



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0347

HOUSE TRANSPORTATION COMMITTEE  
ENGROSSED NO. **HB 1060** - 01/19/2005

Introduced by: The Committee on Transportation at the request of the Department of  
Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to authorize the secretary of Revenue and Regulation to  
2 issue a cease and desist order to vehicle, snowmobile, manufactured home, and boat dealers  
3 for certain violations, to authorize imposition of monetary penalties for failure to comply  
4 with a cease and desist order, and to modify the reasons for suspending or revoking a  
5 dealer's license.

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

7 Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 In addition to any other remedy provided by law, the secretary of revenue and regulation  
10 may issue an order directing a vehicle dealer to cease and desist from engaging in any act or  
11 practice enumerated in § 32-6B-41. A cease and desist order issued pursuant to this section shall  
12 be effective for a period of five years.

13 Section 2. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Within twenty days after service of the order to cease and desist, the vehicle dealer may



1 request a hearing in writing on the question of whether acts or practices in violation of this title  
2 have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be  
3 available as provided by, chapter 1-26.

4 Section 3. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 A cease and desist order pursuant to section 1 of this Act becomes final upon expiration of  
7 the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is  
8 taken, upon final decision of the court if the court affirms the secretary's order or dismisses the  
9 appeal.

10 Section 4. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 1 of this  
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation  
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state  
19 motor vehicle fund.

20 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 A dealer may request a hearing to contest an order issued pursuant to section 4 of this Act.  
23 The request shall be submitted to the secretary in writing within twenty days after service of the  
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

2 Section 6. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 An order issued pursuant to section 4 of this Act becomes final upon expiration of the time  
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,  
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 7. That § 32-6B-41 be amended to read as follows:

8 32-6B-41. The department may deny any application, ~~or suspend or revoke~~ or apply the  
9 provisions of sections 1 to 6, inclusive, of this Act on any license issued under the provisions  
10 of this chapter, for ~~the violation of~~ any of the following:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in  
12 obtaining a license;
- 13 (2) Conviction of a felony involving vehicle theft or odometer fraud in the last five years;
- 14 (3) ~~Second or subsequent~~ A violation of any law of this state which relates to dealing in  
15 vehicles;
- 16 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the  
17 department;
- 18 (5) Perpetration of a fraud upon any person as a result of dealing in vehicles;
- 19 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapter 32-3;
- 20 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual  
21 inspections, complaint investigations, and necessary follow-up inspections;
- 22 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading  
23 statements with regard to the sale or financing of vehicles which a dealer has, or  
24 causes to have, advertised, printed, displayed, published, distributed, broadcast,

1           televised, or made in any manner with regard to the sale or financing of vehicles;

2       (9)    Refusal to comply with a licensee's responsibility under the terms of the new vehicle  
3           warranty issued by its respective manufacturer, unless such refusal is at the direction  
4           of the manufacturer;

5       (10) ~~Repeated failure to provide customers or purchasers with an odometer disclosure~~  
6           ~~statement;~~

7    ~~(11) Willful failure~~ Failure to comply with the terms of any bona fide written, executed  
8           agreement pursuant to the sale of a vehicle;

9       ~~(12)~~(11)    Inability to obtain or renew surety bond or to participate in a dealer asset pool;

10      ~~(13)~~(12)    Failure to maintain and continuously occupy a principal place of business; or

11      ~~(14)~~(13)    Failure to obtain or renew a public liability insurance policy of not less than  
12           three hundred thousand dollars, if the dealer has been given thirty days written  
13           notice to comply.

14       Section 8. That § 32-6B-40 be repealed.

15    ~~32-6B-40. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~  
16    ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~  
17    ~~continue, the inspection will cease. In either case however, the department may initiate~~  
18    ~~revocation proceedings against the dealer's license.~~

19       Section 9. That § 32-6B-43 be repealed.

20    ~~32-6B-43. The department may prepare and serve written notice upon a licensee which has~~  
21    ~~violated § 32-6B-41. The notice shall state that the department intends to revoke and cancel the~~  
22    ~~license thirty days after the notice was sent by certified mail or hand delivered and shall state~~  
23    ~~that the licensee is entitled to a hearing if the licensee submits a written request for a hearing to~~  
24    ~~the department prior to the effective date of the revocation. The notice may contain the~~

1 ~~requirements the licensee shall meet to correct the violation or to come into compliance with~~  
2 ~~the provisions of this chapter.~~

3 Section 10. That § 32-6B-44 be repealed.

4 ~~— 32-6B-44. If a licensee, after receiving a license revocation notice pursuant to § 32-6B-43,~~  
5 ~~decides to challenge the revocation, the licensee shall submit a request for a hearing in writing~~  
6 ~~to the department prior to the effective date of the revocation. If no request is received by the~~  
7 ~~department prior to the effective date of the revocation, the license shall be revoked and~~  
8 ~~canceled. If a hearing request is made the department shall, in accordance with chapter 1-26 and~~  
9 ~~at the time and place fixed pursuant to § 32-6B-43, hear and determine the matter on its merits.~~  
10 ~~If the department finds the existence of any cause for suspension or revocation as set forth in~~  
11 ~~§ 32-6B-41, it shall suspend or revoke the license. A copy of the order shall be served upon the~~  
12 ~~licensee in the manner provided by chapter 1-26. Upon suspension or revocation the licensee~~  
13 ~~shall immediately return to the department all dealers' metal plates issued to the licensee and~~  
14 ~~shall immediately surrender the license certificate to a representative of the department serving~~  
15 ~~the written order upon the licensee.~~

16 Section 11. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 In addition to any other remedy provided by law, the secretary of revenue and regulation  
19 may issue an order directing a snowmobile dealer to cease and desist from engaging in any act  
20 or practice enumerated in § 32-6C-14. A cease and desist order issued pursuant to this section  
21 is effective for a period of five years.

22 Section 12. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Within twenty days after service of the order to cease and desist, the snowmobile dealer may

1 request a hearing in writing on the question of whether acts or practices in violation of this title  
2 have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be  
3 available as provided by, chapter 1-26.

4 Section 13. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 A cease and desist order pursuant to section 11 of this Act becomes final upon expiration  
7 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal  
8 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses  
9 the appeal.

10 Section 14. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 11 of this  
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation  
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state  
19 motor vehicle fund.

