



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0383      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1067 - 02/13/2007**

Introduced by: The Committee on Appropriations at the request of the Department of  
Tourism and State Development

1    FOR AN ACT ENTITLED, An Act to revise certain reversion provisions regarding an  
2        appropriation to the South Dakota Energy Infrastructure Authority.

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

4        Section 1. That section 3 of chapter 12 of the 2006 Session Laws be amended to read as  
5    follows:

6        Section 3. Any amount appropriated in this Act not lawfully expended or obligated by  
7    June 30, ~~2007~~ 2008, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0334

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1072** - 02/12/2007

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

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

1 FOR AN ACT ENTITLED, An Act to create a statewide 24/7 sobriety program, establish the  
2 24/7 sobriety fund, and to make an appropriation therefor.

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

4 Section 1. There is hereby established a statewide 24/7 sobriety program to be administered  
5 by the Office of the Attorney General. The program shall coordinate efforts among various state  
6 and local government entities for the purpose of finding and implementing alternatives to  
7 incarceration for certain offenses that involve driving under the influence and other offenses  
8 involving alcohol, marijuana, or controlled substances.

9 Section 2. There is hereby established in the state treasury the 24/7 sobriety fund. The fund  
10 shall be maintained and administered by the Office of the Attorney General to defray costs of  
11 operating the 24/7 sobriety program, including purchasing and maintaining equipment and  
12 funding support services. The Office of the Attorney General may accept for deposit in the fund  
13 money from donations, gifts, grants, and user fees or payments. Expenditures from the fund  
14 shall be budgeted through the normal budget process. Unexpended funds and interest shall



1 remain in the fund.

2 Section 3. Each county, through its sheriff, may participate in the 24/7 sobriety program. If  
3 a sheriff is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may  
4 designate an entity willing to provide the service. If twice a day testing is ordered, the sheriff,  
5 or designated entity, shall establish the testing locations and times for each county but shall have  
6 at least one location and two daily testing times approximately twelve hours apart.

7 Section 4. The court may condition any bond or pre-trial release upon participation in the  
8 24/7 sobriety program and payment of associated costs and expenses.

9 Section 5. The court may condition the granting of a suspended imposition of sentence,  
10 suspended execution of sentence, or probation upon participation in the 24/7 sobriety program  
11 and payment of associated costs and expenses.

12 Section 6. The court may condition the placement of a child pursuant to § 26-8A-22 or 22-  
13 8A-26 on participation in the 24/7 sobriety program and payment of associated costs and  
14 expenses.

15 Section 7. The Board of Pardons and Paroles, the Department of Corrections, or any parole  
16 agent may condition parole upon participation in the 24/7 sobriety program and payment of  
17 associated cost and expense.

18 Section 8. The Office of the Attorney General, pursuant to chapter 1-26, may promulgate  
19 rules for the administration of this Act to:

- 20 (1) Regulate the nature and manner of testing;
- 21 (2) Provide for procedures and apparatus for testing including electronic monitoring  
22 devices;
- 23 (3) Set participation and user fees; however, user fees for twice a day testing shall not be  
24 less than one dollar per test; and

1 (4) Require the submission of reports and information by law enforcement agencies  
2 within this state.

3 Section 9. All user fees collected under this Act shall be distributed as follows:

4 (1) All user fees collected in the administration of twice a day testing shall be paid into  
5 the treasury of the proper county, or collected by the entity designated by the sheriff,  
6 the proceeds of which shall be applied and used only to defray the reoccurring costs  
7 of twice a day testing including maintaining equipment, funding support services and  
8 ensuring compliance;

9 (2) All user fees collected as a result of the administration of the 24/7 sobriety program  
10 other than those collected by the county, or entity designated by the sheriff, for twice  
11 a day testing, shall be deposited in the 24/7 sobriety fund created by section 2 of this  
12 Act.

