
5 this section may not increase more than the lesser of three percent or the index factor, as defined
6 in § 10-13-38, over the maximum amount of revenue that could have been generated for the
7 taxes payable in 2010. After applying the index factor, a school district may increase the revenue
8 payable from taxes on real property above the limitations provided by this section by the
9 percentage increase of value resulting from any improvements or change in use of real property,
10 annexation, minor boundary changes, and any adjustments in taxation of real property separately
11 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,
12 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value. A school
13 district may increase the revenue it receives from taxes on real property above the limit provided
14 by this section for taxes levied to pay the principal, interest, and redemption charges on any
15 bonds issued after January 1, 2009, which are subject to referendum; for scheduled payment
16 increases on bonds, and for a levy directed by the order of a court for the purpose of paying a
17 judgment against the school district. Any school district created or reorganized after January 1,
18 2009, is exempt from the limitation provided by this section for a period of two years
19 immediately following its creation.

20 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of revenue payable from
21 the levy provided in this section may not increase more than the lesser of three percent or the
22 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have
23 been generated for the taxes payable in 2010 plus any unused index factor from the previous
24 years. After applying the index factor, a school district may increase the revenue payable from

1 taxes on real property above the limitations provided by this section by the percentage increase
2 of value resulting from any improvements or change in use of real property, annexation, minor
3 boundary changes, and any adjustments in taxation of real property separately classified and
4 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,
5 except § 10-6-31.4, only if assessed the same as property of equal value. A school district may
6 increase the revenue it receives from taxes on real property above the limit provided by this
7 section for taxes levied to pay the principal, interest, and redemption charges on any bonds
8 issued after January 1, 2009, which are subject to referendum, scheduled payment increases on
9 bonds and for a levy directed by the order of a court for the purpose of paying a judgment
10 against such school district. Any school district created or reorganized after January 1, 2009, is
11 exempt from the limitation provided by this section for a period of two years immediately
12 following its creation.

13 For taxes payable in 2011, 2012, 2013, 2014, and 2015, the levy limitation of three dollars
14 per thousand dollars of taxable valuation does not apply to any school district.

15 Section 4. That § 13-37-16 be amended to read as follows:

16 13-37-16. For taxes payable in 1997, and each year thereafter, the school board shall levy
17 no more than one dollar and forty cents per thousand dollars of taxable valuation, as a special
18 levy in addition to all other levies authorized by law for the amount so determined to be
19 necessary, and such levy shall be spread against all of the taxable property of the district. The
20 proceeds derived from such levy shall constitute a school district special education fund of the
21 district for the payment of costs for the special education of all children in need of special
22 education or special education and related services who reside within the district pursuant to the
23 provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this section shall be based on
24 valuations such that the median level of assessment represents 85% of market value as

1 determined by the Department of Revenue and Regulation. The total amount of taxes that would
2 be generated at the levy pursuant to this section shall be considered local effort. Money in the
3 special education fund may be expended for the purchase or lease of any assistive technology
4 that is directly related to special education and specified in a student's individualized education
5 plan. This section does not apply to real property improvements.

6 For taxes payable in 2011, the total amount of revenue payable from the levy provided in
7 this section may not increase more than the lesser of three percent or the index factor, as defined
8 in § 10-13-38, over the maximum amount of revenue that could have been generated for the
9 taxes payable in 2010. After applying the index factor, a school district may increase the revenue
10 payable from taxes on real property above the limitations provided by this section by the
11 percentage increase of value resulting from any improvements or change in use of real property,
12 annexation, minor boundary changes, and any adjustments in taxation of real property separately
13 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,
14 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

15 Any school district created or reorganized after January 1, 2009, is exempt from the
16 limitation provided by this section for a period of two years immediately following its creation.

17 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of revenue payable from
18 the levy provided in this section may not increase more than the lesser of three percent or the
19 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have
20 been generated for the taxes payable in 2010 plus any unused index factor from the previous
21 years. After applying the index factor, a school district may increase the revenue payable from
22 taxes on real property above the limitations provided by this section by the percentage increase
23 of value resulting from any improvements or change in use of real property, annexation, minor
24 boundary changes, and any adjustments in taxation of real property separately classified and

1 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,
2 except § 10-6-31.4, only if assessed the same as property of equal value.

3 For taxes payable in 2011, 2012, 2013, 2014, and 2015, the levy limitation of one dollar and
4 forty cents per thousand dollars of taxable valuation does not apply to any school district.

5 Section 5. That § 13-37-35.1 be amended to read as follows:

6 13-37-35.1. Terms used in chapter 13-37 mean:

- 7 (1) "Level one disability," a mild disability;
- 8 (2) "Level two disability," a mental retardation or emotional disorder;
- 9 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-
10 blindness, orthopedic impairment, or traumatic brain injury;
- 11 (4) "Level four disability," autism;
- 12 (5) "Level five disability," multiple disabilities;
- 13 (5A) "Level six disability," prolonged assistance;
- 14 (6) "Index factor," is the annual percentage change in the consumer price index for urban
15 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
16 the United States Department of Labor for the year before the year immediately
17 preceding the year of adjustment or three percent, whichever is less;
- 18 (7) "Local effort," shall be calculated for taxes payable in 2006 and thereafter using a
19 ~~special education levy of one dollar and twenty cents per one thousand dollars of~~
20 ~~valuation~~ 2011 and shall be the amount of revenue that could have been generated
21 for the taxes payable in 2010 using a special education levy of one dollar and twenty
22 cents per one thousand dollars of valuation increased by the lesser of three percent
23 or the index factor, as defined in § 10-13-38, plus a percentage increase of value
24 resulting from any improvements or change in use of real property, annexation, minor

1 boundary changes, and any adjustments in taxation of real property separately
2 classified and subject to statutory adjustments and reductions under chapters 10-4,
3 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property
4 of equal value.

5 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort
6 shall be increased by the lesser of three percent or the index factor, established
7 pursuant to § 10-13-38 plus a percentage increase of value resulting from any
8 improvements or change in use of real property, annexation, minor boundary
9 changes, and any adjustments in taxation of real property separately classified and
10 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and
11 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value;

12 (8) "Allocation for a student with a level one disability," for the school fiscal year
13 beginning July 1, 2004, is \$ 3,533.13. For each school year thereafter, the allocation
14 for a student with a level one disability shall be the previous fiscal year's allocation
15 for such child increased by the lesser of the index factor or three percent;

16 (9) "Allocation for a student with a level two disability," for the school fiscal year
17 beginning July 1, 2004, is \$ 8,277.21. For each school year thereafter, the allocation
18 for a student with a level two disability shall be the previous fiscal year's allocation
19 for such child increased by the lesser of the index factor or three percent;

20 (10) "Allocation for a student with a level three disability," for the school fiscal year
21 beginning July 1, 2004, is \$ 12, 580.73. For each school year thereafter, the allocation
22 for a student with a level three disability shall be the previous fiscal year's allocation
23 for such child increased by the lesser of the index factor or three percent;

24 (11) "Allocation for a student with a level four disability," for the school fiscal year

1 beginning July 1, 2004, is \$ 12, 001.80. For each school year thereafter, the allocation
2 for a student with a level four disability shall be the previous fiscal year's allocation
3 for such child increased by the lesser of the index factor or three percent;

4 (12) "Allocation for a student with a level five disability," for the school fiscal year
5 beginning July 1, 2004, is \$ 15, 882.21. For each school year thereafter, the allocation
6 for a student with a level five disability shall be the previous fiscal year's allocation
7 for such child increased by the lesser of the index factor or three percent;

8 (12A) "Allocation for a student with a level six disability," for the school fiscal year
9 beginning July 2004, is \$8,122.23. For each school year thereafter, the allocation for
10 a student with a level six disability shall be the previous fiscal year's allocation for
11 such child increased by the lesser of the index factor or three percent;

12 (13) "Child count," is the number of students in need of special education or special
13 education and related services according to criteria set forth in rules promulgated
14 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in
15 accordance with rules promulgated pursuant to § 13-37-1.1;

16 (14) "Average daily membership," the average number of kindergarten through twelfth
17 grade pupils enrolled in all schools operated by the school district during the previous
18 regular school year plus the average number of pupils for whom the district pays
19 tuition;

20 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
21 secretary of education for the purpose of instructing children of compulsory school
22 age. This definition excludes any school that receives a majority of its revenues from
23 public funds;

24 (16) "Nonpublic average daily membership," the average number of children under age

1 sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the
2 previous school year plus:

3 (a) For nonpublic schools located within the boundaries of a public school district
4 with an average daily membership of six hundred or more during the previous
5 school year, the average number of kindergarten through twelfth grade pupils
6 enrolled during the previous regular school year in all nonpublic schools
7 located within the boundaries of the public school district;

8 (b) For nonpublic schools located within the boundaries of a public school district
9 with an average daily membership of less than six hundred during the previous
10 school year, the average number of resident kindergarten through twelfth grade
11 pupils enrolled during the previous school year in all nonpublic schools
12 located within the State of South Dakota;

13 (17) "Special education average daily membership," average daily membership plus
14 nonpublic average daily membership;

15 (18) "Local need," an amount to be determined as follows:

16 (a) Multiply the special education average daily membership by 0.1013 and
17 multiply the result by the allocation for a student with a level one disability;

18 (b) Multiply the number of students having a level two disability as reported on
19 the child count for the previous school fiscal year by the allocation for a
20 student with a level two disability;

21 (c) Multiply the number of students having a level three disability as reported on
22 the child count for the previous school fiscal year by the allocation for a
23 student with a level three disability;

24 (d) Multiply the number of students having a level four disability as reported on

1 the child count for the previous school fiscal year by the allocation for a
2 student with a level four disability;

3 (e) Multiply the number of students having a level five disability as reported on
4 the child count for the previous school fiscal year by the allocation for a
5 student with a level five disability;

6 (f) Multiply the number of students having a level six disability as reported on the
7 child count for the previous school fiscal year by the allocation for a student
8 with a level six disability;

9 (g) Sum the results of (a) through (f);

10 (19) "Effort factor," ~~the school district's special education tax levy in dollars per thousand~~
11 ~~divided by \$1.20 for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort~~
12 factor is the amount of taxes payable for the year divided by the amount of local
13 effort as calculated in subdivision (7). The maximum effort factor is 1.0.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

884P0053

HOUSE EDUCATION ENGROSSED NO. **HB 1016**- 1/25/2008

Introduced by: Representatives Haverly, Brunner, Burg, and Faehn and Senators Smidt (Orville), Napoli, Olson (Ed), and Turbak Berry at the request of the Technical Institute Funding Task Force

1 FOR AN ACT ENTITLED, An Act to establish a new system of funding for the postsecondary
2 technical institutes.

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

4 Section 1. Definition of terms. Terms used in this chapter mean:

- 5 (1) "Academic year," the period of time beginning with the fall semester, continuing
6 through the spring semester, and culminating with the subsequent summer sessions;
- 7 (2) "Base funding allocation," for fiscal year 2009 is the amount appropriated by the
8 Legislature in fiscal year 2008 through the General Appropriations Act for
9 postsecondary career and technical education including the portions thereof that were
10 reserved for specific purposes in accordance with ARSD 24:10:42:27. For fiscal year
11 2010 and thereafter, it is the previous year's base funding allocation increased by the
12 index factor. The base funding allocation may not be used for bond payments;
- 13 (3) "High cost program," a postsecondary technical institute program for which the
14 program cost per student FTE exceeds the average program cost per student FTE for



- 1 all postsecondary technical institute programs;
- 2 (4) "Index factor," the cost-of-living adjustment for state employees for that fiscal year
3 as proposed by the Governor and contained in the budget report prepared pursuant
4 to § 4-7-9;
- 5 (5) "New program," a postsecondary technical institute program that, pursuant to § 13-
6 39-18, is approved by the South Dakota Board of Education for the first time or an
7 existing program that is redesigned to fill a new or expanding need and is determined
8 by the board to be a new program for the purposes of this Act;
- 9 (6) "Program cost," any cost directly allocated to a program excluding the cost of any
10 equipment purchased with funds from the postsecondary technical institute
11 equipment subfund established in section 5 of this Act;
- 12 (7) "Program cost per student FTE," the program cost divided by the total student FTEs
13 enrolled in the program;
- 14 (8) "Standard cost program," a postsecondary technical institute program for which the
15 program cost per student FTE does not exceed the average program cost per student
16 FTE for all postsecondary technical institute programs;
- 17 (9) "Student FTE," "Student full-time equivalent," a unit of measure based upon credit
18 hours; one student FTE is equal to thirty credit hours per academic year;
- 19 (10) "High cost program share," a percentage calculated by dividing the total cost of all
20 high cost programs by the total cost of all programs, excluding general education
21 costs; and
- 22 (11) "Standard cost program share," a percentage calculated by dividing the total cost of
23 all standard cost programs by the total cost of all programs, excluding general
24 education costs.

1 Section 2. The secretary of the Department of Education shall calculate, apportion and
2 distribute state funds appropriated by the Legislature for the postsecondary technical institutes
3 as follows:

4 (1) Examine the cost of each program over the previous three years and determine the
5 three-year average cost of each program, excluding general education costs. For
6 programs that have not existed for three years, determine the average cost over the
7 time the program has existed;

8 (2) Using the three-year average cost of each program, determine the average program
9 cost per student FTE for all the postsecondary technical institute programs;

10 (3) Based upon the average calculated in subsection (2), determine which postsecondary
11 technical institute programs are high cost programs and which are standard cost
12 programs;

13 (4) Apportion the high cost program share of the base funding allocation for the high
14 cost programs and the standard cost program share of the base funding allocation for
15 the standard cost programs;

16 (5) Determine the number of student FTEs at each postsecondary technical institute who
17 were in high cost programs during the previous academic year and the number of
18 students at each who were in standard cost programs, including those student FTEs
19 enrolled only in general education courses, during the previous academic year;

20 (6) Distribute the apportionment for high cost programs as calculated in subsection (4)
21 to the LEAs having jurisdiction over the postsecondary technical institutes in
22 proportion to the number of student FTEs in high cost programs within each institute
23 as calculated in subsection (5); and

24 (7) Distribute the apportionment for standard cost programs as calculated in subsection

1 (4) to the LEAs having jurisdiction over the postsecondary technical institutes in
2 proportion to the number of student FTEs in standard cost programs within each
3 institute as calculated in subsection (5).