20 Section 15. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 A dealer may request a hearing to contest an order issued pursuant to section 14 of this Act.  
23 The request shall be submitted to the secretary in writing within twenty days after service of the  
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

2 Section 16. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 An order issued pursuant to section 14 of this Act becomes final upon expiration of the time  
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,  
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 17. That § 32-6C-14 be amended to read as follows:

8 32-6C-14. The department may deny any application, ~~or suspend or revoke~~ or apply the  
9 provisions of sections 11 to 16, inclusive, of this Act on any license issued under the provisions  
10 of this chapter, for the violation of any of the following provisions:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in  
12 obtaining a license;
- 13 (2) Conviction of a felony involving the theft of snowmobiles or other motor vehicles  
14 in the last five years;
- 15 (3) ~~Second or subsequent violations~~ A violation of any law of this state which relates to  
16 dealing in snowmobiles;
- 17 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the  
18 department;
- 19 (5) Perpetration of a fraud upon any person as a result of dealing in snowmobiles;
- 20 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapters 32-3 and  
21 32-20A;
- 22 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual  
23 inspections, complaint investigations, and necessary follow-up inspections;
- 24 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading

1 statements with regard to the sale or financing of snowmobiles which a dealer has,  
2 or causes to have, advertised, printed, displayed, published, distributed, broadcast,  
3 televised, or made in any manner with regard to the sale or financing of  
4 snowmobiles;

5 (9) Refusal to comply with a licensee's responsibility under the terms of a snowmobile  
6 warranty issued by its respective manufacturer, unless such refusal is at the direction  
7 of the manufacturer;

8 (10) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed  
9 agreement pursuant to the sale of a snowmobile;

10 (11) ~~Willful failure~~ Failure to disclose damage to a new snowmobile of which the dealer  
11 had knowledge if the dealer's actual cost to repair, exceeds five percent of the  
12 manufacturer's suggested retail price; or

13 (12) Inability to obtain or renew surety bond.

14 Section 18. That § 32-6C-13 be repealed.

15 ~~— 32-6C-13. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~  
16 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~  
17 ~~continue, the inspection shall cease. In either case, however, the department may initiate~~  
18 ~~revocation proceedings against the dealer's license.~~

19 Section 19. That § 32-6C-15 be repealed.

20 ~~— 32-6C-15. The department may prepare and serve written notice upon a licensee which it~~  
21 ~~received complaints on in the manner provided by chapter 1-26. The notice shall require the~~  
22 ~~licensee to appear before the department at a time and place, not less than five days after service~~  
23 ~~of the notice, to show cause why the license should not be revoked.~~

24 Section 20. That § 32-6C-16 be repealed.

1 ~~32-6C-16. The department shall, in accordance with chapter 1-26 and at the time and place~~  
2 ~~fixed pursuant to § 32-6C-15, hear and determine the matter on its merits. If the department~~  
3 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-6C-14, it shall~~  
4 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~  
5 ~~manner provided by chapter 1-26. Upon suspension or revocation the licensee shall immediately~~  
6 ~~surrender his license certificate to a representative of the department serving the written order~~  
7 ~~upon him.~~

8 Section 21. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 In addition to any other remedy provided by law, the secretary of revenue and regulation  
11 may issue an order directing a dealer to cease and desist from engaging in any act or practice  
12 enumerated in § 32-7A-4.2. A cease and desist order issued pursuant to this section is effective  
13 for a period of five years.

14 Section 22. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 Within twenty days after service of the order to cease and desist, the dealer may request a  
17 hearing in writing on the question of whether acts or practices in violation of this title have  
18 occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as  
19 provided by, chapter 1-26.

20 Section 23. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 A cease and desist order pursuant to section 21 of this Act becomes final upon expiration  
23 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal  
24 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses

1 the appeal.

2 Section 24. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 If a dealer fails to comply with a cease and desist order issued pursuant to section 21 of this  
5 Act, the secretary may issue an order which:

- 6 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation  
7 of the cease and desist order;
- 8 (2) Suspends dealer's license for not more than thirty days; or
- 9 (3) Revokes the dealer's license.

10 All monetary penalties collected pursuant to this section shall be deposited into the state  
11 motor vehicle fund.

12 Section 25. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 A dealer may request a hearing to contest an order issued pursuant to section 24 of this Act.  
15 The request shall be submitted to the secretary in writing within twenty days after service of the  
16 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as  
17 provided by, chapter 1-26.

18 Section 26. That chapter 32-7A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 An order issued pursuant to section 24 of this Act becomes final upon expiration of the time  
21 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,  
22 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

23 Section 27. That § 32-7A-4.2 be amended to read as follows:

24 32-7A-4.2. The department may deny any application, ~~or suspend or revoke~~ or apply the

1 provisions of sections 21 to 26, inclusive, of this Act on any license issued under the provisions  
2 of this chapter, for ~~a violation of any of the following provisions:~~

3 (1) Commission of fraud or willful misrepresentation in the application for or in  
4 obtaining a license;

5 (2) A previous manufacturer or dealer license revocation in this or any other state;

6 (3) ~~Willful violation, which leads to a conviction,~~ A violation of any law of this state  
7 which relates to dealing in manufactured homes or mobile homes;

8 (4) ~~Willful failure~~ Failure to comply with any administrative rule promulgated by the  
9 department;

10 (5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes  
11 or mobile homes;

12 (6) Failure to allow department inspections, including initial and annual inspections,  
13 complaint investigations and necessary follow-up inspections;

14 (7) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading  
15 statements with regard to the sale or financing of manufactured homes or mobile  
16 homes which a dealer has, or causes to have, advertised, printed, displayed,  
17 published, distributed, broadcast, televised, or made in any manner with regard to the  
18 sale or financing of manufactured homes or mobile homes;

19 (8) Refusal to comply with a licensee's responsibility under the terms of the new  
20 manufactured home or mobile home warranty issued by its respective manufacturer,  
21 unless such refusal is at the direction of the manufacturer;

22 (9) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed  
23 agreement pursuant to the sale of a manufactured home or mobile home;

24 (10) Violation by the dealer of any applicable manufactured home building or safety code;

- 1 (11) Failure to continuously occupy a principal place of business licensed under § 32-7A-
- 2 2;
- 3 (12) ~~Willful failure~~ Failure to deliver the manufacturer's statement of origin to the county
- 4 treasurer or the certificate of title to a person entitled to it within thirty days after date
- 5 of delivery;
- 6 (13) Conviction within the previous ~~ten~~ five years, of a crime that related directly to the
- 7 business of the dealer or manufacturer involving fraud, misrepresentation or misuse
- 8 of funds;
- 9 (14) Inability to obtain or renew a surety bond; or
- 10 (15) Misuse of the dealers' metal plates and lending for use on mobile homes or
- 11 manufactured homes not owned by the manufacturer or dealer;
- 12 ~~— (16) Transporting a used mobile home or manufactured home without an affidavit, four~~
- 13 ~~or more times within a one-year period, from the county treasurer of the county in~~
- 14 ~~which the mobile home or manufactured home is registered, stating that the current~~
- 15 ~~year's taxes are paid; or~~
- 16 ~~— (17) Having a used mobile home or manufactured home located on the licensed dealer's~~
- 17 ~~or manufacturer's lot without an affidavit, four or more times within a one-year~~
- 18 ~~period, from the county treasurer of the county in which the mobile home or~~
- 19 ~~manufactured home is registered, stating that the current year's taxes were paid when~~
- 20 ~~the licensed dealer acquired the home.~~