13 Section 10. There is hereby appropriated from the general fund the sum of three hundred  
14 forty-five thousand dollars (\$345,000), or so much thereof as may be necessary, to the Office  
15 of the Attorney General, for the purpose of implementing the provisions of this Act.

16 Section 11. The attorney general shall approve vouchers and the state auditor shall draw  
17 warrants to pay expenditures authorized by this Act.

18 Section 12. That § 32-23-23 be amended to read as follows:

19 32-23-23. Any driving permit issued by the court to any person, who has been convicted of  
20 a violation of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-  
21 23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood, shall  
22 be conditioned on the person's total abstinence from the use of alcohol, the person's participation  
23 in the 24/7 sobriety program created by this Act, and payment of associated costs and expenses.

24 The court shall immediately revoke the permit upon a showing of proof by a preponderance of

1 the evidence that the person has violated this condition. The provisions of this section shall  
2 become effective on January 1, 2008.

3 Section 13. That § 26-8A-22 be amended to read as follows:

4 26-8A-22. On completion of the dispositional phase of the proceeding, the court shall enter  
5 a final decree of disposition. If the final decree of disposition does not terminate parental rights,  
6 the decree shall include one or more of the following provisions which the court finds  
7 appropriate as the least restrictive alternative available:

- 8 (1) The court may place the child in the custody of one or both of the child's parents, a  
9 guardian, a relative of the child or another suitable person, or a party or agency, with  
10 or without protective supervision, or the Department of Social Services, subject to  
11 the conditions and the length of time that the court deems necessary or appropriate.  
12 If the court returns custody to the child's parent, guardian, or custodian, such return  
13 of custody may be with supervision during which the court may require the parent,  
14 guardian, custodian, and any other adult residing in the home, to cooperate with  
15 home visits by the department and may require the parent, guardian, custodian, and  
16 any other adult residing in the home, to submit, at the request of the department, to  
17 tests for alcohol, marijuana, or any controlled drug or substance. If the adjudication  
18 of abuse or neglect was related to the use of alcohol, marijuana, or any controlled  
19 drug or substance, the parent, guardian, or custodian, and any other adult residing in  
20 the home, may be required, in those areas where such testing is available, to submit  
21 to regular tests for alcohol, marijuana, or any controlled drug or substance. If a  
22 positive test for alcohol, marijuana, or any controlled drug or substance is obtained,  
23 or the person fails to submit to the test as required, the department may immediately  
24 remove the child from the physical custody of the parent, guardian, custodian, or any

1 other adult residing in the home whose test was positive or who failed to submit to  
2 the test, without prior court order subject to a review hearing, which may be  
3 telephonic, within forty-eight hours excluding Saturdays, Sundays, and court  
4 holidays. As used herein, any controlled drug or substance means a controlled drug  
5 or substance which was not lawfully prescribed by a practitioner as authorized by  
6 chapters 22-42 and 34-20B;

7 (2) The court after determining that a compelling reason exists to place the child in  
8 another planned permanent living arrangement rather than with a relative or with a  
9 legal guardian other than the department may place the child in the custody of the  
10 department or a child placement agency, with or without guardianship of the child,  
11 until the child attains the age of majority or until an earlier date or event as  
12 determined by the court;

13 (3) The court may order that the child be examined or treated by a physician or by a  
14 qualified mental health professional or that the child receive other special care and  
15 may place the child in a suitable facility for such purposes under conditions that the  
16 court deems necessary or appropriate. On completion of the examination, treatment,  
17 or hospitalization and on a full report to the court, the court shall conduct a  
18 supplemental dispositional hearing or hearings and shall make disposition of the  
19 child as otherwise provided in this section or, if the evidence shows need, the court  
20 may consider termination of parental rights as an appropriate possible alternative in  
21 keeping with the best interests and welfare of the child.

