2020 South Dakota Legislature

House Bill Draft 304

Introduced by:

An Act to provide for the defense of laws by the Legislature.

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

Section 1. That a NEW SECTION be added:

2-18-1. Defense of law by the Legislature.

The Legislature may defend any law, or intervene in the defense of any law, in any civil action or proceeding in which the state is an interested party.

Section 2. That a NEW SECTION be added:

2-18-2. Employment of legal counsel by Legislature--Purposes--Process.

(1) The Legislature may employ legal counsel other than the attorney general to:

(a) Represent the Legislature in any civil action or proceeding under § 2-18-1;

(b) File or intervene in any civil action or proceeding on behalf of the Legislature; or

(c) Otherwise represent the Legislature in any court of this state or of the United States.

(2) Employment of legal counsel under this section must be authorized by:

(a) A vote of a majority of the members of the Executive Board of the Legislative Research Council; or

(b) Concurrent resolution adopted by both houses of the Legislature.

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Section 3. That a NEW SECTION be added:

2-18-3. Employment of legal counsel by each house of the Legislature--Purposes--Process.

(1) In any civil action or proceeding under § 2-18-2, each house of the Legislature may assert an independent legal position and employ legal counsel other than the attorney general to represent the respective house in the action or proceeding.

(2) The speaker of the House of Representatives, in consultation with the majority leader of the House of Representatives and the minority leader of the House of

Representatives, shall determine the legal position of the House of Representatives.

(3) The president pro tempore of the Senate, in consultation with the majority leader of the Senate and the minority leader of the Senate, shall determine the legal position of the Senate.

(4) Each house of the Legislature shall approve the employment of legal counsel under this section by resolution adopted by a majority of the members-elect of the respective house.

Section 4. That a NEW SECTION be added:

2-18-4. Employment of legal counsel by each house of the Legislature-- Defense of member, agent, house.

(1) The speaker of the House of Representatives may employ legal counsel other than the attorney general to defend:

(a) A member of the House of Representatives who is sued in that member's capacity as a representative;

(b) An individual who is sued in that individual's capacity as an agent of the House of Representatives; or

(c) The House of Representatives if the House of Representatives is sued as a body.

(2) The president pro tempore of the Senate may employ legal counsel other than the attorney general to defend:

(a) A member of the Senate who is sued in that member's capacity as a senator;

(b) An individual who is sued in that individual's capacity as an agent of the Senate; or

(c) The Senate if the Senate is sued as a body.

Section 5. That § 4-8A-17 be AMENDED:

4-8A-17. Legislative priority pilot program contingency fund created.

On June 29, 2015, the state treasurer shall transfer to the legislative priority pilot program contingency fund, which is hereby created, the sum of one million dollars ($1,000,000) from the South Dakota risk pool fund created by § 58-17-120. The contingency funds are to be made available in accordance with the provisions of §§ 4-8A-9, 4-8A-10, 4-8A-11, and 4-8A-12. The contingency funds shall be used to fund legislative

priority pilot programs and the cost of employment of legal counsel under § 2-18-2, 2-18-3, or 2-18-4. Interest earned on money in the fund shall be deposited into the general fund.