21 Section 28. That § 32-7A-20 be repealed.

22 ~~— 32-7A-20. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~

23 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~

24 ~~continue, the inspection shall cease. In either case however, the department may immediately~~

1 ~~initiate revocation proceedings against the dealer's license.~~

2 Section 29. That § 32-7A-21 be repealed.

3 ~~—32-7A-21. The department may prepare and serve written notice upon a licensee which it~~  
4 ~~receives complaints on in the manner provided by chapter 1-26. The notice shall require the~~  
5 ~~licensee to appear before the department at a time and place, not less than five days after service~~  
6 ~~of the notice, to show cause why the license should not be revoked.~~

7 Section 30. That § 32-7A-22 be repealed.

8 ~~—32-7A-22. The department shall, in accordance with chapter 1-26 and at the time and place~~  
9 ~~fixed pursuant to § 32-7A-21, hear and determine the matter on its merits. If the department~~  
10 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-7A-4.2, it shall~~  
11 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~  
12 ~~manner provided by chapter 1-26. Upon suspension or revocation, the licensee shall~~  
13 ~~immediately return to the department all dealers' metal plates issued to him and shall~~  
14 ~~immediately surrender his license certificate to a representative of the department serving such~~  
15 ~~written order upon him.~~

16 Section 31. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 In addition to any other remedy provided by law, the secretary of revenue and regulation  
19 may issue an order directing a boat dealer to cease and desist from engaging in any act or  
20 practice enumerated in § 32-7B-17. A cease and desist order issued pursuant to this section is  
21 effective for a period of five years.

22 Section 32. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Within twenty days after service of the order to cease and desist, the boat dealer may request

1 a hearing in writing on the question of whether acts or practices in violation of this title have  
2 occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as  
3 provided by, chapter 1-26.

4 Section 33. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 A cease and desist order pursuant to section 31 of this Act becomes final upon expiration  
7 of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal  
8 is taken, upon final decision of the court if the court affirms the secretary's order or dismisses  
9 the appeal.

10 Section 34. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If a dealer fails to comply with a cease and desist order issued pursuant to section 31 of this  
13 Act, the secretary may issue an order which:

- 14 (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation  
15 of the cease and desist order;
- 16 (2) Suspends dealer's license for not more than thirty days; or
- 17 (3) Revokes the dealer's license.

18 All monetary penalties collected pursuant to this section shall be deposited into the state  
19 motor vehicle fund.

20 Section 35. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 A dealer may request a hearing to contest an order issued pursuant to section 34 of this Act.  
23 The request shall be submitted to the secretary in writing within twenty days after service of the  
24 order. Any hearing shall be conducted pursuant to, and judicial review shall be available as

1 provided by, chapter 1-26.

2 Section 36. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 An order issued pursuant to section 34 of this Act becomes final upon expiration of the time  
5 allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken,  
6 upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

7 Section 37. That § 32-7B-17 be amended to read as follows:

8 32-7B-17. The department may deny any application, ~~or suspend or revoke~~ or apply the  
9 provisions of sections 31 to 36, inclusive, of this Act on any license issued under the provisions  
10 of this chapter, for the violation of any of the following provisions:

- 11 (1) Commission of fraud or willful misrepresentation in the application for or in  
12 obtaining a license;
- 13 (2) Conviction of a felony involving the theft of boats or other motor vehicles in the last  
14 five years;
- 15 (3) ~~Second or subsequent violations~~ A violation of any law of this state that relates to  
16 dealing in boats;
- 17 (4) ~~Repeated failure~~ Failure to comply with any administrative rule promulgated by the  
18 department;
- 19 (5) Perpetration of a fraud upon any person as a result of dealing in boats;
- 20 (6) ~~Repeated failure~~ Failure to apply for transfers of title as required in chapters 32-3 and  
21 42-8;
- 22 (7) ~~Willful failure~~ Failure to allow department inspections, including initial and annual  
23 inspections, complaint investigations and necessary follow-up inspections;
- 24 (8) ~~Willful misrepresentation~~ Misrepresentation through false, deceptive, or misleading

1 statements with regard to the sale or financing of boats which a dealer has, or causes  
2 to have, advertised, printed, displayed, published, distributed, broadcasted, televised,  
3 or made in any manner with regard to the sale or financing of boats;

4 (9) Refusal to comply with a licensee's responsibility under the terms of a boat warranty  
5 issued by its respective manufacturer, unless such refusal is at the direction of the  
6 manufacturer;

7 (10) ~~Willful failure~~ Failure to comply with the terms of any bona fide written, executed  
8 agreement pursuant to the sale of a boat;

9 (11) Inability to obtain or renew surety bond; or

10 (12) Failure to maintain a principal place of business.

11 Section 38. That § 32-7B-16 be repealed.

12 ~~— 32-7B-16. If, prior to an inspection, a dealer refuses to allow the inspection, no inspection~~  
13 ~~need be made. If, during the course of an inspection, a dealer refuses to allow the inspection to~~  
14 ~~continue, the inspection shall cease. In either case, however, the department may initiate~~  
15 ~~revocation proceedings against the dealer's license.~~

16 Section 39. That § 32-7B-18 be repealed.

17 ~~— 32-7B-18. The department may prepare and serve written notice upon a licensee that it~~  
18 ~~received complaints in the manner provided by chapter 1-26. The notice shall require the~~  
19 ~~licensee to appear before the department at a time and place, not less than five days after service~~  
20 ~~of the notice, to show cause why the license should not be revoked.~~

21 Section 40. That § 32-7B-19 be repealed.

22 ~~— 32-7B-19. The department shall, in accordance with chapter 1-26 and at the time and place~~  
23 ~~fixed pursuant to § 32-7B-18, hear and determine the matter on its merits. If the department~~  
24 ~~finds the existence of any cause for suspension or revocation as set forth in § 32-7B-17, it shall~~

1 ~~suspend or revoke the license. A copy of the order shall be served upon the licensee in the~~  
2 ~~manner provided by chapter 1-26. Upon suspension or revocation, the licensee shall~~  
3 ~~immediately surrender the license certificate to a representative of the department serving the~~  
4 ~~written order upon the licensee.~~

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

444L0354

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1119** - 01/31/2005

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

Introduced by: Representatives Hunt, Fryslie, Gillespie, Hackl, Krebs, Lange, McLaughlin, Pederson (Gordon), Rounds, and Weems and Senators Napoli, Abdallah, Broderick, Hundstad, Kelly, Koskan, McNenny, Moore, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the sale of out-of-state  
2 motor vehicles.