22 If disposition of the child under this section involves the removal from or nonreturn of the  
23 child to the home of the child's parents, guardian, or custodian and placement of the child in the  
24 custody of the department for placement in foster care, the court shall include in the decree a

1 written judicial determination that continuation of the child's placement in the home of the  
2 child's parents, guardian, or custodian would be contrary to the welfare of the child and that  
3 reasonable efforts were made by the department to prevent or eliminate the need for removal  
4 of the child from the home. In no case may a child remain in foster care for a period in excess  
5 of twelve months from the time the child entered foster care without the court holding a  
6 permanency hearing and making a dispositional decree. The court shall review the child's  
7 permanency status and make a dispositional decree every twelve months thereafter as long as  
8 the child continues in the custody of the department. The court shall determine whether the state  
9 has made reasonable efforts to finalize the permanency plan that is in effect. That determination  
10 shall be included in the dispositional decree.

11 Section 14. That § 26-8A-26 be amended to read as follows:

12 26-8A-26. If an adjudicated, abused, or neglected child whose parental rights have not been  
13 terminated has been in the custody of the Department of Social Services and it appears at a  
14 dispositional or review hearing that all reasonable efforts have been made to rehabilitate the  
15 family, that the conditions which led to the removal of the child still exist, and there is little  
16 likelihood that those conditions will be remedied so the child can be returned to the custody of  
17 the child's parents, the court shall affirmatively find that good cause exists for termination of the  
18 parental rights of the child's parents and the court shall enter an order terminating parental  
19 rights. If the court does not find at the hearing, which shall be conducted in the same manner  
20 as a dispositional hearing, that good cause exists for termination of parental rights, the court may  
21 make further disposition of the child as follows:

- 22 (1) Return custody of the child to the child's parents, guardian, or custodian, with or  
23 without supervision during which the court may require the parent, guardian,  
24 custodian, and any other adult residing in the home, to cooperate with home visits by

1 the department and may require the parent, guardian, custodian, and any other adult  
2 residing in the home, to submit, at the request of the department, to tests for alcohol,  
3 marijuana, or any controlled drug or substance. If the adjudication of abuse or neglect  
4 was related to the use of alcohol, marijuana, or any controlled drug or substance, the  
5 parent, guardian, or custodian, and any other adult residing in the home, may be  
6 required, in those areas where such testing is available, to submit to regular tests for  
7 alcohol, marijuana, or any controlled drug or substance. If a positive test for alcohol,  
8 marijuana, or any controlled drug or substance is obtained, or if the person fails to  
9 submit to the test as required, the department may immediately remove the child  
10 from the physical custody of the parent, guardian, custodian, or any other adult  
11 residing in the home whose test was positive or who failed to submit to the test,  
12 without prior court order subject to a review hearing, which may be telephonic,  
13 within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used  
14 herein, any controlled drug or substance means a controlled drug or substance which  
15 was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-  
16 20B;

- 17 (2) Continue foster care placement of the child for a specified period of time, and, if the  
18 child is sixteen years of age or older, direct the department to determine the services  
19 needed to assist the child to make the transition from foster care to independent living  
20 and, if appropriate, provide a plan for independent living for the child;
- 21 (3) Place the child in the custody of the department or a child placement agency, with or  
22 without guardianship of the child, in another planned permanent living arrangement  
23 following a determination that a compelling reason exists that the placement is more  
24 appropriate than adoption or with a relative or with a legal guardian other than the

1 department and under a court-approved plan that determines visitation rights of the  
2 child's parents, guardian, or custodian. Under this subdivision, the court may retain  
3 jurisdiction of the action and proceedings for future consideration of termination of  
4 parental rights if termination of parental rights is the least restrictive alternative  
5 available in keeping with the best interests of the child.