4 Section 3. The secretary of the Department of Education shall make bond payments
5 authorized in § 13-39-66 from general funds provided for the postsecondary technical institutes
6 through the General Appropriations Act. The bond payments may not be deducted from the base
7 funding allocation as defined in section 1 of this Act.

8 Section 4. Beginning in fiscal year 2012 and every three years thereafter, the Board of
9 Education shall evaluate the apportionment and distribution of state funds to the state's
10 postsecondary technical institutes and report its findings and recommendations to the
11 Legislature and the Governor no later than the thirty-first day of August.

12 Section 5. There is hereby established within the state treasury the postsecondary technical
13 institute auxiliary fund. The fund shall be a participating fund and shall be credited for all
14 interest earned on fund balances. The Board of Education shall approve all expenditures from
15 the postsecondary technical institute auxiliary fund. For purposes of administration, the fund
16 shall be divided into three subfunds as follows:

17 (1) The postsecondary technical institute maintenance and repair subfund to fund the
18 maintenance and repair of existing facilities;

19 (2) The postsecondary technical institute new program subfund to fund the one-time
20 costs associated with starting a new program or retooling a current program to meet
21 a new or expanding need; and

22 (3) The postsecondary technical institute equipment subfund to fund the replacement of
23 old or outdated equipment being used in current programs.

24 Section 6. That § 13-39-18 be amended to read as follows:

1 13-39-18. The director shall submit all requests for new programs and requests to expand
2 or redesign current programs, if funds are requested for the expansion or redesign, from the
3 postsecondary technical institutes in the state to the ~~state board~~ Board of Education for action.

4 Section 7. That § 13-39-37 be amended to read as follows:

5 13-39-37. The South Dakota Board of Education may adopt rules pursuant to chapter 1-26,
6 to be administered by the director, governing the operation and maintenance of postsecondary
7 technical institutes ~~which will~~ to afford the people of the state, insofar as practicable, an equal
8 opportunity to acquire a public technical education. The rules may provide for the following:

- 9 (1) Curriculum and standards of instruction and scholarship;
- 10 (2) Attendance requirements, age limits of trainees, eligibility for attendance, and tuition
11 payments and other charges;
- 12 (3) Apportionment and distribution of state funds pursuant to this Act, and the
13 apportionment and distribution of all other funds made available to the board for
14 carrying out the purposes of §§ 13-39-34 to 13-39-39, inclusive;
- 15 (4) Transportation requirements and payments;
- 16 (5) General administrative matters;
- 17 (6) The submission of the annual budget of the postsecondary technical institute which
18 shall include, but is not limited to, a description of programs, a list of staff positions,
19 and the amount for supplies and operating expenses associated with the programs
20 offered. The rules shall require the budget to include all operating costs of programs,
21 including those costs ineligible for reimbursement from federal and state funds, shall
22 state the procedure for amending and filing it with the division of education services
23 and resources and shall provide that failure to comply with the rules may result in
24 withholding of payments from federal and state funds;

1 (7) The submission of plans of LEAs for new construction or major renovation of
 2 facilities eligible for reimbursement. The rules regarding these plans shall provide a
 3 requirement that the LEA, by a written resolution, declare the LEA committed to
 4 begin construction if the budget of the state board provides the matching funds;

5 (8) The promotion and coordination of ~~vocational~~ career and technical education; and

6 (9) The duplication of programs.

7 Section 8. That § 13-39-38 be amended to read as follows:

8 13-39-38. The secretary of education shall calculate, apportion and distribute state funds
 9 made available for postsecondary technical institutes ~~through a formula approved by the South~~
 10 ~~Dakota Board of Education to the LEAs having jurisdiction over postsecondary technical~~
 11 ~~institutes to assist in maintaining and operating those schools~~ through the formula provided in
 12 this Act. The use of the funds are subject to rules adopted by the state board pursuant to
 13 subdivision § 13-39-37(3) and in accordance with the approved state plan for vocational
 14 education.

15 Section 9. That ARSD 24:10:42:27 be repealed.

16 ~~24:10:42:27. The Office of Career and Technical Education shall set aside and distribute~~
 17 ~~funds to postsecondary technical institutes for the following purpose before distributing funds~~
 18 ~~through the formula prescribed in § 24:10:42:28:~~

19 ~~—(1)— Bonding;~~

20 ~~—(2)— Maintenance and repair;~~

21 ~~—(3)— Day care;~~

22 ~~—(4)— Business and industry training coordinators;~~

23 ~~—(5)— New programs; and~~

24 ~~—(6)— Other.~~

1 Section 10. That ARSD 24:10:42:28 be repealed.

2 ~~24:10:42:28. The postsecondary technical institutes shall receive state funding, from the~~
3 ~~amount appropriated by the Legislature less funds reserved in § 24:10:42:27, under a formula~~
4 ~~that distributes these funds based on tuition full-time equivalents as follows:~~

5 ~~— (1) — Subtract the total set-asides reserved in § 24:10:42:27 from the total amount~~
6 ~~appropriated by the Legislature within the general appropriations act;~~

7 ~~— (2) — Determine the tuition collected at each institution for the preceding fiscal year;~~

8 ~~— (3) — Sum the tuition collected at each institution as determined in subdivision (2) to~~
9 ~~establish the total postsecondary institute tuition;~~

10 ~~— (4) — Determine the percent of the total tuition collected at each institution by dividing the~~
11 ~~result in subdivision (2) for each institution by the result obtained in subdivision (3);~~

12 ~~and~~

13 ~~— (5) — The allocation for each institution is then determined by multiplying the result~~
14 ~~obtained in subdivision (4) times the result in subdivision (1).~~

15 Section 11. That ARSD 24:10:42:29 be repealed.

16 ~~24:10:42:29. The Office of Career and Technical Education shall revise the funding formula~~
17 ~~each year using tuition data.~~

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0330

HOUSE APPROPRIATIONS ENGROSSED NO. **HB** **1067** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to make an appropriation to defray operation costs of the
2 24/7 sobriety program and to declare an emergency.

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

4 Section 1. There is hereby appropriated from the law enforcement officers training fund the
5 sum of four hundred thousand dollars (\$400,000), or so much thereof as may be necessary, to
6 the Office of the Attorney General's 24/7 sobriety fund, to defray costs of operating the 24/7
7 sobriety program.

8 Section 2. The attorney general shall approve vouchers and the state auditor shall draw
9 warrants to pay expenditures authorized by this Act.

10 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,
11 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
12 effect from and after its passage and approval.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

284P0335

HOUSE APPROPRIATIONS ENGROSSED NO. **HB** **1080** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a student
2 athlete development center on the campus of South Dakota State University and to make an
3 appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
8 roofing and structures, and such other services and improvements as may be required to erect,
9 a student athlete development center on the campus of South Dakota State University in
10 Brookings, in Brookings County, at an estimated cost of six million dollars.

11 Section 2. There is hereby appropriated the sum of six million dollars (\$6,000,000), or so
12 much thereof as may be necessary, of other fund expenditure authority, payable from funds
13 donated for the purposes of this Act, to the Board of Regents for the construction authorized by
14 this Act.



1 Section 3. The design and construction of the facilities approved by this Act shall be under
2 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
3 commissioner of the Bureau of Administration and the executive director of the Board of
4 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
5 authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0338

HOUSE APPROPRIATIONS ENGROSSED NO. **HB** **1081** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to replace storage
2 facilities at the Cottonwood Agricultural Experiment Station and to make an appropriation
3 therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, and such other
8 services as may be required to construct a new machine and equipment storage shed and hoop
9 barn at the Cottonwood Agricultural Experiment Station, located near Cottonwood in Jackson
10 County, in conjunction with the agricultural experiment station, at an estimated cost of two
11 hundred thousand dollars.

12 Section 2. The Board of Regents shall provide for the removal or demolition of existing
13 storage sheds pursuant to § 13-51-12.

14 Section 3. There is hereby appropriated from pesticide registration fees designated for the



1 agricultural experiment station in subdivision 38-20A-59(4) the sum of two hundred thousand
2 dollars (\$200,000), or so much thereof as may be necessary, to the Board of Regents for the
3 purpose of constructing the facility described in this Act.

4 Section 4. The design and construction of the facilities approved by this Act shall be under
5 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
6 commissioner of the Bureau of Administration and the executive director of the Board of
7 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
8 authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0339

HOUSE APPROPRIATIONS ENGROSSED NO. **HB** **1082** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to revise the appropriation for a new dairy manufacturing
2 plant at South Dakota State University.

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

4 Section 1. That section 2 of chapter 93 of the 2006 Session Laws be amended to read as
5 follows:

6 Section 2. There is hereby appropriated to the Board of Regents ~~four million dollars~~
7 ~~(\$4,000,000)~~ five million eight hundred fifty-two thousand dollars (\$5,852,000), or so much
8 thereof as may be necessary, from private donations and grants received by South Dakota State
9 University to construct the facility described in section 1 of this Act.

10 Section 2. That section 3 of chapter 93 of the 2006 Session Laws be repealed.

11 ~~Section 3. The Board of Regents may accept, transfer, and expend any funds obtained for~~
12 ~~these purposes from federal sources, gifts, contributions, or any other source, all of which shall~~
13 ~~be deemed appropriated to the project authorized by this Act.~~



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0340

HOUSE APPROPRIATIONS ENGROSSED NO. **HB** **1083** - 1/25/2008

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a new public
2 restroom facility at McCrory Gardens on the campus of South Dakota State University and
3 to make an appropriation therefor.

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

5 Section 1. The Board of Regents may contract for the construction, completion, furnishing,
6 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
7 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
8 roofing and structures, and such other services and improvements as may be required to erect,
9 a new public restroom facility at McCrory Gardens on the campus of South Dakota State
10 University in Brookings, in Brookings County, at an estimated cost of fifty thousand dollars.

11 Section 2. There is hereby appropriated the sum of fifty thousand dollars (\$50,000), or so
12 much thereof as may be necessary, of other fund expenditure authority, payable from funds
13 donated for the purposes of this Act, to the Board of Regents for the construction authorized by
14 this Act.



1 Section 3. The design and construction of the facilities approved by this Act shall be under
2 the general supervision of the Bureau of Administration as provided in § 5-14-2. The
3 commissioner of the Bureau of Administration and the executive director of the Board of
4 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures
5 authorized by this Act.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

682P0247

HOUSE JUDICIARY ENGROSSED NO. **HB 1130** 1/28/2008

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the implementation
2 by the court of the standard visitation guidelines.

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

4 Section 1. That § 25-4A-16.1 be amended to read as follows:

5 25-4A-16.1. ~~Any~~ Subject to the jurisdictional and procedural provisions of chapter 26-5B,
6 any parent subject to a court order of this state or subject to the jurisdiction of a court of this
7 state pursuant to chapter 26-5B relating to visitation, custody, or child support may request the
8 court to enter an order implementing the standard visitation guidelines. If the request is made
9 in a child support proceeding, compliance with chapter 26-5B, including appropriate notice and
10 an opportunity to be heard, if not previously provided, is required. The request shall be in
11 writing and shall include a copy of the existing order establishing custody or visitation and
12 provide a current address of the responding party, but no particular formality is required by the
13 moving party. Upon receipt of the written request, the court shall serve a copy of the standard
14 guidelines upon both parties by first class mail, together with a copy of the request and
15 providing notice that absent an objection, the guideline visitation shall be imposed. The notice



1 shall provide instructions as to the manner in which objections may be made. If either party
2 objects to the imposition of the standard guidelines within ten days of service, the court shall
3 conduct an expedited hearing as soon as practical. Based upon the evidence presented at the
4 hearing, the court may order the parties to abide by the standard visitation guidelines or may
5 order any other relief as it deems appropriate.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

970P0248

HOUSE JUDICIARY ENGROSSED NO. **HB 1135** -
1/25/2008

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to filing petitions for
2 protection and to declare an emergency.

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

4 Section 1. That § 22-19A-9 be amended to read as follows:

5 22-19A-9. A petition for relief under §§ 22-19A-8 to 22-19A-16, inclusive, may be filed in
6 circuit court or in a magistrate court with a magistrate judge presiding. Venue lies where any
7 party to the proceedings resides.

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



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

283P0024

HOUSE COMMERCE ENGROSSED NO. **HB 1137** - 1/28/2008

Introduced by: Representatives Lust, Boomgarden, Dreyer, Feinstein, Haverly, Kirkeby, McLaughlin, Olson (Betty), Peters, Rausch, and Vehle and Senators Knudson, Abdallah, Dempster, Heidepriem, McCracken, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to adopt the Model Registered Agents Act.