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

4 Section 1. That § 32-5-27 be amended to read as follows:

5 32-5-27. Any dealer, person, firm, or corporation, which brings into the state or purchases  
6 any used or secondhand out-of-state motor vehicles not currently licensed in this state for the  
7 purpose of sale or resale, except as a trade-in on a new motor vehicle or another used motor  
8 vehicle ~~or, a used motor vehicle purchased by a dealer and sold to another dealer,~~ vehicles  
9 receiving a junking certificate ~~or,~~ motor vehicles with a gross vehicle weight rating of over  
10 twenty-six thousand pounds, or a semitrailer with a manufacturer's shipping weight of nine  
11 thousand pounds or more, shall, within thirty days from the date of purchase or entry of the  
12 motor vehicle into the limits of this state, or from the date of purchase at a dealer's car auction  
13 agency, title the motor vehicle pursuant to chapter 32-3 and pay the excise tax pursuant to  
14 chapter 32-5B but is not required to license the vehicle. Any licensed motor vehicle dealer



1 titling a motor vehicle pursuant to this section is exempt from paying the excise tax imposed by  
2 § 32-5B-1 on such vehicle. A vehicle titled by a licensed motor vehicle dealer pursuant to this  
3 section shall be issued a title indicating that no excise tax has been paid. Upon transfer of the  
4 title to a subsequent purchaser of the motor vehicle, the excise tax shall be paid by the purchaser  
5 or by any other person as defined by subdivision 2-14-2(18), on behalf of and as the agent for  
6 the purchaser. A violation of this section is a Class 2 misdemeanor.

7 The provisions of this section do not apply to any motor vehicle titled and licensed in  
8 another jurisdiction which is sold in this state through a dealer's car auction agency licensed  
9 under the provisions of chapter 32-6B.

10 Section 2. That § 32-3-51.8 be amended to read as follows:

11 ~~32-3-51.8. Upon the sale, transfer, or trade-in of a motor vehicle, or if licensing a motor~~  
12 ~~vehicle in South Dakota which is titled in another state or jurisdiction, the seller, transferor,~~  
13 ~~trader, or person wishing to license in South Dakota the motor vehicle which is titled in another~~  
14 ~~state or jurisdiction~~ Upon the sale, transfer, trade-in, or titling of a motor vehicle, the seller,  
15 transferor, trader, or person wishing to title in South Dakota shall submit an accurately  
16 completed damage disclosure statement ~~when applying for a certificate of title pursuant to § 32-~~  
17 ~~3-18.~~ The completed damage disclosure statement may be on the back of the certificate of title  
18 or on a separate document that has been approved for use by the department. Except as  
19 otherwise provided by this section, no certificate of title may be issued by the department unless  
20 the damage disclosure statement accompanies the application. It is a Class 1 misdemeanor to  
21 intentionally falsify any information on the damage disclosure statement. No person or dealer  
22 is liable to a subsequent owner of a vehicle because a prior owner of the vehicle failed to  
23 disclose that the vehicle had previously been damaged and repaired. This section does not apply  
24 to any motor vehicles vehicle more than six model years old or with a gross vehicle weight

1 rating of more than sixteen thousand pounds and does not apply if a rebuilt title or junking  
2 certificate is sought.

3 This section ~~does apply~~ applies to all other motor vehicles, but only damage in excess of five  
4 thousand dollars shall be disclosed in the statement. If the motor vehicle has incurred damages  
5 more than once, only those damages ~~which~~ that occurred at one time ~~would be~~ are considered  
6 in determining whether the damages exceeded five thousand dollars.

7 Section 3. That § 32-5B-13 be repealed:

8 ~~— 32-5B-13. Following a retail sale of a motor vehicle licensed pursuant to § 32-5-27 to an~~  
9 ~~out-of-state resident who has not purchased the vehicle for the purpose of resale, the seller of~~  
10 ~~the vehicle upon application to the county treasurer shall receive a refund of the excise tax~~  
11 ~~imposed by § 32-5B-1. The seller shall present the county treasurer with a copy of the retail sale~~  
12 ~~order, a receipt for the payment of the excise tax, motor vehicle title, and an affidavit stating the~~  
13 ~~documents are valid before the county treasurer makes such refund.~~

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

474L0424

## HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1171** - 02/02/2005

Introduced by: Representatives Weems, Faehn, Gassman, Krebs, Lange, Miles, Pederson (Gordon), Schafer, Sebert, and Willadsen and Senators Gant, Bartling, Kelly, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to permit certain dealers or public auctions to sell  
2 snowmobiles and vehicles on consignment.

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

4 Section 1. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any snowmobile dealer or public auction may sell, or offer to sell, new or used snowmobiles  
7 on consignment. For the purposes of this chapter, consignment means the delivery of a  
8 snowmobile by the owner into the possession of another without transfer of title for the purpose  
9 of sale or where there is any condition that the purchaser does not have an absolute obligation  
10 to pay for the snowmobile or has a right to return the snowmobile to the seller. Any snowmobile  
11 dealer or public auction who sells, or offers to sell, a South Dakota titled snowmobile on  
12 consignment shall enter into a contract with the consignor. The department shall prescribe the  
13 form of the contract.

14 Section 2. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as



1 follows:

2 No person may sell or offer to sell a snowmobile, to which a manufacturer's statement of  
3 origin has not been transferred, on consignment.

4 Section 3. That § 32-6B-3 be amended to read as follows:

5 32-6B-3. Any ~~vehicle~~ dealer or public auction may sell, or offer to sell, new or used vehicles  
6 on consignment. For the purposes of this chapter, consignment means the delivery of a vehicle  
7 by the owner into the possession of another without transfer of title for the purpose of sale or  
8 where there is any condition that the purchaser does not have an absolute obligation to pay for  
9 the vehicle or has a right to return the vehicle to the seller. Any ~~vehicle~~ dealer or public auction  
10 who sells, or offers to sell, South Dakota titled vehicles on consignment shall enter into a  
11 contract with the consignor. The department shall prescribe the form of the contract.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

718L0599

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 168** - 02/09/2005

Introduced by: Senators Adelstein, Broderick, Knudson, Nesselhuf, and Two Bulls and Representatives Murschel, Bradford, Elliott, Halverson, Thompson, Valandra, and Van Norman

1 FOR AN ACT ENTITLED, An Act to ensure appropriate emergency health care for certain rape  
2 survivors and to require health care facilities and the Department of Health to provide  
3 information to certain rape survivors.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Emergency contraception," any drug or device approved by the Food and Drug  
7 Administration that can prevent pregnancy after sex;
- 8 (2) "Emergency care," any medical examination or treatment provided by a health care  
9 facility to a rape survivor following an alleged rape;
- 10 (3) "Medically and factually accurate and objective," verified or supported by the weight  
11 of research conducted in compliance with accepted scientific methods and either: (1)  
12 published in peer-reviewed journals; or (2) comprising information that leading  
13 professional organizations and agencies with relevant expertise in the field recognize  
14 as accurate and objective;



1 (4) "Rape," as defined in § 22-22-1;

2 (5) "Rape survivor," any female person who alleges or is alleged to have been raped and  
3 who presents as a patient.