6 In no case may a child remain in foster care for a period in excess of twelve months from  
7 the time the child entered foster care without the court holding a permanency hearing and  
8 making a dispositional decree setting forth one of the above options. The court shall review the  
9 child's permanency status and make a dispositional decree every twelve months thereafter as  
10 long as the child continues in the custody of the department. The court shall determine whether  
11 the state has made reasonable efforts to finalize the permanency plan that is in effect. That  
12 determination shall be included in the dispositional decree.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

695N0041

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**HB 1082** - 02/13/2007

Introduced by: Representatives Heineman, Deadrick, Halverson, and McLaughlin and  
Senators Olson (Ed) and Knudson

1 FOR AN ACT ENTITLED, An Act to revise the funding of K-12 education in the state.

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

3 Section 1. The Legislature finds, based upon a two-year study of school funding that was  
4 undertaken by the Department of Education in 2005 at the direction of the Legislature and  
5 included legislators, school officials, and business leaders, that in order to enhance the  
6 educational opportunities available to all of our state's children and to provide those  
7 opportunities in the most efficient and equitable manner, it is necessary to revise the current  
8 school funding formula that was enacted in 1995.

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

11 Any school district that has a fall enrollment, as defined in this Act, of less than one hundred  
12 thirty and is not a sparse school district, as defined in § 13-13-78, shall reorganize with another  
13 school district or school districts to create a newly reorganized school district with a fall  
14 enrollment of one hundred thirty or greater. Any school district that is not sparse and has a fall  
15 enrollment of one hundred thirty or less on July 1, 2007 shall prepare a plan for reorganization



1 by June 30, 2009. After July 1, 2007, if the fall enrollment of any school district that is not  
 2 sparse falls to one hundred thirty or below, that school district shall prepare a plan for  
 3 reorganization within two years. If any such district fails to prepare a plan for reorganization by  
 4 the deadline, the Board of Education shall prepare a reorganization plan for the district.

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

6 13-6-92. If two or more school districts consolidate ~~after July 1, 2001~~, the new school  
 7 district is entitled to an additional ~~three~~ six hundred dollars per ~~average daily membership as~~  
 8 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
 9 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
 10 from a partial school district as it existed prior to consolidation for the first year after  
 11 consolidation. If two or more school districts consolidate ~~after July 1, 2001~~, the new school  
 12 district is entitled to an additional ~~two~~ four hundred dollars per ~~average daily membership as~~  
 13 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
 14 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
 15 from a partial school district as it existed prior to consolidation for the second year after  
 16 consolidation. If two or more school districts consolidate ~~after July 1, 2001~~, the new school  
 17 district is entitled to an additional ~~one~~ two hundred dollars per ~~average daily membership as~~  
 18 ~~defined in § 13-13-10.1~~ fall enrollment as defined in this Act, up to a maximum of four hundred  
 19 ~~average daily membership~~ fall enrollment from each school district or a prorated portion thereof  
 20 from a partial school district as it existed prior to consolidation for the third year after  
 21 consolidation.

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

24 The consolidation incentives provided for in §§ 13-13-1.4 to 13-13-1.7, inclusive, apply only

1 to those school districts whose consolidations are completed prior to July 1, 2007.

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

3 13-13-1.4. If two or more school districts consolidate, for a period of four years after  
4 consolidation, the ~~adjusted average daily membership~~ local need for the newly formed district  
5 shall be based upon the ~~average daily membership as defined in § 13-13-10.1~~ fall enrollment  
6 as defined in this Act of those school districts that have not previously benefited from this  
7 section as they existed prior to consolidation. In years two to four, inclusive, after the  
8 consolidation, the relationship between the ~~adjusted average daily membership~~ local need and  
9 ~~average daily membership~~ fall enrollment shall be proportional to the relationship that existed  
10 for the first year.

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

12 13-13-1.5. In years five to eight, inclusive, after the consolidation of two or more school  
13 districts, the ~~adjusted average daily membership~~ local need for the newly formed district shall  
14 be calculated as follows:

- 15 (1) Calculate ~~adjusted average daily membership~~ local need pursuant to § ~~13-13-10.1~~  
16 § 13-13-73;
- 17 (2) Notwithstanding the four-year time limit, calculate ~~adjusted average daily~~  
18 ~~membership~~ local need pursuant to § 13-13-1.4;
- 19 (3) Subtract the results of subdivision (1) from the results of subdivision (2);
- 20 (4) Multiply the results of subdivision (3) by eighty percent in the fifth year, sixty  
21 percent in the sixth year, forty percent in the seventh year, and twenty percent in the  
22 eighth year;
- 23 (5) Add the results of subdivision (1) and the results of subdivision (4).