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

3 Section 1. This Act may be cited as the Model Registered Agents Act.

4 Section 2. Terms used in this Act mean:

5 (1) "Commercial registered agent," an individual or a domestic or foreign entity listed
6 under section 7 of this Act;

7 (2) "Domestic entity," an entity whose internal affairs are governed by the law of this
8 state;

9 (3) "Entity," a person that has a separate legal existence or has the power to acquire an
10 interest in real property in its own name other than:

11 (a) An individual;

12 (b) A testamentary, inter vivos, or charitable trust;

13 (c) An association or relationship that is not a partnership by reason of § 48-7A-
14 202(c) or a similar provision of the law of any other jurisdiction;



- 1 (d) A decedent's estate; or
- 2 (e) A public corporation, government or governmental subdivision, agency, or
- 3 instrumentality, or quasi-governmental instrumentality;
- 4 (4) "Filing entity," any domestic corporation, domestic cooperative, domestic limited
- 5 liability company, domestic nonprofit corporation, domestic limited liability
- 6 partnership, or domestic limited partnership;
- 7 (5) "Foreign entity," an entity other than a domestic entity;
- 8 (6) "Foreign qualification document," an application for a certificate of authority or other
- 9 foreign qualification filing with the secretary of state by a foreign entity;
- 10 (7) "Governance interest," the right under the organic law or organic rules of an entity,
- 11 other than as a governor, agent, assignee, or proxy, to:
 - 12 (a) Receive or demand access to information concerning, or the books and records
 - 13 of, the entity;
 - 14 (b) Vote for the election of the governors of the entity; or
 - 15 (c) Receive notice of or vote on any or all issues involving the internal affairs of
 - 16 the entity;
- 17 (8) "Governor," a person by or under whose authority the powers of an entity are
- 18 exercised and under whose direction the business and affairs of the entity are
- 19 managed pursuant to the organic law and organic rules of the entity;
- 20 (9) "Interest," a share or membership in a corporation;
- 21 (10) "Interest holder," a direct holder of an interest;
- 22 (11) "Jurisdiction of organization," with respect to an entity, the jurisdiction whose law
- 23 includes the organic law of the entity;
- 24 (12) "Noncommercial registered agent," a person that is not listed as a commercial

1 registered agent under section 7 of this Act and that is:

2 (a) An individual or a domestic or foreign entity that serves in this state as the
3 agent for service of process of an entity; or

4 (b) The individual who holds the office or other position in an entity that is
5 designated as the agent for service of process pursuant to subsection (2)(b) of
6 section 6 of this Act;

7 (13) "Nonqualified foreign entity," a foreign entity that is not authorized to transact
8 business in this state pursuant to a filing with the secretary of state;

9 (14) "Nonresident LLP statement,":

10 (a) A statement of qualification of a domestic limited liability partnership that
11 does not have an office in this state; or

12 (b) A statement of foreign qualification of a foreign limited liability partnership
13 that does not have an office in this state;

14 (15) "Organic law," the statutes, if any, other than this Act, governing the internal affairs
15 of an entity;

16 (16) "Organic rules," the public organic document and private organic rules of an entity;

17 (17) "Person," an individual, corporation, estate, trust, partnership, limited liability
18 company, business or similar trust, association, joint venture, public corporation,
19 government or governmental subdivision, agency, or instrumentality, or any other
20 legal or commercial entity;

21 (18) "Private organic rules," the rules, whether or not in a record, that govern the internal
22 affairs of an entity, are binding on all of its interest holders, and are not part of its
23 public organic document, if any;

24 (19) "Public organic document," the public record the filing of which creates an entity,

- 1 and any amendment to or restatement of that record;
- 2 (20) "Qualified foreign entity," any foreign corporation, foreign cooperative, foreign
3 limited liability company, foreign nonprofit corporation, foreign limited liability
4 partnership, or foreign limited partnership;
- 5 (21) "Record," information that is inscribed on a tangible medium or that is stored in an
6 electronic or other medium and is retrievable in perceivable form;
- 7 (22) "Registered agent," a commercial registered agent or a noncommercial registered
8 agent;
- 9 (23) "Registered agent filing,":
- 10 (a) The public organic document of a domestic filing entity;
- 11 (b) A nonresident LLP statement; or
- 12 (c) A foreign qualification document;
- 13 (24) "Represented entity,":
- 14 (a) A domestic filing entity;
- 15 (b) A domestic or qualified foreign limited liability partnership that does not have
16 an office in this state; or
- 17 (c) A qualified foreign entity;
- 18 (25) "Sign," with present intent to authenticate or adopt a record:
- 19 (a) To execute or adopt a tangible symbol; or
- 20 (b) To attach to or logically associate with the record an electronic sound, symbol,
21 or process;
- 22 (26) "Transferable interest," the right under an entity's organic law to receive distributions
23 from the entity;
- 24 (27) "Type," with respect to an entity, means a generic form of entity:

- 1 (a) Recognized at common law; or
- 2 (b) Organized under an organic law, whether or not some entities organized under
- 3 that organic law are subject to provisions of that law that create different
- 4 categories of the form of entity.

5 Section 3. The secretary of state shall collect the following fees when the following
6 documents are filed pursuant to this Act:

- 7 (1) Commercial registered agent listing statement, \$100;
- 8 (2) Commercial registered agent termination statement, \$10;
- 9 (3) Statement of change, \$10 per filing entity;
- 10 (4) Statement of resignation, no charge;
- 11 (5) Statement appointing an agent for service of process, \$10.

12 Section 4. The secretary of state shall collect the following fees for copying and certifying
13 a copy of any document filed under this Act:

- 14 (1) One dollar a page for copying; and
- 15 (2) Ten dollars for a certificate.

16 Section 5. Whenever a provision of this Act other than subdivision (4) of section 15 of this
17 Act requires that a filing state an address, the filing must state:

- 18 (1) An actual street address or rural route box number in this state; and
- 19 (2) A mailing address in this state, if different from the address under subdivision (1).

20 Section 6. A registered agent filing must state:

- 21 (1) The name of the represented entity's commercial registered agent; or
- 22 (2) If the entity does not have a commercial registered agent:
 - 23 (a) The name and address of the entity's noncommercial registered agent; or
 - 24 (b) The title of an office or other position with the entity if service of process is

1 to be sent to the person holding that office or position, and the address of the
2 business office of that person.

3 The appointment of a registered agent pursuant to subdivision (1) or subsection (2)(a) is an
4 affirmation by the represented entity that the agent has consented to serve as such.

5 Section 7. An individual or a domestic or foreign entity may become listed as a commercial
6 registered agent by filing with the secretary of state a commercial registered agent listing
7 statement signed by or on behalf of the person which states:

8 (1) The name of the individual or the name, type, and jurisdiction of organization of the
9 entity;

10 (2) That the person is in the business of serving as a commercial registered agent in this
11 state; and

12 (3) The address of a place of business of the person in this state to which service of
13 process and other notice and documents being served on or sent to entities
14 represented by it may be delivered.

15 A commercial registered agent listing statement may include the information regarding
16 acceptance of service of process in a record by the commercial registered agent provided for in
17 section 18 of this Act.

18 If the name of a person filing a commercial registered agent listing statement is not
19 distinguishable on the records of the secretary of state from the name of another commercial
20 registered agent listed under this section, the person must adopt a fictitious name that is
21 distinguishable and use that name in its statement and when it does business in this state as a
22 commercial registered agent.

23 A commercial registered agent listing statement takes effect on filing.

24 Section 8. The secretary of state shall note the filing of the commercial registered agent

1 listing statement in the index of filings maintained by the secretary of state for each entity
2 represented by the registered agent at the time of the filing. The statement has the effect of
3 deleting the address of the registered agent from the registered agent filing of each of those
4 entities.

5 Section 9. A commercial registered agent may terminate its listing as a commercial
6 registered agent by filing with the secretary of state a commercial registered agent termination
7 statement signed by or on behalf of the agent which states:

8 (1) The name of the agent as currently listed under section 7 of this Act; and

9 (2) That the agent is no longer in the business of serving as a commercial registered
10 agent in this state.

11 A commercial registered agent termination statement takes effect on the thirty-first day after
12 the day on which it is filed.

13 The commercial registered agent shall promptly furnish each entity represented by it with
14 notice in a record of the filing of the commercial registered agent termination statement.

15 Section 10. When a commercial registered agent termination statement takes effect, the
16 registered agent ceases to be an agent for service of process on each entity formerly represented
17 by it. Until an entity formerly represented by a terminated commercial registered agent appoints
18 a new registered agent, service of process may be made on the entity as provided in sections 16
19 to 19, inclusive, of this Act. Termination of the listing of a commercial registered agent under
20 this section does not affect any contractual rights a represented entity may have against the agent
21 or that the agent may have against the entity.

22 Section 11. A represented entity may change the information currently on file under section
23 6 of this Act by filing with the secretary of state a statement of change signed on behalf of the
24 entity which states:

1 (1) The name of the entity; and

2 (2) The information that is to be in effect as a result of the filing of the statement of
3 change.

4 The interest holders or governors of a domestic entity need not approve the filing of:

5 (1) A statement of change under this section; or

6 (2) A similar filing changing the registered agent or registered office of the entity in any
7 other jurisdiction.

8 The appointment of a registered agent pursuant to this section is an affirmation by the
9 represented entity that the agent has consented to serve as such.

10 A statement of change filed under this section takes effect on filing.

11 As an alternative to using the procedures in this section, a represented entity may change the
12 information currently on file under section 6 of this Act by amending its most recent registered
13 agent filing in the manner provided by the laws of this state other than this Act for amending
14 that filing.

15 Section 12. If a noncommercial registered agent changes its name or its address as currently
16 in effect with respect to a represented entity pursuant to section 6 of this Act, the agent shall file
17 with the secretary of state, with respect to each entity represented by the agent, a statement of
18 change signed by or on behalf of the agent which states:

19 (1) The name of the entity;

20 (2) The name and address of the agent as currently in effect with respect to the entity;

21 (3) If the name of the agent has changed, its new name; and

22 (4) If the address of the agent has changed, the new address.

23 A statement of change filed under this section takes effect on filing.

24 A noncommercial registered agent shall promptly furnish the represented entity with notice

1 in a record of the filing of a statement of change and the changes made by the filing.

2 Section 13. If a commercial registered agent changes its name, its address as currently listed
3 under section 7 of this Act, or its type or jurisdiction of organization, the agent shall file with
4 the secretary of state a statement of change signed by or on behalf of the agent which states:

- 5 (1) The name of the agent as currently listed under section 7 of this Act;
- 6 (2) If the name of the agent has changed, its new name;
- 7 (3) If the address of the agent has changed, the new address; and
- 8 (4) If the type or jurisdiction of organization of the agent has changed, the new type or
9 jurisdiction of organization.

10 The filing of a statement of change under this section is effective to change the information
11 regarding the commercial registered agent with respect to each entity represented by the agent.

12 A statement of change filed under this section takes effect on filing.

13 A commercial registered agent shall promptly furnish each entity represented by it with
14 notice in a record of the filing of a statement of change relating to the name or address of the
15 agent and the changes made by the filing.

16 Section 14. If a commercial registered agent changes its address without filing a statement
17 of change as required by section 13 of this Act, the secretary of state may cancel the listing of
18 the agent. Such cancellation has the same effect as a termination. Promptly after canceling the
19 listing of an agent, the secretary of state shall serve notice in a record on:

- 20 (1) Each entity represented by the agent, stating that the agent has ceased to be an agent
21 for service of process on the entity and that, until the entity appoints a new registered
22 agent, service of process may be made on the entity as provided in sections 16 to 19,
23 inclusive, of this Act; and
- 24 (2) The agent, stating that the listing of the agent has been canceled under this section.

1 Section 15. A registered agent may resign at any time with respect to a represented entity
2 by filing with the secretary of state a statement of resignation signed by or on behalf of the agent
3 which states:

- 4 (1) The name of the entity;
- 5 (2) The name of the agent;
- 6 (3) That the agent resigns from serving as agent for service of process for the entity; and
- 7 (4) The name and address of the person to which the agent will send notice.

8 A statement of resignation takes effect on the earlier of the thirty-first day after the day on
9 which it is filed or the appointment of a new registered agent for the represented entity.

10 The registered agent shall, pursuant to subdivision (4), promptly furnish the represented
11 entity notice in a record of the date on which a statement of resignation was filed.

12 When a statement of resignation takes effect, the registered agent ceases to have
13 responsibility for any matter tendered to it as agent for the represented entity. A resignation
14 under this section does not affect any contractual rights the entity has against the agent or that
15 the agent has against the entity.

16 A registered agent may resign with respect to a represented entity whether or not the entity
17 is in good standing.

18 Section 16. A registered agent is an agent of the represented entity authorized to receive
19 service of any process, notice, or demand required or permitted by law to be served on the
20 entity.

21 If an entity that previously filed a registered agent filing with the secretary of state no longer
22 has a registered agent, or if its registered agent cannot with reasonable diligence be served, the
23 entity may be served by registered or certified mail, return receipt requested, addressed to the
24 governors of the entity by name at its principal office in accordance with any applicable judicial

1 rules and procedures. The names of the governors and the address of the principal office may
2 be as shown in the most recent annual report filed with the secretary of state. Service is
3 perfected under this section at the earliest of:

- 4 (1) The date the entity receives the mail;
- 5 (2) The date shown on the return receipt, if signed on behalf of the entity; or
- 6 (3) Five days after its deposit with the United States Postal Service, if correctly
7 addressed and with sufficient postage.

8 Section 17. If process, notice, or demand cannot be served on an entity pursuant to section
9 16 of this Act, service of process may be made by handing a copy to the manager, clerk, or other
10 person in charge of any regular place of business or activity of the entity if the person served is
11 not a plaintiff in the action.

12 Section 18. Service of process, notice, or demand on a registered agent must be in the form
13 of a written document, except that service may be made on a commercial registered agent in
14 such other forms of a record, and subject to such requirements as the agent has stated from time
15 to time in its listing under section 7 of this Act that it will accept.

16 Section 19. Service of process, notice, or demand may be perfected by any other means
17 prescribed by law other than this Act.

18 Section 20. The only duties under this Act of a registered agent that has complied with this
19 Act are:

- 20 (1) To forward to the represented entity at the address most recently supplied to the agent
21 by the entity any process, notice, or demand that is served on the agent;
- 22 (2) To provide the notices required by this Act to the entity at the address most recently
23 supplied to the agent by the entity;
- 24 (3) If the agent is a noncommercial registered agent, to keep current the information

1 required by section 6 of this Act in the most recent registered agent filing for the
2 entity; and

3 (4) If the agent is a commercial registered agent, to keep current the information listed
4 for it under section 7 of this Act.