4 Section 2. Every health care facility providing emergency treatment to a rape survivor shall  
5 promptly:

6 (1) Provide such survivor with medically and factually accurate and objective written  
7 and oral information pursuant to section 3 of this Act, relating to emergency  
8 contraception;

9 (2) Orally inform such survivor of the availability of emergency contraception, its use  
10 and efficacy; and

11 (3) Provide to such survivor:

12 (a) Emergency contraception upon her request, if medically necessary; or

13 (b) A prescription for the medication if it can be confirmed that there is a  
14 pharmacy open and able to meet this need within seventy-two hours of the  
15 rape; or

16 (c) A referral to a physician or a clinic where the patient can receive emergency  
17 contraception within seventy-two hours of the rape.

18 Any religiously affiliated health care facility is exempt from subdivision (3) of this section.

19 No health care facility is required to provide emergency contraception to a pregnant woman.

20 Section 3. The Department of Health shall develop, prepare, and produce informational  
21 materials relating to emergency contraception for distribution to and use in all health care  
22 facilities in the state, in quantities sufficient to comply with the requirements of this Act. The  
23 Department of Health may also approve informational materials from medically recognized  
24 sources for the purposes of this Act. Such informational material shall be in clear and concise

1 language, readily comprehensible, in such varieties and forms as the Department of Health  
2 deems necessary to inform rape survivors in English and languages other than English. Such  
3 materials shall explain the nature of emergency contraception including its use, safety, efficacy,  
4 and availability.

5 Section 4. The Department of Health shall respond to complaints and shall periodically  
6 determine whether health care facilities are complying with this Act.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

480L0708

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 177** - 02/09/2005

Introduced by: Senators McCracken, Bartling, Bogue, Broderick, Knudson, Koskan, and Sutton (Dan) and Representatives Dykstra, Cutler, Dennert, Garnos, Gillespie, Glenski, Hargens, Miles, Olson (Ryan), Rave, Rhoden, Rounds, and Schafer

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a renewable electricity and  
2 recycled energy renewable energy credit system by the Public Utilities Commission.

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

4 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 For the purposes of this Act, renewable electricity and recycled energy include electricity  
7 generated from facilities using one or more of the following sources:

- 8 (1) Wind that uses wind as the source of energy to produce electricity;
- 9 (2) Solar that uses the sun as the source of energy to produce electricity;
- 10 (3) Hydroelectric that uses water as the source of energy to produce electricity, with a  
11 capacity of less than sixty megawatts;
- 12 (4) Hydrogen that is generated from one of the sources listed in this section;
- 13 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and  
14 wood wastes and residues, animal wastes, or landfill gas as the fuel to produce



1 electricity;

2 (6) Geothermal that uses energy contained in heat that continuously flows outward from  
3 the earth as the source of energy to produce electricity; and

4 (7) Recycled energy systems that produce electricity from currently unused waste heat  
5 resulting from combustion or other processes and which do not use an additional  
6 combustion process. The term does not include any system whose primary purpose  
7 is the generation of electricity.

8 Section 2. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 The commission may establish, or allow participation in, a system of renewable energy  
11 credits for electricity generated from renewable electricity or recycled energy. A renewable  
12 energy credit system shall track, record, and verify the trading of credits for electricity generated  
13 from renewable electricity and recycled energy sources among electric generators, utilities, and  
14 other interested entities within the state and with similar entities in other states. This Act applies  
15 to any provider of electricity that generates electricity from renewable electricity or recycled  
16 energy.

17 Section 3. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The commission may promulgate rules pursuant to chapter 1-26 concerning:

20 (1) Requirements for tracking, recording, and verifying the trading of renewable energy  
21 credits;

22 (2) Requirements for compliance with a renewable energy credit system;

23 (3) Requirements for certification of renewable energy credits;

24 (4) Requirements for participation in a regional system that relates to renewable energy

1 credits; and

2 (5) Requirements regarding the eligibility of a provider of electricity generated from  
3 renewable electricity or recycled energy to participate in the system.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

429L0703

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 186** - 02/09/2005

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

Introduced by: Senator Nesselhuf and Representative Hargens

1 FOR AN ACT ENTITLED, An Act to revise the penalties for the improper notarization of  
2 certain documents and to establish civil penalties for improper notarization of certain  
3 documents pertaining to elections or the election process.

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

5 Section 1. That § 18-1-11 be amended to read as follows:

6 18-1-11. It is a ~~Class 2~~ Class 1 misdemeanor for any notary public to affix his or her official  
7 signature to ~~documents when the parties have~~ any document if the party has not appeared before  
8 ~~him~~ such notary. The court may assess a civil penalty on such notary public, an amount not to  
9 exceed one thousand dollars per document, if the documents are related to an election or the  
10 election process. Any civil penalty collected pursuant to this section shall be deposited in the  
11 county general fund.

12 Section 2. That § 18-1-12 be amended to read as follows:

13 18-1-12. It is a ~~Class 2~~ Class 1 misdemeanor for any notary public to exercise the duties of  
14 ~~his office after the expiration of his commission or when he is otherwise disqualified~~ a notary  
15 public if the person's commission has expired or the person has been otherwise disqualified as



1 a notary public.

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

527L0621

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 218** - 02/09/2005

Introduced by: Senators Koskan, Abdallah, Adelstein, Apa, Bartling, Bogue, Dempster, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, McNenny, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Sutton (Dan), and Sutton (Duane) and Representatives Dykstra, Garnos, Gassman, Gillespie, Hackl, Haley, Hargens, Hunt, Jensen, Jerke, Klaudt, Kraus, Michels, Miles, Novstrup, Olson (Ryan), Putnam, Rave, Rhoden, Rounds, and Wick

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority  
2 and to declare an emergency.

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

4 Section 1. Terms used in this Act man as follows:

- 5 (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to  
6 this Act;
- 7 (2) "Board," the board of directors of the authority;
- 8 (3) "Facilities," electric generation and electric transmission facilities and the related  
9 supporting infrastructure, including any interest therein.

10 Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and  
11 expand the state's economy by developing in this state the energy production facilities and the  
12 energy transmission facilities necessary to produce and transport energy to markets outside of



1 the state.