24 Section 7. That § 13-13-10.1 be amended to read as follows:

1 13-13-10.1. Terms used in this chapter mean:

2 (1) ~~"Average daily membership," the average number of resident and nonresident~~  
3 ~~kindergarten through twelfth grade pupils enrolled in all schools operated by the~~  
4 ~~school district during the previous regular school year, minus average number of~~  
5 ~~pupils for whom the district receives tuition, except pupils described in subdivision~~  
6 ~~(1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the~~  
7 ~~average number of pupils for whom the district pays tuition;~~

8 ~~—(1A) Nonresident students who are in the care and custody of the Department of Social~~  
9 ~~Services, the Unified Judicial System, the Department of Corrections, or other state~~  
10 ~~agencies and are attending a public school may be included in the average daily~~  
11 ~~membership of the receiving district when enrolled in the receiving district. When~~  
12 ~~counting a student who meets these criteria in its general enrollment average daily~~  
13 ~~membership, the receiving district may begin the enrollment on the first day of~~  
14 ~~attendance. The district of residence prior to the custodial transfer may not include~~  
15 ~~students who meet these criteria in its general enrollment average daily membership~~  
16 ~~after the student ceases to attend school in the resident district;~~

17 ~~—(2) "Adjusted average daily membership," calculated as follows:~~

18 ~~—(a) For districts with an average daily membership of two hundred or less,~~  
19 ~~multiply 1.2 times the average daily membership;~~

20 ~~—(b) For districts with an average daily membership of less than six hundred, but~~  
21 ~~greater than two hundred, raise the average daily membership to the 0.8293~~  
22 ~~power and multiply the result times 2.98;~~

23 ~~—(c) For districts with an average daily membership of six hundred or more,~~  
24 ~~multiply 1.0 times their average daily membership "Fall enrollment," the~~

1           number of kindergarten through twelfth grade students enrolled in all schools  
2           operated by the school district on the last Friday of September of the previous  
3           school year minus the number of students for whom the district receives  
4           tuition, except nonresident students who are in the care and custody of a state  
5           agency and are attending a public school and students for whom tuition is  
6           being paid pursuant to § 13-28-42.1, plus the number of students for whom the  
7           district pays tuition. No student who is partially enrolled in a school may be  
8           counted in the fall enrollment for that school unless the partial enrollment  
9           exceeds fifty percent. When computing state aid to education for a school  
10          district under the foundation program pursuant to § 13-13-73, the secretary of  
11          the Department of Education shall use either the school district's fall  
12          enrollment or the average of the school district's fall enrollment and the school  
13          district's fall enrollment from the prior year, whichever is higher;

14          (1A) "Current fall enrollment," the number of kindergarten through twelfth grade students  
15          enrolled in all schools operated by the school district on the last Friday of September  
16          of the current school year minus the number of students for whom the district  
17          receives tuition except nonresident students who are in the care and custody of a state  
18          agency and are attending a public school and students for whom tuition is being paid  
19          pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
20          tuition. No student who is partially enrolled in a school may be counted in the current  
21          fall enrollment for that school unless the partial enrollment exceeds fifty percent;

22          (2) "Small school adjustment," for school districts with a fall enrollment of at least one  
23          hundred thirty, but less than six hundred, is calculated as follows:

24          (a) Multiply the fall enrollment times negative 0.0005;