5 Section 21. The appointment or maintenance in this state of a registered agent does not by
6 itself create the basis for personal jurisdiction over the represented entity in this state. The
7 address of the agent does not determine venue in an action or proceeding involving the entity.

8 Section 22. In applying and construing this Act, consideration must be given to the need to
9 promote consistency of the law with respect to its subject matter among states that enact it.

10 Section 23. This Act modifies, limits, and supersedes the federal Electronic Signatures in
11 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,
12 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any
13 of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

14 Section 24. Each filing entity or qualified foreign entity, except a bank organized pursuant
15 to § 51A-3-1.1 and a limited partnership organized pursuant to chapter 48-7, shall deliver to the
16 Office of the Secretary of State for filing an annual report that sets forth:

- 17 (1) The name of the filing entity or qualified foreign entity;
- 18 (2) The jurisdiction under whose law it is formed;
- 19 (3) The address of its principal office, wherever located;
- 20 (4) The information required by section 6 of this Act; and
- 21 (5) The names and business addresses of its governors except in the following two cases:
- 22 (a) If a business corporation has eliminated its board of directors pursuant to § 47-
- 23 1A-732, the annual report shall set forth the names of the shareholders instead;
- 24 and

1 (b) If a limited liability company is member-managed, the names and business
2 addresses of its governors need not be set forth.

3 Information in the annual report must be current as of the date the annual report is executed
4 on behalf of the filing entity or qualified foreign entity. Any other provisions of law
5 notwithstanding the annual report may be executed by any authorized person.

6 Section 25. The first annual report shall be delivered to the Office of the Secretary of State
7 before the first day of the second month of the year following the year in which a filing entity
8 or qualified foreign entity, except a bank organized pursuant to § 51A-3-1.1 and limited
9 partnership organized pursuant to chapter 48-7, was authorized to transact business. The
10 subsequent annual report shall be delivered to the Office of the Secretary of State by the same
11 date each subsequent year.

12 Section 26. If an annual report does not contain the information required by section 24 of
13 this Act, the secretary of state shall promptly notify the filing entity or qualified foreign entity
14 in writing and return the report to it for correction. If the report is corrected to contain the
15 information required by section 24 of this Act and delivered to the Office of the Secretary of
16 State within thirty days after the effective date of notice, it is deemed to be timely filed.

17 Section 27. That § 47-1A-122 be amended to read as follows:

18 47-1A-122. The Office of the Secretary of State shall collect the following fees when the
19 documents described in this section are delivered for filing:

- 20 (1) Articles of incorporation, \$125;
- 21 (2) Application for use of indistinguishable name, \$20;
- 22 (3) Application for reserved name, \$20;
- 23 (4) Notice of transfer of reserved name, \$10;
- 24 (5) Application for registered name, \$12;

- 1 (6) Application for renewal of registered name, \$10;
- 2 (7) ~~Corporation's statement of change of registered agent or registered office or both, \$10~~
- 3 Repealed;
- 4 (8) ~~Agent's statement of change of registered office for each affected corporation, \$10~~
- 5 Repealed;
- 6 (9) ~~Agent's statement of resignation, no charge~~ Repealed;
- 7 (10) Articles of domestication, \$125;
- 8 (11) Articles of charter surrender, \$125;
- 9 (12) Articles of domestication and conversion, \$125;
- 10 (13) Articles of entity conversion, \$125;
- 11 (14) Amendment of articles of incorporation, \$50;
- 12 (15) Restatement of articles of incorporation, \$50;
- 13 (16) Articles of merger or share exchange, \$50;
- 14 (17) Articles of dissolution, \$10;
- 15 (18) Articles of revocation of dissolution, \$10;
- 16 (19) Certificate of administrative dissolution, no charge;
- 17 (20) Application for reinstatement following administrative dissolution, plus any
- 18 delinquent annual report filing fees for the period prior to the reinstatement
- 19 application, \$250;
- 20 (21) Certificate of reinstatement, no charge;
- 21 (22) Certificate of judicial dissolution, no charge;
- 22 (23) Application for certificate of authority, \$550;
- 23 (24) Application for amended certificate of authority, \$200;
- 24 (25) Application for certificate of withdrawal, \$10;

- 1 (26) Application for transfer of authority, \$20;
- 2 (27) Certificate of revocation of authority to transact business, no charge;
- 3 (28) Annual report, \$30;
- 4 (29) Articles of correction, \$20;
- 5 (30) Application for certificate of existence or authorization, \$15;
- 6 (31) Any other document required or permitted to be filed by this chapter, \$20.

7 The Office of the Secretary of State shall collect a fee of twenty-five dollars each time
8 process is served on the Office of the Secretary of State under this chapter. The party to a
9 proceeding causing service of process is entitled to recover this fee as costs if the party prevails
10 in the proceeding.

11 Section 28. That § 47-1A-125 be amended to read as follows:

12 47-1A-125. If a document delivered to the Office of the Secretary of State for filing satisfies
13 the requirements of §§ 47-1A-120 to 47-1A-120.3, inclusive, the Office of the Secretary of State
14 shall file it. The Office of the Secretary of State files a document by recording it as filed on the
15 date and time of receipt. After filing a document, ~~except as provided in §§ 47-1A-503, 47-1A-~~
16 ~~1520, and 47-1A-1621.1 to 47-1A-1701, inclusive,~~ the Office of the Secretary of State shall
17 deliver to the domestic or foreign corporation or its representative a receipt with an
18 acknowledgment of the date and time of filing.

19 If the Office of the Secretary of State refuses to file a document, the Office of the Secretary
20 of State shall return it to the domestic or foreign corporation or its representative within five
21 days after the document was delivered, together with a brief, written explanation of the reason
22 for the refusal.

23 The Office of the Secretary of State's duty to file documents under this section is ministerial.
24 The Office of the Secretary of State's filing or refusing to file a document does not:

- 1 (1) Affect the validity or invalidity of the document in whole or part;
- 2 (2) Relate to the correctness or incorrectness of information contained in the document;
- 3 or
- 4 (3) Create a presumption that the document is valid or invalid or that information
- 5 contained in the document is correct or incorrect.

6 Section 29. That § 47-1A-126 be amended to read as follows:

7 47-1A-126. If the Office of the Secretary of State refuses to file a document delivered to the
8 Office of the Secretary of State for filing, the domestic or foreign corporation may appeal the
9 refusal within thirty days after the return of the document to the circuit court of the county where
10 the corporation's principal office is located in this state or, if none in this state, ~~its registered~~
11 ~~office, is or will be located~~ to the circuit court of Hughes County. The appeal is commenced by
12 petitioning the court to compel filing the document and by attaching to the petition the
13 document and the Office of the Secretary of State's explanation of the refusal to file.

14 The court may summarily order the Office of the Secretary of State to file the document or
15 take other action the court considers appropriate. The court's final decision may be appealed as
16 in other civil proceedings.

17 Section 30. That § 47-1A-141.3 be amended to read as follows:

18 47-1A-141.3. Written notice to a domestic or foreign corporation authorized to transact
19 business in this state may be addressed to its registered agent ~~at its registered office~~ or to the
20 corporation or its secretary at its principal office shown in its most recent annual report or, in
21 the case of a foreign corporation that has not yet delivered an annual report, in its application
22 for a certificate of authority.

23 Section 31. That § 47-1A-202 be amended to read as follows:

24 47-1A-202. The articles of incorporation shall set forth:

- 1 (1) A corporate name for the corporation that satisfies the requirements of §§ 47-1A-401
2 to 47-1A-401.3, inclusive;
- 3 (2) The number of shares the corporation is authorized to issue;
- 4 (3) The street address, ~~or a statement that there is no street address,~~ of its principal
5 office;
- 6 (4) The ~~street address, or a statement that there is no street address,~~ of the corporation's
7 ~~initial registered office, and the name of its initial registered agent at that office~~
8 information required by section 6 of this Act; and
- 9 (5) The name and address of each incorporator.

10 Section 32. That §§ 47-1A-501 to 47-1A-504, inclusive, be repealed.

11 Section 33. That § 47-1A-703 be amended to read as follows:

12 47-1A-703. The circuit court of the county where a corporation's principal office is located
13 in this state, or, if none in this state, its registered office, is located the circuit court of Hughes
14 County, may summarily order a meeting to be held:

- 15 (1) On application of any shareholder of the corporation entitled to participate in an
16 annual meeting if an annual meeting was not held within the earlier of six months
17 after the end of the corporation's fiscal year or fifteen months after its last annual
18 meeting; or
- 19 (2) On application of a shareholder who signed a demand for a special meeting valid
20 under § 47-1A-702, if:
 - 21 (a) Notice of the special meeting was not given within thirty days after the date
22 the demand was delivered to the corporation's secretary; or
 - 23 (b) The special meeting was not held in accordance with the notice.

24 The court may fix the time and place of the meeting, determine the shares entitled to

1 participate in the meeting, specify a record date for determining shareholders entitled to notice
2 of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
3 quorum required for specific matters to be considered at the meeting, or direct that the votes
4 represented at the meeting constitute a quorum for action on those matters, and enter other
5 orders necessary to accomplish the purposes of the meeting.

6 Section 34. That § 47-1A-720 be amended to read as follows:

7 47-1A-720. After fixing a record date for a meeting, a corporation shall prepare an
8 alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders'
9 meeting. The list shall be arranged by voting group, and within each voting group by class or
10 series of shares, and show the address of and number of shares held by each shareholder. The
11 shareholders' list shall be available for inspection by any shareholder, beginning two business
12 days after notice of the meeting is given for which the list was prepared and continuing through
13 the meeting, at the corporation's principal office or at a place identified in the meeting notice
14 in the city where the meeting will be held. A shareholder, a shareholder's agent, or an attorney
15 is entitled on written demand to inspect and, subject to the requirements of § 47-1A-1602.3, to
16 copy the list, during regular business hours and at the person's expense, during the period it is
17 available for inspection. The corporation shall make the shareholders' list available at the
18 meeting, and any shareholder, shareholder's agent, or attorney is entitled to inspect the list at any
19 time during the meeting or any adjournment. If the corporation refuses to allow any shareholder,
20 or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting,
21 or copy the list as permitted by this section, the circuit court of the county where a corporation's
22 principal office is located, or, if none in this state, ~~its registered office, is located~~ the circuit
23 court of Hughes County, on application of the shareholder, may summarily order the inspection
24 or copying at the corporation's expense and may postpone the meeting for which the list was

1 prepared until the inspection or copying is complete. Refusal or failure to prepare or make
2 available the shareholders' list does not affect the validity of action taken at the meeting.

3 Section 35. That § 47-1A-809 be amended to read as follows:

4 47-1A-809. The circuit court of the county where a corporation's principal office is located,
5 or, if none in this state, ~~its registered office, is located~~ the circuit court of Hughes County, may
6 remove a director of the corporation from office in a proceeding commenced by or in the right
7 of the corporation if the court finds that (1) the director engaged in fraudulent conduct with
8 respect to the corporation or its shareholders, grossly abused the position of director, or
9 intentionally inflicted harm on the corporation; and (2) considering the director's course of
10 conduct and the inadequacy of other available remedies, removal would be in the best interest
11 of the corporation.

12 A shareholder proceeding on behalf of the corporation under this section shall comply with
13 all of the requirements of §§ 47-1A-740 to 47-1A-747, inclusive, except subdivision 47-1A-
14 741(1).

15 The court, in addition to removing the director, may bar the director from reelection for a
16 period prescribed by the court. Nothing in this section limits the equitable powers of the court
17 to order other relief.

18 Section 36. That § 47-1A-1005 be amended to read as follows:

19 47-1A-1005. Unless the articles of incorporation provide otherwise, a corporation's board
20 of directors may adopt amendments to the corporation's articles of incorporation without
21 shareholder approval:

- 22 (1) To extend the duration of the corporation if it was incorporated at a time when
23 limited duration was required by law;
- 24 (2) To delete the names and addresses of the initial directors;

- 1 (3) To ~~delete the name and address of the initial registered agent or registered office, if~~
2 ~~a statement of change is on file with the Office of the Secretary of State~~ change the
3 information required by section 6 of this Act;
- 4 (4) If the corporation has only one class of shares outstanding:
- 5 (a) To change each issued and unissued authorized share of the class into a greater
6 number of whole shares of that class; or
- 7 (b) To increase the number of authorized shares of the class to the extent
8 necessary to permit the issuance of shares as a share dividend;
- 9 (5) To change the corporate name by substituting the term, corporation, incorporated,
10 company, limited, or the abbreviation, corp., inc., co., or ltd., for a similar word or
11 abbreviation in the name, or by adding, deleting, or changing a geographical
12 attribution for the name;
- 13 (6) To reflect a reduction in authorized shares, as a result of the operation of § 47-1A-
14 631, when the corporation has acquired its own shares and the articles of
15 incorporation prohibit the reissue of the acquired shares;
- 16 (7) To delete a class of shares from the articles of incorporation, as a result of the
17 operation of § 47-1A-631, when there are no remaining shares of the class because
18 the corporation has acquired all shares of the class and the articles of incorporation
19 prohibit the reissue of the acquired shares; or
- 20 (8) To make any change expressly permitted by § 47-1A-602 or 47-1A-602.1 to be made
21 without shareholder approval.

22 Section 37. That § 47-1A-1107.3 be amended to read as follows:

23 47-1A-1107.3. Upon a merger becoming effective, a foreign corporation, or a foreign
24 eligible entity, that is the survivor of the merger is deemed to:

- 1 (1) ~~Appoint the Office of the Secretary of State as its agent for~~ Agree that service of
2 process in a proceeding to enforce the rights of shareholders of each domestic
3 corporation that is a party to the merger who exercise appraisal rights may be made
4 in the manner provided in sections 16 to 19, inclusive, of this Act; and
- 5 (2) Agree that it will promptly pay the amount, if any, to which such shareholders are
6 entitled under §§ 47-1A-1301 to 47-1A-1331.2, inclusive.