2 Section 3. The authority may provide for the financing, construction, development,  
3 maintenance, and operation of new energy production facilities and energy transmission  
4 facilities. The authority may own, lease, or rent such facilities. The authority may enter into  
5 partnerships with public and private entities to develop and operate such facilities.

6 Section 4. If the authority becomes the owner or partial owner of any energy production  
7 facility or energy transmission facility, the authority shall attempt to divest itself of ownership  
8 as soon as economically practical.

9 Section 5. In order to finance projects authorized pursuant to this Act, the authority may  
10 issue and have outstanding bonds to finance facilities in an amount not to exceed one billion  
11 dollars. The authority shall have contracts sufficient to justify the issuance of bonds.

12 Section 6. There is hereby appropriated from the state general fund the sum of five hundred  
13 thousand dollars (\$500,000), or so much thereof as may be necessary, to the authority created  
14 pursuant to this Act to pursue the construction of facilities authorized by this Act.

15 Section 7. The director of the authority shall approve vouchers and the state auditor shall  
16 draw warrants to pay expenditures authorized by this Act.

17 Section 8. Any amounts appropriated in this Act not lawfully expended or obligated by  
18 June 30, 2007, shall revert in accordance with § 4-8-21.

19 Section 9. The governing and administrative powers of the authority are vested in its board  
20 of directors consisting of seven members. The Governor shall appoint the directors, with the  
21 advice and consent of the Senate. Not all members of the board may be of the same political  
22 party. The terms of the members of the board may not exceed six years. The terms of the initial  
23 board of directors shall be staggered by the drawing of lots so that not more than two of the  
24 director's terms shall end at the same time. Members of the board may serve more than one term.

1 Section 10. The Governor may remove any member of the board for cause, including  
2 incompetence, neglect of duty, or malfeasance in office.

3 Section 11. Members of the board shall receive compensation for the performance of their  
4 duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the  
5 authority. Members may be reimbursed at rates established by the Bureau of Personnel for  
6 necessary expenses, including travel and lodging expenses, incurred in connection with the  
7 performance of their duties as members.

8 Section 12. Each member of the board shall, before entering upon the duties of office, take  
9 and subscribe the constitutional oath of office.

10 Section 13. The board may appoint an executive director. The executive director may not  
11 be a member of the board. The executive director shall hold office at the discretion of the board.  
12 The executive director shall be the chief administrative and operational officer of the authority,  
13 shall direct and supervise its administrative affairs and general management, shall perform such  
14 other duties as may be prescribed from time to time by the board, and shall receive  
15 compensation fixed by the board. The executive director shall attend all meetings of the board.  
16 However, no action of the board or the authority is invalid on account of the absence of the  
17 executive director from a meeting. The board may engage the services of such other agents and  
18 employees as they deem appropriate, including attorneys, appraisers, scientists, researchers,  
19 engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and  
20 fix their compensation.

21 Section 14. The board shall meet on the call of the chair, upon the written request of four  
22 members of the board, or upon the request of the executive director.

23 Section 15. A majority of the members of the board constitute a quorum for the transaction  
24 of business. All official acts of the authority shall require the affirmative vote of at least four

1 members of the board at a meeting of the board at which the members casting those affirmative  
2 votes are present.

3 Section 16. Notwithstanding any other law to the contrary it is not a conflict of interest for  
4 a trustee, director, officer, or employee of any financial institution, investment banking firm,  
5 brokerage firm, commercial bank or trust company, architectural firm, utility company,  
6 engineering firm, mining firm, insurance company, energy company, or any other firm, person,  
7 or corporation to serve as a member of the authority, if the trustee, director, officer, or employee  
8 abstains from deliberation, action, and vote by the authority in each instance where the business  
9 affiliation of any such trustee, director, officer, or employee is involved.

10 Section 17. Each meeting of the authority for any purpose whatsoever shall be open to the  
11 public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the  
12 authority. Resolutions need not be published or posted.

13 Section 18. The executive director or other person designated by the authority shall keep a  
14 record of the proceedings thereof and shall be custodian of all books, documents, and papers  
15 filed with the authority, the minute books or journal of the authority and its official seal. The  
16 executive director or other person designated by the authority may cause copies to be made of  
17 all minutes and other records and documents of the authority and may give certificates under  
18 the official seal of the authority to the effect that such copies are true copies and all persons  
19 dealing with the authority may rely on such certificates.

20 Section 19. The authority shall establish and collect fees, schedules of fees, rentals and other  
21 charges for the use of the facilities of the authority as the board may determine, and may borrow  
22 funds for the execution of the purposes of the authority, and mortgage and pledge any lease or  
23 leases granted, assigned, or subleased by the authority.

24 Section 20. The authority may:

- 1 (1) Have perpetual succession as a body politic and corporate exercising essential public  
2 functions;
- 3 (2) Sue and be sued in its own name;
- 4 (3) Have an official seal and alter the seal at will;
- 5 (4) Maintain an office at such places within the state as the authority may designate;
- 6 (5) Make and execute contracts and all other instruments necessary or convenient for the  
7 performance of its duties and the exercise of its powers and functions under this Act;
- 8 (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and  
9 employees as may be required and contract with agencies of the state to provide staff  
10 and support services;
- 11 (7) Procure insurance against any loss in connection with its property and other assets,  
12 including loans and notes in such amounts and from such insurers as it may deem  
13 advisable;
- 14 (8) Borrow money and issue bonds as provided by this Act;
- 15 (9) Procure insurance, letters of credit, guarantees, or other credit enhancement  
16 arrangements from any public or private entities, including any department, agency,  
17 or instrumentality of the United States or the state, for payment of all or any portion  
18 of any bonds issued by the authority, including the power to pay premiums, fees, or  
19 other charges on any such insurance, letters of credit, guarantees, or credit  
20 arrangements;
- 21 (10) Receive and accept from any source financial aid or contributions of moneys,  
22 property, labor, or other things of value to be held, used, and applied to carry out the  
23 purposes of this Act subject to the conditions upon which the grants or contributions  
24 are made, including, gifts or grants from any department, agency, or instrumentality

1 of the United States for any purpose consistent with the provisions of this Act;

2 (11) To the extent permitted under its contract with the holders of bonds of the authority,  
3 consent to any modification with respect to the rate of interest, time, and payment of  
4 any installment of principal or interest, or any other term of any contract, loan, loan  
5 note, loan note commitment, contract, lease, or agreement of any kind to which the  
6 authority is a party;

7 (12) To make loans and grants to, and enter into financing agreements with, any  
8 governmental agency or any person for the costs incurred in connection with the  
9 development, construction, acquisition, improvement, maintenance, operation, or  
10 decommissioning of a project, or for the maintenance of the physical or structural  
11 integrity of real or personal property incorporated or which may be incorporated into  
12 a project, in accordance with a written agreement between the authority and such  
13 governmental agency or person. However, no such loan or grant may exceed the total  
14 cost of such project as determined by the governmental agency or person and  
15 approved by the authority;