7 Section 38. That § 47-1A-1330.1 be amended to read as follows:

8 47-1A-1330.1. The corporation shall commence the proceeding in the appropriate court of
9 the county where the corporation's principal office is located, or, if none, ~~its registered office,~~
10 ~~in this state is located,~~ in Hughes County. If the corporation is a foreign corporation ~~without a~~
11 ~~registered office in this state,~~ it shall commence the proceeding in the county in this state where
12 the principal office ~~or registered office~~ of the domestic corporation merged with the foreign
13 corporation was located or, if the domestic corporation did not have its principal office in this
14 state at the time of the transaction, in Hughes County.

15 Section 39. That § 47-1A-1407 be amended to read as follows:

16 47-1A-1407. A dissolved corporation may also publish notice of its dissolution and request
17 that persons with claims against the dissolved corporation present them in accordance with the
18 notice. The notice must:

- 19 (1) Be published one time in a newspaper of general circulation in the county where the
20 dissolved corporation's principal office is or was located, or, if none in this state, ~~its~~
21 ~~registered office, is or was last located~~ in Hughes County;
- 22 (2) Describe the information that must be included in a claim and provide a mailing
23 address where the claim may be sent; and
- 24 (3) State that a claim against the dissolved corporation will be barred unless a proceeding

1 to enforce the claim is commenced within three years after the publication of the
2 notice.

3 Section 40. That § 47-1A-1408 be amended to read as follows:

4 47-1A-1408. A dissolved corporation that has published a notice under §§ 47-1A-1407 to
5 47-1A-1407.2, inclusive, may file an application with the circuit court of the county where the
6 dissolved corporation's principal office is located, or, if none in this state, ~~its registered office,~~
7 ~~is located~~ with the circuit court of Hughes County, for a determination of the amount and form
8 of security to be provided for payment of claims that are contingent or have not been made
9 known to the dissolved corporation or that are based on an event occurring after the effective
10 date of dissolution but that, based on the facts known to the dissolved corporation, are
11 reasonably estimated to arise after the effective date of dissolution. Provision need not be made
12 for any claim that is or is reasonably anticipated to be barred under § 47-1A-1407.1.

13 Within ten days after the filing of the application, notice of the proceeding shall be given by
14 the dissolved corporation to each claimant holding a contingent claim whose contingent claim
15 is shown on the records of the dissolved corporation.

16 The court may appoint a guardian ad litem to represent all claimants whose identities are
17 unknown in any proceeding brought under this section. The reasonable fees and expenses of
18 such guardian, including all reasonable expert witness fees, shall be paid by the dissolved
19 corporation.

20 Section 41. That § 47-1A-1420 be amended to read as follows:

21 47-1A-1420. The Office of the Secretary of State may commence a proceeding under § 47-
22 1A-1421 to administratively dissolve a corporation if:

23 (1) The corporation does not pay within sixty days after they are due any filing fees or
24 penalties imposed by this chapter or other law;

- 1 (2) The corporation does not deliver its annual report to the Office of the Secretary of
2 State within sixty days after it is due;
- 3 (3) The corporation is without a registered agent ~~or registered office~~ in this state for sixty
4 days or more;
- 5 (4) The corporation does not notify the Office of the Secretary of State within sixty days
6 that its registered agent ~~or registered office~~ has been changed; or that its registered
7 ~~office~~ agent has been discontinued resigned; or
- 8 (5) The corporation's period of duration stated in its articles of incorporation expires.

9 Section 42. That § 47-1A-1421 be amended to read as follows:

10 47-1A-1421. If the Office of the Secretary of State determines that one or more grounds
11 exist under § 47-1A-1420 for dissolving a corporation, the Office of the Secretary of State shall
12 serve the corporation with written notice of that determination ~~under § 47-1A-504~~. If the
13 corporation does not correct each ground for dissolution or demonstrate to the reasonable
14 satisfaction of the Office of the Secretary of State that each ground determined by the Office of
15 the Secretary of State does not exist within sixty days after service of the notice is perfected
16 ~~under § 47-1A-504~~, the Office of the Secretary of State shall administratively dissolve the
17 corporation by signing a certificate of dissolution that recites the ground or grounds for
18 dissolution and its effective date. The Office of the Secretary of State shall file the original of
19 the certificate and serve a copy on the corporation ~~under § 47-1A-504~~.

20 A corporation administratively dissolved continues its corporate existence but may not carry
21 on any business except that necessary to wind up and liquidate its business and affairs under
22 §§ 47-1A-1405 and 47-1A-1405.1 and notify claimants under §§ 47-1A-1406 to 47-1A-1406.2,
23 inclusive, and 47-1A-1407 to 47-1A-1407.2, inclusive.

24 The administrative dissolution of a corporation does not terminate the authority of its

1 registered agent.

2 Section 43. That § 47-1A-1422 be amended to read as follows:

3 47-1A-1422. A corporation administratively dissolved under § 47-1A-1421 may apply to
4 the Office of the Secretary of State for reinstatement any time after the effective date of
5 dissolution. The application must:

6 (1) Recite the name of the corporation and the effective date of its administrative
7 dissolution;

8 (2) State that the ground or grounds for dissolution either did not exist or have been
9 eliminated;

10 (3) State that the corporation's name satisfies the requirements of §§ 47-1A-401 to 47-
11 1A-401.3, inclusive; and

12 (4) Contain a certificate from the Department of Revenue and Regulation in this state
13 reciting that all taxes and fees administered and collected by the department which
14 are owed by the corporation have been paid.

15 If the Office of the Secretary of State determines that the application contains the
16 information required by this section and that the information is correct, the Office of the
17 Secretary of State shall cancel the certificate of dissolution and prepare a certificate of
18 reinstatement that recites that determination and the effective date of reinstatement, file the
19 original of the certificate, and serve a copy on the corporation ~~under § 47-1A-504.~~

20 When the reinstatement is effective, it relates back to and takes effect as of the effective date
21 of the administrative dissolution and the corporation resumes carrying on its business as if the
22 administrative dissolution had never occurred.

23 Section 44. That § 47-1A-1423 be amended to read as follows:

24 47-1A-1423. If the Office of the Secretary of State denies a corporation's application for

1 reinstatement following administrative dissolution, the Office of the Secretary of State shall
2 serve the corporation ~~under § 47-1A-504~~ with a written notice that explains the reason or
3 reasons for denial.

4 The corporation may appeal the denial of reinstatement to the circuit court within thirty days
5 after service of the notice of denial is perfected. The corporation appeals by petitioning the court
6 to set aside the dissolution and attaching to the petition copies of the Office of the Secretary of
7 State's certificate of dissolution, the corporation's application for reinstatement, and the Office
8 of the Secretary of State's notice of denial.

9 The court may summarily order the Office of the Secretary of State to reinstate the dissolved
10 corporation or may take other action the court considers appropriate. The court's final decision
11 may be appealed as in other civil proceedings.

12 Section 45. That § 47-1A-1431 be amended to read as follows:

13 47-1A-1431. Venue for a proceeding by the attorney general to dissolve a corporation lies
14 in Hughes County. Venue for a proceeding brought by any other party named in § 47-1A-1430
15 lies in the county where a corporation's principal office is or was last located, or, if none in this
16 state, ~~its registered office, is or was last located~~ in Hughes County.

17 Section 46. That § 47-1A-1503 be amended to read as follows:

18 47-1A-1503. A foreign corporation may apply for a certificate of authority to transact
19 business in this state by delivering an application to the Office of the Secretary of State for
20 filing. The application must set forth:

21 (1) The name of the foreign corporation or, if its name is unavailable for use in this state,
22 a corporate name that satisfies the requirements of §§ 47-1A-1506 to 47-1A-1506.4,
23 inclusive;

24 (2) The name of the state or country under whose law it is incorporated;

- 1 (3) Its date of incorporation and period of duration;
- 2 (4) The street address, ~~or a statement that there is no street address,~~ of its principal
3 office;
- 4 (5) ~~The address of its registered office in this state and the name of its registered agent~~
5 ~~at that office~~ information required by section 6 of this Act; and
- 6 (6) The names and usual business addresses of its current directors and officers.

7 The foreign corporation shall deliver with the completed application a certificate of
8 existence, or a document of similar import, duly authenticated by the secretary of state or other
9 official having custody of corporate records in the state or country under whose law it is
10 incorporated.

11 Section 47. That § 47-1A-1504 be amended to read as follows:

12 47-1A-1504. A foreign corporation authorized to transact business in this state must obtain
13 an amended certificate of authority from the Office of the Secretary of State if it changes:

- 14 (1) Its corporate name;
- 15 (2) The period of its duration; ~~or~~
- 16 (3) The state or country of its incorporation; or
- 17 (4) Any of the information required by section 6 of this Act.

18 The requirements of § 47-1A-1503 for obtaining an original certificate of authority apply
19 to obtaining an amended certificate under this section.

20 Section 48. That §§ 47-1A-1507 to 47-1A-1510, inclusive, be repealed.

21 Section 49. That § 47-1A-1530 be amended to read as follows:

22 47-1A-1530. The Office of the Secretary of State may commence a proceeding under §§ 47-
23 1A-1531 and 47-1A-1531.1 to revoke the certificate of authority of a foreign corporation
24 authorized to transact business in this state if:

- 1 (1) The foreign corporation does not deliver its annual report to the Office of the
2 Secretary of State within sixty days after it is due;
- 3 (2) The foreign corporation does not pay within sixty days after they are due any
4 franchise taxes or penalties imposed by this chapter or other law;
- 5 (3) The foreign corporation is without a registered agent ~~or registered office~~ in this state
6 for sixty days or more;
- 7 (4) The foreign corporation does not inform the secretary of state ~~under § 47-1A-1508~~
8 ~~or 47-1A-1509~~ by an appropriate filing that its registered agent ~~or registered office~~
9 has changed; or that its registered agent has resigned; ~~or that its registered office has~~
10 ~~been discontinued~~ within sixty days of the change; or resignation; ~~or discontinuance~~;
- 11 (5) An incorporator, director, officer, or agent of the foreign corporation signed a
12 document knowing it was false in any material respect with intent that the document
13 be delivered to the Office of the Secretary of State for filing;
- 14 (6) The Office of the Secretary of State receives a duly authenticated certificate from the
15 Office of the Secretary of State or other official having custody of corporate records
16 in the state or country under whose law the foreign corporation is incorporated stating
17 that it has been dissolved or disappeared as the result of a merger.

18 Section 50. That § 47-1A-1604 be amended to read as follows:

19 47-1A-1604. If a corporation does not allow a shareholder who complies with § 47-1A-1602
20 to inspect and copy any records required by that section to be available for inspection, the circuit
21 court of the county where the corporation's principal office is located, or, if none in this state,
22 ~~its registered office, is located~~ the circuit court of Hughes County, may summarily order
23 inspection and copying of the records demanded at the corporation's expense upon application
24 of the shareholder.

1 Section 51. That § 47-1A-1604.1 be amended to read as follows:

2 47-1A-1604.1. If a corporation does not within a reasonable time allow a shareholder to
3 inspect and copy any other record, the shareholder who complies with §§ 47-1A-1602.1 and 47-
4 1A-1602.2 may apply to the circuit court in the county where the corporation's principal office
5 is located, or, if none in this state, ~~its registered office, is located~~ the circuit court of Hughes
6 County, for an order to permit inspection and copying of the records demanded. The court shall
7 dispose of an application under this section on an expedited basis.

8 Section 52. That § 47-1A-1605.1 be amended to read as follows:

9 47-1A-1605.1. The circuit court of the county where the corporation's principal office is
10 located, or, if none in this state, ~~its registered office, is located~~ the circuit court of Hughes
11 County, may order inspection and copying of the books, records, and documents at the
12 corporation's expense, upon application of a director who has been refused such inspection
13 rights, unless the corporation establishes that the director is not entitled to such inspection
14 rights. The court shall dispose of an application under this section on an expedited basis.

15 Section 53. That §§ 47-1A-1621 to 47-1A-1621.3, inclusive, be repealed.

16 Section 54. That § 47-9A-16 be amended to read as follows:

17 47-9A-16. Every corporation engaged in farming or proposing to commence farming in this
18 state shall file with the secretary of state a report containing:

- 19 (1) ~~The name of the corporation and its place of incorporation;~~ information required by
20 section 6 of this Act; and
- 21 (2) ~~The address of the registered office of the corporation in this state, the name and~~
22 ~~address of its registered agent in this state and, in the case of a foreign corporation,~~
23 ~~the address of its principal office in its place of incorporation;~~
- 24 ~~(3) The acreage and location listed by section, township, and county of each lot or parcel~~

1 of land in this state that is owned or leased by the corporation and used for the
2 growing of crops or the keeping or feeding of poultry or livestock; ~~and~~

3 ~~(4) The names and addresses of the officers and the members of the board of directors~~
4 ~~of the corporation.~~

5 Section 55. That § 47-15-4 be amended to read as follows:

6 47-15-4. The articles of incorporation shall set forth that they are executed pursuant to the
7 provisions of this chapter and shall state:

- 8 (1) The name of the cooperative;
- 9 (2) The period of existence, unless perpetual;
- 10 (3) The purposes for which organized. It is sufficient to state that the cooperative may
11 engage in any activity within the purposes for which cooperatives may be organized,
12 and all such activities shall then be deemed within its purposes, subject to express
13 limitations;
- 14 (4) Whether the cooperative is organized with or without capital stock;
- 15 (5) The designation of classes of members, if more than one;
- 16 (6) The number and par value of shares of each authorized class of stock; if more than
17 one class is authorized, the designation, preferences, limitations, and relative rights
18 of each class shall also be set forth;
- 19 (7) Which classes of stock are membership stock;
- 20 (8) As to each class of stock, the rate of dividend, or that the rate of dividend may be
21 fixed by the board, or that no dividend will be paid;
- 22 (9) Any reservation of a right to acquire or recall any stock;
- 23 (10) The basis of distribution of assets in the event of liquidation;
- 24 (11) The municipality in this state in which the cooperative's principal office is to be

1 located and the ~~street address~~, or a statement that there is no street address, of its
2 ~~registered office~~, the name of its initial registered agent at that address, and his
3 ~~written consent to the appointment~~ information required by section 6 of this Act;

4 (12) The number of directors, or that the number of directors shall be as stated in the
5 bylaws;

6 (13) The name and address of each incorporator; and

7 (14) The names and addresses of at least three incorporators who will act as the temporary
8 board and will serve until the first annual meeting of members or stockholders.

9 Section 56. That §§ 47-15-18.1 and 47-15-21 to 47-15-26, inclusive, be repealed.

10 Section 57. That § 47-18-16.1 be repealed.

11 Section 58. That § 47-18-16.3 be amended to read as follows:

12 47-18-16.3. The secretary of state may commence a proceeding under § 47-18-16.4 to
13 administratively dissolve a cooperative if:

14 (1) The cooperative does not pay within sixty days after they are due any fees or
15 penalties imposed by chapters 47-15 to 47-20, inclusive, or other law;

16 (2) The cooperative does not deliver its annual report to the secretary of state within sixty
17 days after it is due ~~as outlined in § 47-20-7~~;

18 (3) The cooperative is without a registered agent or registered office in this state for sixty
19 days or more;

20 (4) The cooperative does not notify the secretary of state within sixty days that its
21 registered agent ~~or registered office~~ has been changed; or that its registered agent has
22 resigned, ~~or that its registered office has been discontinued~~; or

23 (5) The cooperative's period of duration stated in its articles of incorporation expires.

24 Section 59. That § 47-19-2 be amended to read as follows:

1 47-19-2. In order to procure the certificate required by § 47-19-1, a foreign cooperative shall
2 make application therefor to the secretary of state, which application shall set forth:

- 3 (1) The name of the cooperative and the state or country under whose laws it is
4 incorporated;
- 5 (2) The date of incorporation and the period of duration of the cooperative;
- 6 (3) The street address, ~~or a statement that there is no street address,~~ of the principal office
7 of the cooperative in the state or country under the laws of which it is incorporated;
- 8 (4) ~~The street address, or a statement that there is no street address, of the proposed~~
9 ~~registered office of the cooperative in this state, the name of its proposed registered~~
10 ~~agent in this state at such address and his written consent to the appointment~~
11 information required by section 6 of this Act;
- 12 (5) The purpose or purposes of the cooperative which it proposes to pursue in the
13 transaction of business in this state;
- 14 (6) The names and respective addresses of the directors and officers of the cooperative;
- 15 (7) A statement of its aggregate number of members, and of the number of members by
16 classes, if any;
- 17 (8) A statement of the aggregate number of authorized and issued capital stock itemized
18 by classes, par value of stock, stock without par value, and series, if any, within a
19 class; and
- 20 (9) Such additional information as may be necessary in order to enable the secretary of
21 state to determine whether such cooperative is entitled to a certificate of authority to
22 transact business in this state and to determine and assess fees payable.

23 Such application shall be made on forms prescribed and furnished by the secretary of state
24 and an original and one exact or conforming copy shall be executed by the chairman of the

1 board of directors, by its president or by another officer and acknowledged by one of the officers
2 signing the application.

3 Section 60. That §§ 47-20-5, 47-20-6, and 47-20-8 to 47-20-9, inclusive, be repealed.

4 Section 61. That § 47-20-7 be amended to read as follows:

5 47-20-7. The annual report ~~required by § 47-20-5~~ shall be delivered to the secretary of state
6 ~~before the first day of the second month following the anniversary month of the corporation, of~~
7 ~~each year following incorporation pursuant to sections 24 to 26, inclusive, of this Act.~~ A fee of
8 thirty dollars shall be paid to the secretary of state for filing the report. If the report does not
9 conform to requirements, it shall be returned to the cooperative for necessary corrections. ~~The~~
10 ~~penalties for failure to file the report do not apply if it is corrected and returned within thirty~~
11 ~~days after receipt thereof.~~

12 Section 62. That § 47-22-6 be amended to read as follows:

13 47-22-6. The articles of incorporation shall set forth:

- 14 (1) The name of the corporation;
- 15 (2) The period of duration, which may be perpetual;
- 16 (3) The purpose or purposes for which the corporation is organized;
- 17 (4) If the corporation is to have no members, a statement to that effect;
- 18 (5) If the corporation is to have one or more classes of members, any provision which the
19 incorporators elect to set forth in the articles of incorporation designating the class
20 or classes of members and stating the qualifications and rights of the members of
21 each class;
- 22 (6) If the directors or any of them are not to be elected or appointed by one or more
23 classes of members, a statement of the manner in which such directors shall be
24 elected or appointed;

- 1 (7) Any provisions, not inconsistent with law, which the incorporators elect to set forth
- 2 in the articles of incorporation for the regulation of the internal affairs of the
- 3 corporation, including any provision for distribution of assets on dissolution or final
- 4 liquidation;
- 5 (8) ~~The street address, or a statement that there is no street address, of its initial~~
- 6 ~~registered office, and the name of its initial registered agent at such address and the~~
- 7 ~~registered agent's written consent to the appointment. Such consent may be given by~~
- 8 ~~electronic signature pursuant to chapter 53-12~~ information required by section 6 of
- 9 this Act;
- 10 (9) The number of directors constituting the initial board of directors, and the names and
- 11 addresses of the persons who are to serve as the initial directors; and
- 12 (10) The name and address of each incorporator.

13 It is not necessary to set forth in the articles of incorporation any of the corporate powers
 14 enumerated in chapters 47-22 to 47-28, inclusive.

15 Section 63. That §§ 47-22-42 to 47-22-51, inclusive, be repealed.

16 Section 64. That § 47-24-6 be amended to read as follows:

17 47-24-6. Any domestic nonprofit corporation authorized to engage in business in this state
 18 shall file, ~~within the time prescribed by §§ 47-24-7 to 47-24-9, inclusive,~~ a report setting forth:

- 19 ~~—(1)— The name of the corporation;~~
- 20 ~~—(2)— The street address, or a statement that there is no street address, of the registered~~
- 21 ~~office of the corporation in this state and the name of its registered agent at such~~
- 22 ~~address;~~
- 23 ~~—(3)— A brief statement of the nature of the affairs which the corporation is conducting;~~
- 24 ~~—(4)— The amount of property which the corporation may hold and the amount of property~~

1 held; and

2 ~~—(5)—The names and respective addresses of the directors and officers of the corporation.~~

3 ~~—The report shall be made on forms prescribed and furnished by the secretary of state and the~~
4 ~~information therein contained shall be given as of the date of the execution of the report. It shall~~
5 ~~be executed for the corporation by the chair of the board of directors, by its president, or by~~
6 ~~another of its officers. If the corporation is in the hands of a receiver, trustee, or other~~
7 ~~court-appointed fiduciary, the report shall be executed on behalf of the corporation by that~~
8 ~~fiduciary pursuant to sections 24 to 26, inclusive, of this Act.~~

9 Section 65. That § 47-24-7 and §§ 47-24-9 to 47-24-12, inclusive, be repealed.

10 Section 66. That § 47-24-13.1 be amended to read as follows:

11 47-24-13.1. The secretary of state may commence a proceeding under § 47-24-13.2 to
12 administratively dissolve a corporation if:

- 13 (1) The corporation does not pay within sixty days after they are due any fees or penalties
- 14 imposed by chapters 47-22 to 47-28, inclusive, or other law;
- 15 (2) ~~The corporation fails to file any two successive reports required under § 47-24-9~~ does
- 16 not deliver its annual report to the secretary of state within sixty days after it is due;
- 17 (3) The corporation is without a registered agent ~~or registered office~~ in this state for sixty
- 18 days or more;
- 19 (4) The corporation does not notify the secretary of state within sixty days that its
- 20 registered agent ~~or registered office~~ has been changed; or that its registered agent has
- 21 resigned; ~~or that its registered office has been discontinued;~~ or
- 22 (5) The corporation's period of duration stated in its articles of incorporation expires.

23 Section 67. That § 47-26-17 be repealed.

24 Section 68. That § 47-27-1 be amended to read as follows:

1 47-27-1. Any foreign corporation, in order to procure a certificate of authority to engage in
2 business in this state, shall make application to the secretary of state, which application shall set
3 forth:

4 (1) The name of the corporation and the state or country under the laws of which it is
5 incorporated;

6 (2) The date of incorporation and the period of duration of the corporation;

7 (3) The street address of the principal office of the corporation in the state or country
8 under whose laws it is incorporated;

9 (4) ~~The street address, or a statement that there is no street address, of the proposed~~
10 ~~registered office of the corporation in this state, and the name of its proposed~~
11 ~~registered agent in this state at such address and the registered agent's written consent~~
12 ~~to the appointment. Such consent may be given by electronic signature pursuant to~~
13 ~~chapter 53-12 information required by section 6 of this Act;~~

14 (5) The purpose or purposes of the corporation in engaging in business in this state;

15 (6) The names and respective addresses of the directors and officers of the corporation;
16 and

17 (7) Such additional information as may be necessary in order to enable the secretary of
18 state to determine whether such corporation is entitled to a certificate of authority to
19 engage in business in this state.

20 An original and one exact or conforming copy of the application shall be made on forms
21 prescribed and furnished by the secretary of state and shall be executed and acknowledged by
22 the chair of the board of directors, by the corporation's president, or by another of the
23 corporation's officers.

24 Section 69. That § 47-27-18 be amended to read as follows:

1 47-27-18. Any foreign corporation authorized to engage in business in this state, shall file;
2 ~~within the time prescribed by this chapter, an annual report setting forth:~~

3 ~~—(1)—The name of the corporation and the state or country under whose laws it is~~
4 ~~incorporated;~~

5 ~~—(2)—The street address, or a statement that there is no street address, of the registered~~
6 ~~office of the corporation in this state and the name of its registered agent at such~~
7 ~~address and the address of its principal office in the state or country under whose~~
8 ~~laws it is incorporated;~~

9 ~~—(3)—A brief statement of the character of the affairs which the corporation is conducting~~
10 ~~in this state; and~~

11 ~~—(4)—The names and respective addresses of the directors and officers of the corporation.~~

12 ~~—The annual report shall be made on forms prescribed and furnished by the secretary of state~~
13 ~~and the information therein contained shall be given as of the date of the execution of the report.~~

14 ~~It shall be executed by the chair of the board, by the corporation's president or another of the~~
15 ~~corporation's officers or, if the corporation is in the hands of a receiver, trustee, or other~~
16 ~~court-appointed fiduciary, it shall be executed on behalf of the corporation by that fiduciary~~
17 ~~pursuant to sections 24 to 26, inclusive, of this Act.~~

18 Section 70. That §§ 47-27-19 to 47-27-28, inclusive, 47-27-30, and 47-27-31 be repealed.

19 Section 71. That § 47-27-35 be amended to read as follows:

20 47-27-35. The certificate of authority of a foreign corporation to do or engage in any
21 business in this state may be revoked by the secretary of state upon the conditions prescribed
22 in § 47-27-36 when:

23 (1) The corporation has failed to file its annual report within the time required ~~by this~~
24 ~~chapter~~, or has failed to pay any fees or penalties prescribed by this chapter or chapter

- 1 47-28 when they have become due and payable; or
- 2 (2) The corporation has failed to appoint and maintain a registered agent in this state ~~as~~
3 ~~required by this chapter~~; or
- 4 (3) The corporation has failed, after change of its registered agent, to file in the Office
5 of the Secretary of State a statement of such change ~~as required by this chapter~~; or
- 6 (4) The corporation has failed to file in the Office of the Secretary of State any
7 amendment to its articles of incorporation or any articles of merger within the time
8 prescribed by this chapter; or
- 9 (5) A misrepresentation has been made of any material matter in any application, report,
10 affidavit, or other document submitted by such corporation pursuant to chapters 47-
11 22 to 47-28, inclusive.

12 Section 72. That § 47-28-6 be amended to read as follows:

13 47-28-6. The secretary of state shall charge and collect for:

- 14 (1) Filing articles of incorporation and issuing a certificate of incorporation, twenty-five
15 dollars;
- 16 (2) Filing articles of amendment and issuing a certificate of amendment, ten dollars;
- 17 (3) Filing articles of merger or consolidation and issuing a certificate of merger or
18 consolidation, ten dollars;
- 19 (4) ~~Filing a statement of change of address of registered office or change of registered~~
20 ~~agent, or both, five dollars~~ Repealed;
- 21 (5) Filing articles of dissolution, five dollars;
- 22 (6) Filing an application of a foreign corporation for a certificate of authority to conduct
23 affairs in this state and issuing a certificate of authority, one hundred dollars;
- 24 (7) Filing an application of a foreign corporation for an amended certificate of authority

1 to conduct affairs in this state and issuing an amended certificate of authority, twenty
2 dollars;

3 (8) Filing an application for withdrawal of a foreign corporation and issuing a certificate
4 of withdrawal, five dollars;

5 (9) Filing any other statement or report, including an annual report, of a foreign
6 corporation, ten dollars;

7 (10) Filing an annual report of a domestic nonprofit corporation under chapter 47-24, ten
8 dollars; and

9 (11) Filing a petition for reinstatement and issuing a certificate of reinstatement,
10 twenty-five dollars.

11 Section 73. That § 47-28-10 be repealed.

12 Section 74. That §§ 47-34A-108 to 47-34A-111, inclusive, be repealed.

13 Section 75. That § 47-34A-203 be amended to read as follows:

14 47-34A-203. (a) Articles of organization of a limited liability company must set forth:

15 (1) The name of the company;

16 (2) The address of the initial designated office;

17 (3) ~~The name and street address of the initial agent for service of process and the agent's~~
18 ~~written consent to the appointment~~ information required by section 6 of this Act;

19 (4) The name and address of each organizer;

20 (5) The duration of the company if other than perpetual;

21 (6) Whether the company is to be manager-managed, and, if so, the name and address
22 for each initial manager; and

23 (7) Whether one or more of the members of the company are to be liable for its debts and
24 obligations under § 47-34A-303(c).