16 (13) Cooperate with and exchange services, personnel, and information with any  
17 governmental agency;

18 (14) Enter into agreements for management on behalf of the authority of any of its  
19 properties upon such terms and conditions as may be mutually agreeable;

20 (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority  
21 finds such action to be in furtherance of the purposes for which it was organized;

22 (16) Acquire, hold, lease, and dispose of real and personal property, and construct,  
23 develop, maintain, operate, and decommission projects for the purposes for which the  
24 authority was created;

1 (17) Indemnify any person or governmental agency for such reasonable risks as the  
2 authority deems advisable if the indemnification is a condition of a grant, gift, or  
3 donation to the authority. However, any such obligation to indemnify may only be  
4 paid from insurance or from revenues of the authority, and such obligation does not  
5 constitute a debt or obligation of the State of South Dakota;

6 (18) Do any act and execute any instrument which in the authority's judgment is necessary  
7 or convenient to the exercise of the powers granted by this Act or reasonably implied  
8 from it;

9 (19) After consultation with the Public Utilities Commission and any other relevant  
10 governmental authority, establish and charge reasonable fees, rates, tariffs, or other  
11 charges for the use of all facilities administered by the authority and for all services  
12 rendered by it;

13 (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity;  
14 and

15 (21) Acquire by condemnation within the state any properties necessary or useful for the  
16 authority's purposes. However, the authority may not condemn any existing facilities.

17 Section 21. The authority may invest any funds not needed for immediate investment in the  
18 following:

19 (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities  
20 constituting direct obligations of, or obligations the principal of and interest on which  
21 are fully guaranteed or insured by, the United States of America;

22 (2) Obligations issued by or obligations the principal of and interest on which are fully  
23 guaranteed or insured by any agency or instrumentality of the United States of  
24 America;

- 1       (3)   Certificates of deposit or time deposits constituting direct obligations of any bank  
2            which is a qualified public depository or any savings and loan association which is  
3            a savings and loan depository under the Public Deposit Insurance Act pursuant to  
4            chapter 4-6A, unless sufficient volume of such certificates is not available at  
5            competitive interest rates. In that event, the authority may purchase noncollateralized  
6            direct obligations of any bank or savings institution or holding company if such  
7            institution or holding company is rated in the highest two quality categories by a  
8            nationally recognized rating agency;
- 9       (4)   Obligations of any solvent insurance company or other corporation or business entity  
10           existing under the laws of the United States or any state thereof, if the obligation of  
11           the insurance company or other corporation or business entity is rated in the two  
12           highest classifications established by a standard rating service of insurance  
13           companies or a nationally recognized rating agency;
- 14       (5)   Short term discount obligations of the Federal National Mortgage Association;
- 15       (6)   Obligations issued by any state of the United States or any political subdivision,  
16           public instrumentality, or public authority of any state of the United States, which  
17           obligations are not callable before the date the principal thereof will be required to  
18           be paid and which obligations are fully secured as to both sufficiency and timely  
19           payment by, and payable solely from, securities described in subdivision (1) and  
20           which obligations are rated in the highest investment classification by at least two  
21           standard rating services of such obligations.

22       Any securities may be purchased at the offering or market price thereof at the time of the  
23       purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to  
24       the time when, in the judgment of the authority, the funds so invested will be required for

1 expenditure. The express judgment of the authority as to the time when any funds will be  
2 required for expenditure or be redeemable is final and conclusive. Investment in any obligation  
3 enumerated in this section may be made either directly or in the form of securities of, or other  
4 interests in, an investment company registered under the Federal Investment Act of 1940, whose  
5 shares are registered under the Federal Securities Act of 1933, and whose investments are  
6 limited to these obligations.

7 Section 22. The authority may issue revenue bonds, notes, or other evidences of  
8 indebtedness to pay the cost incurred in connection with developing, constructing, acquiring,  
9 improving, maintaining, operating, and decommissioning projects. For the purpose of  
10 evidencing the obligations of the authority to repay any money borrowed, the authority may,  
11 pursuant to resolution, from time to time issue and dispose of its interest bearing revenue bonds,  
12 notes, or other instruments and may also from time to time issue and dispose of such bonds,  
13 notes, or other instruments to refund, at maturity, at a redemption date or in advance of either,  
14 any revenue bonds, notes, or other instruments pursuant to redemption provisions or at any time  
15 before maturity. All such revenue bonds, notes, or other instruments shall be payable solely  
16 from the revenues or income to be derived with respect to projects, from the leasing or sale of  
17 the projects, or from any other funds available to the authority for such purposes. The revenue  
18 bonds, notes, or other instruments may bear such date or dates, may mature at such time or times  
19 not exceeding forty years from their respective dates, may bear interest at such rate or rates, may  
20 be in such form, may carry such registration privileges, may be executed in such manner, may  
21 be payable at such place or places, may be made subject to redemption in such manner and upon  
22 such terms, with or without premium as is stated on the face thereof, may be authenticated in  
23 such manner, and may contain such terms and covenants as may be provided by an applicable  
24 resolution.

1 Section 23. Any holder of any revenue bonds, notes, or other instruments issued by the  
2 authority may bring suits at law or proceedings in equity to compel the performance and  
3 observance by any corporation or person or by the authority or any of its agents or employees  
4 of any contract or covenant made with the holders of such revenue bonds, notes, or other  
5 instruments, to compel such corporation, person, the authority, and any of its agents or  
6 employees to perform any duties required to be performed for the benefit of the holders of any  
7 such revenue bonds, notes, or other instruments by the provision of the resolution authorizing  
8 their issuance and to enjoin such corporation, person, the authority, and any of its agents or  
9 employees from taking any action in conflict with any such contract or covenant.

10 Section 24. If the authority fails to pay the principal of or interest on any of the revenue  
11 bonds or premium, if any, as the same become due, a civil action to compel payment may be  
12 instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which  
13 such default of payment exists or by an indenture trustee acting on behalf of such holders.  
14 Delivery of a summons and a copy of the complaint to the chair of the board constitutes  
15 sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and  
16 jurisdiction over the authority and its officers named as defendants for the purpose of  
17 compelling such payment.

18 Section 25. Notwithstanding the form and tenor of any such revenue bonds, notes, or other  
19 instruments and in the absence of any express recital on the face of any such revenue bond, note,  
20 or other instruments that it is non-negotiable, all such revenue bonds, notes, and other  
21 instruments shall be negotiable instruments. Pending the preparation and execution of any such  
22 revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may  
23 be issued as provided by resolution.

24 Section 26. To secure the payment of any or all of such revenue bonds, notes, or other

1 instruments, the revenues to be received by the authority from a lease agreement or loan  
2 agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings  
3 of the authority in connection with the issuance thereof and the issuance of any additional  
4 revenue bonds, notes, or other instruments payable from such revenues, income, or other funds  
5 to be derived from projects, the authority may execute and deliver a trust agreement. A remedy  
6 for any breach or default of the terms of any such trust agreement by the authority may be by  
7 mandamus proceedings in the appropriate circuit court to compel the performance and  
8 compliance therewith, but the trust agreement may prescribe by whom or on whose behalf the  
9 action may be instituted.

10 Section 27. The revenue bonds or notes shall be secured as provided in the authorizing  
11 resolution which may, notwithstanding any other provision of this Act, include in addition to  
12 any other security a specific pledge or assignment of and lien on or security interest in any or  
13 all revenues or money of the authority from whatever source which may by law be used for debt  
14 service purposes and a specific pledge or assignment of and lien on or security interest in any  
15 funds or accounts established or provided for by resolution of the authority authorizing the  
16 issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority  
17 of revenues or other moneys received or to be received by the authority pursuant to an  
18 agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other  
19 evidences of indebtedness of the authority shall be binding from the time the pledge is made.  
20 Revenues and other moneys received or to be received by the authority pursuant to an agreement  
21 with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or  
22 other evidences of indebtedness of the authority shall be held outside of the state treasury and  
23 in the custody of the authority or a trustee or a depository appointed by the authority. Revenues  
24 or other moneys received or to be received by the authority pursuant to an agreement with a

1 governmental agency relating to a project so pledged to pay revenue bonds, notes, or other  
2 evidences of indebtedness of the authority and thereafter received by the authority or such  
3 trustee or depository shall immediately be subject to the lien of the pledge without any physical  
4 delivery thereof or further act, and the lien of any pledge shall be binding against all parties  
5 having claims of any kind of tort, contract, or otherwise against the authority or the State of  
6 South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor  
7 any other instrument by which a pledge is created need be filed or recorded except in the records  
8 of the authority.

9 Section 28. The State of South Dakota pledges to and agrees with the holders of the revenue  
10 bonds and notes of the authority issued pursuant to this Act that the state will not limit or  
11 decrease the rights and powers vested in the authority by this Act so as to impair the terms of  
12 any contract made by the authority with such holders or in any way impair the rights and  
13 remedies of such holders until such revenue bonds, notes, or other instruments, together with  
14 interest thereon, with interest on any unpaid installments of interest, and all costs and expenses  
15 in connection with any action or proceedings by or on behalf of such holders, are fully met and  
16 discharged. The authority may include these pledges and agreements of the state in any contract  
17 with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

18 Section 29. Nothing in this Act may be construed to authorize the authority to create a debt  
19 of the state within the meaning of the Constitution or statutes of South Dakota and all revenue  
20 bonds, notes, other instruments and obligations issued by the authority pursuant to the  
21 provisions of this Act are payable and shall state that they are payable solely from the funds  
22 pledged for their payment in accordance with the resolution authorizing their issuance or in any  
23 trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any  
24 event liable for the payment of the principal of or interest on any bonds, notes, instruments, or

1 obligations issued by the authority or for the performance of any pledge, mortgage, obligation,  
2 or agreement of any kind whatsoever which may be undertaken by the authority. No breach of  
3 any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon  
4 the state or any charge upon its general credit or against its taxing power.

5 Section 30. The state and all counties, municipalities, political subdivisions, public bodies,  
6 public officers, banks, bankers, trust companies, savings banks and institutions, building and  
7 loan associations, savings and loan associations, personal representatives, conservators, trustees,  
8 and other fiduciaries may legally invest any debt service funds, money, or other funds belonging  
9 to them or within their control in any bonds or notes issued pursuant to this Act.

10 Section 31. Any documentary material or data made or received by the authority for  
11 purposes under this Act, to the extent that such material or data consists of trade secrets,  
12 scientific or technical secrets, matters involving national security, or commercial or financial  
13 information regarding the operation of a business, may not be considered public records, and  
14 are exempt from disclosure. Any discussion or consideration of such information may be held  
15 by the authority in executive session.

16 Section 32. The authority may acquire title to any project with respect to which it exercises  
17 its authority.

18 Section 33. The authority may acquire by purchase, lease, gift, or otherwise any property or  
19 rights to any property from any person or any governmental agency, whether improved for the  
20 purposes of any prospective project or unimproved. The authority may also accept any donation  
21 of funds for its purposes from any of those sources.

22 Section 34. The authority may acquire, develop, construct, improve, maintain, operate, and  
23 decommission any project, either under its own direction or through collaboration with any  
24 approved applicant, or to acquire any project through purchase or otherwise, using for that

1 purpose the proceeds derived from its sale of revenue bonds, notes, or other instruments or  
2 governmental loans, grants, or other funds and to hold title to those projects in the name of the  
3 authority.

4 Section 35. The authority may enter into intergovernmental agreements with any  
5 governmental agency.

6 Section 36. The authority may share employees with governmental agencies.

7 Section 37. The provisions of § 5-2-19 do not apply to real or personal property given to the  
8 authority.

9 Section 38. The authority shall designate a qualified public depository as defined in § 4-6A-  
10 1 as a depository of its money. Those depositories shall be designated only within the state and  
11 upon condition that bonds approved as to form and surety by the authority and at least equal in  
12 amount to the maximum sum expected to be on deposit at any one time shall be first given by  
13 the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt  
14 repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in  
15 any such depository, the treasurer and the sureties on the treasurer's official bond are, to that  
16 extent, exempt from liability for the loss of any of the deposited funds by reason of the failure,  
17 bankruptcy, or any other act or default of the depository. However, the authority may accept  
18 assignments of collateral by any depository of its funds to secure the deposits to the same extent  
19 and conditioned in the same manner as assignments of collateral are permitted by law to secure  
20 deposits of the funds consistent with the provisions of chapter 4-6A.

21 Section 39. The income of the authority and all land, improvements, equipment, fixtures,  
22 or other property interests owned by the authority are exempt from all taxation in the State of  
23 South Dakota. The authority is exempt from the provisions of chapter 47-31A.

24 Section 40. The authority is attached to the Department of Tourism and State Development

1 for reporting purposes. The authority shall submit such records, information, and reports in the  
2 form and at such times as required by the secretary. However, the authority shall report at least  
3 annually.

4 Section 41. Notwithstanding any other provisions of law, all funds received by the authority  
5 shall be set forth in an informational budget as described in § 4-7-7.2.

6 Section 42. Whereas, this Act is necessary for the support of the state government and its  
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
8 full force and effect from and after its passage and approval.