1 (b) Articles of organization of a limited liability company may set forth:

2 (1) Provisions permitted to be set forth in an operating agreement; or

3 (2) Other matters not inconsistent with law.

4 (c) Articles of organization of a limited liability company may not vary the nonwaivable
5 provisions of § 47-34A-103(b). As to all other matters, if any provision of an operating
6 agreement is inconsistent with the articles of organization:

7 (1) The operating agreement controls as to managers, members, and members'
8 transferees; and

9 (2) The articles of organization control as to persons, other than managers, members and
10 their transferees, who reasonably rely on the articles to their detriment.

11 Section 76. That § 47-34A-211 be amended to read as follows:

12 47-34A-211. (a) A limited liability company, and a foreign limited liability company
13 authorized to transact business in this state, except a bank organized pursuant to § 51A-3-1.1,
14 shall deliver to the secretary of state for filing an annual report ~~that sets forth:~~

15 ~~—(1)— The name of the company and the state or country under whose law it is organized;~~

16 ~~—(2)— The address of its registered office and the name and address of its registered agent
17 for service of process in this state;~~

18 ~~—(3)— The address of its principal office;~~

19 ~~—(4)— The names and business addresses of any managers.~~

20 ~~—(5)— Deleted by SL 2005, ch 241, § 2.~~

21 ~~—(b) Information in an annual report must be current as of the date the annual report is signed
22 on behalf of the limited liability company.~~

23 ~~—(c) The first annual report shall be delivered to the secretary of state before the first day of
24 the second month of the year following the year in which a limited liability company was~~

1 ~~organized or a foreign company was authorized to transact business. The subsequent annual~~
2 ~~report shall be delivered to the secretary of state by the same date each subsequent year.~~

3 ~~—(d) If an annual report does not contain the information required in subsection (a) or the fees~~
4 ~~required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited~~
5 ~~liability company or foreign limited liability company and return the report to it for correction.~~
6 ~~If the report is corrected to contain the information required in subsection (a) or the fees~~
7 ~~required by § 47-34A-212 and delivered to the secretary of state within thirty days after the~~
8 ~~effective date of the notice, it is timely filed pursuant to sections 24 to 26, inclusive, of this Act.~~

9 Section 77. That § 47-34A-808 be amended to read as follows:

10 47-34A-808. (a) A dissolved limited liability company may publish notice of its dissolution
11 and request persons having claims against the company to present them in accordance with the
12 notice.

13 (b) The notice must:

14 (1) Be published at least once in a newspaper of general circulation in the county in
15 which the dissolved limited liability company's principal office is or was located or,
16 if none in this state, in ~~which its registered office is or was last located~~ Hughes
17 County;

18 (2) Describe the information required to be contained in a claim and provide a mailing
19 address where the claim is to be sent; and

20 (3) State that a claim against the limited liability company is barred unless a proceeding
21 to enforce the claim is commenced within five years after publication of the notice.

22 (c) If a dissolved limited liability company publishes a notice in accordance with subsection
23 (b), the claim of each of the following claimants is barred unless the claimant commences a
24 proceeding to enforce the claim against the dissolved company within five years after the

1 publication date of the notice:

- 2 (1) A claimant who did not receive written notice under § 47-34A-807;
- 3 (2) A claimant whose claim was timely sent to the dissolved company but not acted on;
- 4 and
- 5 (3) A claimant whose claim is contingent or based on an event occurring after the
- 6 effective date of dissolution.

7 (d) A claim not barred under this section may be enforced:

- 8 (1) Against the dissolved limited liability company, to the extent of its undistributed
- 9 assets; or
- 10 (2) If the assets have been distributed in liquidation, against a member of the dissolved
- 11 company to the extent of the member's proportionate share of the claim or the
- 12 company's assets distributed to the member in liquidation, whichever is less, but a
- 13 member's total liability for all claims under this section may not exceed the total
- 14 amount of assets distributed to the member.

15 Section 78. That § 47-34A-906 be amended to read as follows:

16 47-34A-906. (a) When a merger takes effect:

- 17 (1) The separate existence of each limited liability company and other entity that is a
- 18 party to the merger, other than the surviving entity, terminates;
- 19 (2) All property owned by each of the limited liability companies and other entities that
- 20 are party to the merger vests in the surviving entity;
- 21 (3) All debts, liabilities, and other obligations of each limited liability company and other
- 22 entity that is party to the merger become the obligations of the surviving entity;
- 23 (4) An action or proceeding pending by or against a limited liability company or other
- 24 party to a merger may be continued as if the merger had not occurred or the surviving

1 entity may be substituted as a party to the action or proceeding; and

2 (5) Except as prohibited by other law, all the rights, privileges, immunities, powers, and
3 purposes of every limited liability company and other entity that is a party to a merger
4 vest in the surviving entity.

5 ~~(b) The secretary of state is an agent for service of process in an action or proceeding against~~
6 ~~the surviving foreign entity to enforce an obligation of any party to a merger if~~ If the surviving
7 foreign entity fails to appoint or maintain a registered agent designated for service of process
8 in this state or the agent for service of process cannot with reasonable diligence be found ~~at the~~
9 ~~registered office. Upon receipt of process, the secretary of state shall send a copy of the process~~
10 ~~by registered or certified mail, return receipt requested, to the surviving entity at the address set~~
11 ~~forth in the articles of merger. Service is effected under this subsection at the earliest of:~~

12 ~~— (1) — The date the company receives the process, notice, or demand;~~

13 ~~— (2) — The date shown on the return receipt, if signed on behalf of the company; or~~

14 ~~— (3) — Five days after its deposit in the mail, if mailed postpaid and correctly addressed,~~

15 service of process may be made on the foreign entity as provided in section 16 of this
16 Act.

17 (c) A member of the surviving limited liability company is liable for all obligations of a
18 party to the merger for which the member was personally liable before the merger.

19 (d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving
20 entity in the merger does not require the limited liability company to wind up its business under
21 this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

22 (e) Articles of merger serve as articles of dissolution for a limited liability company that is
23 not the surviving entity in the merger.

24 Section 79. That § 47-34A-1002 be amended to read as follows:

1 47-34A-1002. (a) A foreign limited liability company may apply for a certificate of authority
2 to transact business in this state by delivering an application to the secretary of state for filing.

3 The application must set forth:

4 (1) The name of the foreign company or, if its name is unavailable for use in this state,
5 a name that satisfies the requirements of § 47-34A-1005;

6 (2) The name of the state or country under whose law it is organized;

7 (3) The street address of its principal office;

8 (4) ~~The address of its initial designated office in this state~~ Repealed;

9 (5) ~~The name and street address of its initial agent for service of process in this state~~
10 information required by section 6 of this Act;

11 (6) Whether the duration of the company is for a specified term and, if so, the period
12 specified;

13 (7) Whether the company is manager-managed, and, if so, the name and address of each
14 initial manager; and

15 (8) Whether the members of the company are to be liable for its debts and obligations
16 under a provision similar to § 47-34A-303(c).

17 (b) A foreign limited liability company shall deliver with the completed application a
18 certificate of existence or a record of similar import authenticated by the secretary of state or
19 other official having custody of company records in the state or country under whose law it is
20 organized together with ~~the annual report required by § 47-34A-211~~, the fees required by § 47-
21 34A-212, and all other fees.

22 Section 80. That § 47-34A-1006 be amended to read as follows:

23 47-34A-1006. (a) A certificate of authority of a foreign limited liability company to transact
24 business in this state may be revoked by the secretary of state in the manner provided in

1 subsection (b) if:

2 (1) The company fails to:

3 (i) Pay any fees, taxes, and penalties owed to this state;

4 (ii) Deliver its annual report required under § 47-34A-211 to the secretary of state
5 within sixty days after it is due;

6 (iii) Appoint and maintain an agent for service of process as required by ~~this article~~
7 section 6 of this Act; or

8 (iv) File a statement of a change in the name or business address of the agent as
9 required by ~~this article~~ section 11 of this Act; or

10 (2) A misrepresentation has been made of any material matter in any application, report,
11 affidavit, or other record submitted by the company pursuant to this article.

12 (b) The secretary of state may not revoke a certificate of authority of a foreign limited
13 liability company unless the secretary of state sends the company notice of the revocation, at
14 least sixty days before its effective date, by a record addressed to its registered agent for service
15 of process in this state, or if the company fails to appoint and maintain a proper agent in this
16 state, addressed to the registered office required to be maintained by § 47-34A-108 served in
17 accordance with sections 16 to 19, inclusive, of this Act. The notice must specify the cause for
18 the revocation of the certificate of authority. The authority of the company to transact business
19 in this state ceases on the effective date of the revocation unless the foreign limited liability
20 company cures the failure before that date.

21 Section 81. That § 48-7-104 be amended to read as follows:

22 48-7-104. Each limited partnership shall continuously maintain in this state:

23 (1) An office, which may but need not be a place of its business in this state, at which
24 shall be kept the records required by § 48-7-105 to be maintained; and

1 (2) An agent for service of process on the limited partnership, ~~which agent must be an~~
 2 ~~individual resident of this state, a domestic corporation, a foreign corporation~~
 3 ~~authorized to do business in this state or a domestic limited liability company, or a~~
 4 ~~domestic limited liability partnership whose business office is identical with the~~
 5 ~~registered office~~ that meets the requirements of sections 1 to 23, inclusive, of this
 6 Act.

7 Section 82. That § 48-7-201 be amended to read as follows:

8 48-7-201. In order to form a limited partnership, a certificate of limited partnership shall be
 9 executed and filed in the Office of the Secretary of State. The certificate shall set forth:

- 10 (1) The name of the limited partnership;
- 11 (2) ~~The street address, or a statement that there is no street address, of the office and the~~
 12 ~~name and street address, or a statement that there is no street address, and the written~~
 13 ~~consent, of the agent for service of process required to be maintained by § 48-7-104~~
 14 information required by section 6 of this Act;
- 15 (3) The name and the business address of each general partner;
- 16 (4) The latest date upon which the limited partnership is to dissolve; and
- 17 (5) Any other matters the general partners determine to include therein.

18 A limited partnership is formed at the time of the filing of the certificate of limited
 19 partnership in the Office of the Secretary of State or at any later time specified in the certificate
 20 of limited partnership if, in either case, there has been substantial compliance with the
 21 requirements of this section.

22 Section 83. That § 48-7-902 be amended to read as follows:

23 48-7-902. Before transacting business in this state, a foreign limited partnership shall
 24 register with the secretary of state. In order to register, a foreign limited partnership shall submit

1 to the secretary of state an original application for registration as a foreign limited partnership
2 and one exact or conforming copy thereof, signed and sworn to by a general partner and setting
3 forth:

4 (1) The name of the foreign limited partnership and, if different, the name under which
5 it proposes to register and transact business in this state;

6 (2) The state and date of its formation;

7 (3) ~~The name and street address, or a statement that there is no street address, of any~~
8 ~~agent for service of process on the foreign limited partnership whom the foreign~~
9 ~~limited partnership elects to appoint. The agent shall be an individual resident of this~~
10 ~~state, a domestic corporation, or a foreign corporation having a place of business in,~~
11 ~~and authorized to do business in, this state~~ information required by section 6 of this
12 Act;

13 (4) ~~A statement that the secretary of state is appointed the agent of the foreign limited~~
14 ~~partnership for service of process if no agent has been appointed under subdivision~~
15 ~~(3) of this section or, if appointed, the agent's authority has been revoked or if the~~
16 ~~agent cannot be found or served with the exercise of reasonable diligence~~ Repealed;

17 (5) ~~The street address, or a statement that there is no street address,~~ of the office required
18 to be maintained in the state of its organization by the laws of that state or, if not so
19 required, of the principal office of the foreign limited partnership;

20 (6) The name and business address of each general partner; and

21 (7) The street address, or a statement that there is no street address, of the office at which
22 is kept a list of the names and addresses of the limited partners and their capital
23 contributions, together with an undertaking by the foreign limited partnership to keep
24 those records until the foreign limited partnership's registration in this state is

1 cancelled or withdrawn.

2 Section 84. That § 48-7-906 be amended to read as follows:

3 48-7-906. A foreign limited partnership may cancel its registration by filing with the
4 secretary of state a certificate of cancellation signed and sworn to by a general partner. ~~A~~
5 ~~cancellation does not terminate the authority of the secretary of state to accept service of process~~
6 ~~on the foreign limited partnership with respect to claims for relief or causes of action arising out~~
7 ~~of the transactions of business in this state.~~ Service of process is perfected on a foreign limited
8 partnership that has filed a cancellation in the manner outlined in sections 16 to 19, inclusive,
9 of this Act.

10 Section 85. That § 48-7A-1001 be amended to read as follows:

11 48-7A-1001. (a) A partnership may become a limited liability partnership pursuant to this
12 section.

13 (b) The terms and conditions on which a partnership becomes a limited liability partnership
14 must be approved by the vote necessary to amend the partnership agreement except, in the case
15 of a partnership agreement that expressly considers obligations to contribute to the partnership,
16 the vote necessary to amend those provisions.

17 (c) After the approval required by subsection (b), a partnership may become a limited
18 liability partnership by filing a statement of qualification in the Office of the Secretary of State.

19 The statement must contain:

- 20 (1) The name of the partnership;
- 21 (2) The street address of the partnership's chief executive office and, if different, the
22 street address of an office in this state, if any;
- 23 (3) If the partnership does not have an office in this state, ~~the name and street address of~~
24 ~~the partnership's agent for service of process and the agent's written consent to the~~

1 appointment information required by section 6 of this Act;

2 (4) A statement that the partnership elects to be a limited liability partnership; and

3 (5) A deferred effective date, if any.

4 ~~(d) The agent of a limited liability partnership for service of process must be an individual~~
5 ~~who is a resident of this state or other person authorized to do business in this state, or a~~
6 ~~domestic limited liability company or domestic limited liability partnership whose business~~
7 ~~office is identical with the registered office.~~

8 ~~(1) Any registered agent of a limited liability partnership may resign upon written notice~~
9 ~~to the limited liability partnership. The registered agent shall file a copy of the~~
10 ~~resignation with the secretary of state;~~

11 ~~(2) Upon an agent's resignation, the secretary of state is appointed the agent of the~~
12 ~~limited liability partnership for service of process until a new agent is appointed;~~

13 ~~(3) A limited liability partnership may change its registered agent upon filing in the~~
14 ~~Office of the Secretary of State a statement setting forth:~~

15 ~~(a) The name of the limited liability partnership;~~

16 ~~(b) The name of its registered agent;~~

17 ~~(c) The name of its successor registered agent and the new agent's written consent~~
18 ~~to the appointment;~~

19 ~~(d) That the address of its registered office and the address of the business office~~
20 ~~of its registered agent, as changed, will be identical Repealed.~~

21 (e) The status of a partnership as a limited liability partnership is effective on the later of the
22 filing of the statement or a date specified in the statement. The status remains effective,
23 regardless of changes in the partnership, until it is canceled pursuant to subsection 48-7A-105(d)
24 or revoked pursuant to § 48-7A-1003.

1 (f) The status of a partnership as a limited liability partnership and the liability of its partners
2 is not affected by errors or later changes in the information required to be contained in the
3 statement of qualification under subsection (c).

4 (g) The filing of a statement of qualification under this Act or, before July 1, 2001,
5 registering as a registered limited liability partnership under prior law establishes that a
6 partnership has satisfied all conditions precedent to the qualification of the partnership as a
7 limited liability partnership.

8 (h) An amendment or cancellation of a statement of qualification is effective when it is filed
9 or on a deferred effective date specified in the amendment or cancellation.

10 Section 86. That § 48-7A-1003 be amended to read as follows:

11 48-7A-1003. (a) A limited liability partnership, and a foreign limited liability partnership
12 authorized to transact business in this state, shall file an annual report ~~in the Office of the~~
13 ~~Secretary of State which contains:~~

14 ~~(1) The name of the limited liability partnership and the state or other jurisdiction under~~
15 ~~whose laws the foreign limited liability partnership is formed;~~

16 ~~(2) The street address of the partnership's chief executive office and, if different, the~~
17 ~~street address of an office of the partnership in this state, if any; and~~

18 ~~(3) If the partnership does not have an office in this state, the name and street address of~~
19 ~~the partnership's current agent for service of process pursuant to sections 24 to 26,~~
20 ~~inclusive, of this Act.~~

21 (b) ~~An annual report must be filed with the secretary of state by the date specified by the~~
22 ~~secretary of state in each year following the calendar year in which a partnership files a~~
23 ~~statement of qualification or a foreign partnership becomes authorized to transact business in~~
24 ~~this state Repealed.~~

1 (c) The secretary of state may revoke the statement of qualification of a partnership that fails
2 to file an annual report when due or pay the required filing fee. To do so, the secretary of state
3 shall provide the partnership at least sixty days' written notice of intent to revoke the statement.
4 The notice must be mailed to the partnership at its chief executive office set forth in the last
5 filed statement of qualification or annual report. The notice must specify the annual report that
6 has not been filed, the fee that has not been paid, and the effective date of the revocation. The
7 revocation is not effective if the annual report is filed and the fee is paid before the effective
8 date of the revocation.

9 (d) A revocation under subsection (c) only affects a partnership's status as a limited liability
10 partnership and is not an event of dissolution of the partnership.

11 (e) A partnership whose statement of qualification has been revoked may apply to the
12 secretary of state for reinstatement within two years after the effective date of the revocation.
13 The applicant shall submit with the application the filing fee of one hundred dollars, plus any
14 delinquent annual reports and fees for the period prior to the reinstatement application. The
15 application must state:

- 16 (1) The name of the partnership and the effective date of the revocation; and
- 17 (2) That the ground for revocation either did not exist or has been corrected.

18 (f) A reinstatement under subsection (e) relates back to and takes effect as of the effective
19 date of the revocation, and the partnership's status as a limited liability partnership continues as
20 if the revocation had never occurred.

21 Section 87. That § 48-7A-1102 be amended to read as follows:

22 48-7A-1102. (a) Before transacting business in this state, a foreign limited liability
23 partnership must file a statement of foreign qualification in the Office of the Secretary of State.
24 The statement must contain:

1 (1) The name of the foreign limited liability partnership which satisfies the requirements
2 of the state or other jurisdiction under whose law it is formed and ends with
3 "Registered Limited Liability Partnership," "Limited Liability Partnership,"
4 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

5 (2) The street address of the partnership's chief executive office ~~and, if different, the~~
6 ~~street address of an office of the partnership in this state, if any;~~

7 (3) ~~If there is no office of the partnership in this state, the name and street address of the~~
8 ~~partnership's agent for service of process~~ The information required by section 6 of
9 this Act; and

10 (4) A deferred effective date, if any.

11 (b) ~~The agent of a foreign limited liability company for service of process must be an~~
12 ~~individual who is a resident of this state or other person authorized to do business in this state~~
13 Repealed.

14 (c) The status of a partnership as a foreign limited liability partnership is effective on the
15 later of the filing of the statement of foreign qualification or a date specified in the statement.
16 The status remains effective, regardless of changes in the partnership, until it is canceled
17 pursuant to subsection 48-7A-105(d) or revoked pursuant to § 48-7A-1003.

18 (d) An amendment or cancellation of a statement of foreign qualification is effective when
19 it is filed or on a deferred effective date specified in the amendment or cancellation.

20 Section 88. That § 47-34A-1206 be amended to read as follows:

21 47-34A-1206. The secretary of state may charge the following fees:

22 (a) For amending or restating the articles of organization in the case of a domestic
23 limited liability company, a filing fee of fifty dollars. For amending the registration
24 in the case of a foreign limited liability company, a filing fee of five hundred fifty

1 dollars;

2 (b) For filing articles of termination, ten dollars;

3 (c) For filing articles of merger, fifty dollars;

4 (d) For filing a statement of dissociation, ten dollars;

5 (e) For filing an application to reserve a name, twenty dollars;

6 (f) For issuing a certificate of existence, fifteen dollars;

7 (g) For filing an application for registration of name, one dollar for each month, or
8 fraction thereof, between the date of filing such application and December thirty-first
9 of the calendar year in which such application is filed;

10 (h) For filing an annual renewal of registration, a limited liability company which has in
11 effect a registration of its name, may renew such registration from year to year by
12 annually filing an application for renewal setting forth the facts required to be set
13 forth in an original application for registration and a certificate of good standing as
14 required for the original registration and by paying a fee of ten dollars. A renewal
15 application may be filed between the first day of October and the thirty-first day of
16 December in each year and shall extend the registration for the following year;

17 (i) For acting as agent for service of process the secretary of state shall charge and
18 collect at the time of such service twenty-five dollars which may be recoverable as
19 taxable costs by the party to the suit or action causing the service to be made if the
20 party prevails in the suit or action.

21 ~~Each limited liability company, domestic or foreign, that fails or refused to file its annual~~
22 ~~report for any year within the time prescribed is subject to a penalty of fifty dollars to be~~
23 ~~assessed by the secretary of state.~~

24 Section 89. This Act does not affect an action or proceeding commenced or right accrued

1 before July 1, 2008.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

248P0556

HOUSE TRANSPORTATION ENGROSSED NO. **HB** **1241** - 1/24/2008

Introduced by: Representatives Olson (Russell), Faehn, and Lucas and Senators Hauge, Abdallah, and Gant

1 FOR AN ACT ENTITLED, An Act to provide licensed dealers additional time to deliver a title
2 under certain conditions.

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

4 Section 1. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If a licensed dealer does not deliver title within thirty days as required by § 32-3-7, and the
7 dealer has satisfied any lien in compliance with chapter 32-6B, 32-6C, 32-7A, or 32-7B and the
8 delay in delivering title was caused because the lien holder failed to release the lien or deliver
9 the title document in accordance with § 32-3-44, the dealer may request additional time to
10 deliver title to the retail purchaser. The dealer's request for an extension shall be made within
11 forty days of the date of sale. Any request after the forty days shall be denied and the dealer is
12 in violation of § 32-3-7. The dealer shall provide to the department documentation to support
13 the steps taken to satisfy the lien in a timely manner and request the title. If the department finds
14 the request for additional time is substantiated, the department may authorize the issuance of



1 another temporary license permit not to exceed thirty days.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

454P0572

HOUSE JUDICIARY ENGROSSED NO. **HB 1253** - 1/28/2008

Introduced by: Representatives Peters, Buckingham, Cutler, Gillespie, Gilson, Kirkeby, Lucas, and Moore and Senators Sutton, Abdallah, Albers, Gant, Koetzle, McCracken, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to require that home studies conducted for custody
2 determinations be completed by certain professionals.

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

4 Section 1. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any home study conducted for purposes of determining custody of a minor shall be
7 completed by one of the following persons:

- 8 (1) A licensed professional counselor or licensed professional counselor-mental health
9 licensed pursuant to chapter 36-32;
- 10 (2) A marriage and family therapist licensed pursuant to chapter 36-33;
- 11 (3) A psychologist licensed pursuant to chapter 36-27A;
- 12 (4) A certified social worker licensed pursuant to chapter 36-26; or
- 13 (5) Any other person that a court may deem appropriate.

14 However, the provisions of this section do not apply to any home study conducted pursuant



1 to chapters 26-7A, 26-8A, 26-8B, and 26-8C.

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0149

SENATE ENGROSSED NO. **SB 2** - 1/16/2008

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to prohibit public access to birth dates of voters contained
2 in the master voter registration file.

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

4 Section 1. That § 12-4-9 be amended to read as follows:

5 12-4-9. The county auditor shall maintain and safeguard a file of voters in computer format
6 that contains each person registered in each voting precinct within the county. This file shall be
7 known as the master registration file and shall be, at all times during office hours, open to public
8 inspection. However, public access to social security numbers and driver license numbers
9 contained in the master registration file shall be ~~restricted~~ prohibited. Public access to each
10 voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not
11 restricted. The master registration file shall contain all information from each voter's registration
12 card except the description of the location of the voter's residence. The master registration file
13 shall also include the date of the last election the voter has voted in and when the voter's
14 information was last updated. The master registration file may also contain additional voter
15 history information.



State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0143

SENATE LOCAL GOVERNMENT ENGROSSED NO. **SB 3** - 1/14/2008

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain procedures concerning elections for special
2 districts and to declare an emergency.

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

4 Section 1. That § 6-16-4 be amended to read as follows:

5 6-16-4. The county auditor shall publish the notice of the voter registration deadline at least
6 once each week for two consecutive weeks, the last publication to be not less than ~~twenty-five~~
7 twenty-four nor more than thirty days prior to the election. The auditor shall publish notices of
8 election at least once each week for two consecutive weeks, the last publication to be not less
9 than four nor more than ten days before the election in at least one legal newspaper of general
10 circulation in the proposed district.

11 Section 2. That § 6-16-5 be amended to read as follows:

12 6-16-5. ~~The~~ If the proposed district contains less than one thousand eligible voters as defined
13 in § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within
14 the district to conduct an election on the question of formation of the special district. The date



1 may not be more than sixty days after the appropriate board declares that the application for
2 incorporation is valid. The auditor shall appoint three judges of election, one of whom shall
3 serve as the superintendent, to conduct the election. The vote upon the question of incorporation
4 shall be by ballot which conforms to a ballot for a statewide question except that the statement
5 required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast
6 and counted, the judges shall prepare a certification showing the whole number of ballots cast,
7 together with the number voting for and the number voting against incorporation, and shall
8 return the certification to the county auditor. If a majority of the votes cast on the question of
9 formation is in favor, an election shall be conducted by those present at the same meeting to
10 elect the initial board of directors or trustees.

11 Section 3. That § 6-16-8 be amended to read as follows:

12 6-16-8. The State Board of Elections may promulgate rules pursuant to chapter 1-26
13 concerning:

- 14 (1) The petition form; ~~and~~ for the formation of a special district;
15 (2) The notice of election; and
16 (3) The nominating petition.

17 The petition form and notice of election shall include a description of the proposed district
18 boundaries.

19 Section 4. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If the proposed district contains one thousand or more eligible voters as defined in § 6-16-6,
22 the county auditor shall set a date for an election to be held within the district on the question
23 of formation of the special district. The date may not be more than sixty days after the
24 appropriate board declares that the application for incorporation is valid. The election shall be

1 conducted pursuant to Title 12. The vote upon the question of incorporation shall be by ballot
2 which conforms to a ballot for a statewide question except that the statement required to be
3 printed on the ballot shall be prepared by the state's attorney. The election shall be canvassed
4 by the county commission.

5 Section 5. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 If a majority of the votes cast in an election conducted pursuant to section 4 of this Act is
8 in favor on the question of formation of the special district, an election shall be conducted by
9 the county auditor within sixty days after the official canvass to elect the initial board of
10 directors or trustees. The election shall be conducted pursuant to Title 12. The county auditor
11 shall publish a notice of vacancy no later than fifty days prior to the election. Circulation of
12 nominating petitions may begin upon completion of the official canvass of the election to form
13 the district. Nominating petitions shall be filed with the county auditor by 5:00 p.m. at least
14 thirty days before the election. The nominating petitions shall contain signatures of at least
15 twenty-five registered voters in the district. Absentee ballots shall be made available to the
16 voters no later than twenty days before the date of election. The election shall be canvassed by
17 the county commission.

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