- 1           (b) Add 0.3 to the result of subsection (a); and
- 2           (c) Multiply the sum obtained in subsection (b) times \$4,237.72;
- 3       (2A) "Sparsity small school adjustment," for sparse school districts, as defined in  
4           subdivision 13-13-78 (1), is calculated as follows:
- 5           (a) Multiply the fall enrollment times negative 0.0005;
- 6           (b) Add 0.3 to the result of subsection (a); and
- 7           (c) Multiply the sum obtained in subsection (b) times the per student allocation;
- 8       (3) "Index factor," is the annual percentage change in the consumer price index for urban  
9           wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
10           the United States Department of Labor for the year before the year immediately  
11           preceding the year of adjustment or three percent, whichever is less;
- 12       (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal  
13           year thereafter, the per student allocation is the previous fiscal year's per student  
14           allocation increased by the index factor;
- 15       (5) "Local need," ~~the~~ is the sum of:
- 16           (a) The per student allocation multiplied by the ~~adjusted average daily~~  
17                 membership fall enrollment; and
- 18           (b) The small school adjustment or the sparsity small school adjustment, if  
19                 applicable, multiplied by the fall enrollment;
- 20       (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
21           applying the levies established pursuant to § 10-12-42;
- 22       (7) "General fund balance," the unreserved fund balance of the general fund, less general  
23           fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
24           out of the general fund for the previous school fiscal year;

1 (8) "General fund balance percentage," is a school district's general fund balance divided  
 2 by the school district's total general fund expenditures for the previous school fiscal  
 3 year, the quotient expressed as a percent;

4 (9) "General fund base percentage," is the lesser of:

5 (a) The general fund balance percentage as of June 30, 2000; or

6 (b) The maximum allowable percentage for that particular fiscal year as stated in  
 7 this subsection.

8 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for  
 9 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year  
 10 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five  
 11 percent. However, the general fund base percentage can never increase and can never  
 12 be less than ~~twenty~~ twenty-five percent;

13 (10) "Allowable general fund balance," the general fund base percentage multiplied by the  
 14 district's general fund expenditures in the previous school fiscal year;

15 (11) ~~"Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5~~  
 16 ~~percentage points;~~

17 ~~—(12)—~~ "General fund exclusions," revenue a school district has received from the imposition  
 18 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
 19 from gifts, contributions, grants, or donations; revenue a school district has received  
 20 under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received  
 21 as compensation for being a sparse school district under the terms of §§ 13-13-78 and  
 22 13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable  
 23 judgment.

24 Section 8. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as

1 follows:

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

7 Section 9. That § 13-13-73 be amended to read as follows:

8 13-13-73. The secretary of the Department of Education shall compute state aid to education  
9 for each school district under the foundation program according to the following calculations:

- 10 (1) Determine each school district's ~~average daily membership~~ fall enrollment;
- 11 (2) To arrive at the local need per district:
  - 12 (a) Multiply the per student allocation by the ~~adjusted average daily membership~~  
13 ~~to arrive at the local need per district~~ fall enrollment;
  - 14 (b) Multiply the small school adjustment or the sparsity small school adjustment,  
15 if applicable, by the fall enrollment; and
  - 16 (c) Add the product of subsection (a) to the product of subsection (b);
- 17 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a  
18 negative number;
- 19 (4) If the state aid appropriation for the general support of education is in excess of the  
20 entitlement provided for in this section, the excess shall be used to fund any shortfall  
21 of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary  
22 shall report to the Governor by January seventh of each year, the amount of state aid  
23 necessary to fully fund the general aid formula in the current year. If a shortfall in the  
24 state aid appropriation for general education exists that cannot be covered by § 13-

1 37-45, the Governor shall inform the Legislature and provide a proposal to eliminate  
2 the shortfall.

3 Section 10. That § 13-13-73.2 be amended to read as follows:

4 13-13-73.2. A school district's state aid for general education as calculated pursuant to § 13-  
5 13-73 shall be reduced by ~~the following calculation:~~

6 ~~(1) Subtract the allowable general fund balance from the general fund balance. If the~~  
7 ~~result is less than zero, (1) equals zero;~~

8 ~~(2) Determine the lower of the general fund base percentage or the general fund balance~~  
9 ~~percentage;~~

10 ~~(3) Subtract twenty percent (0.2) from the result of (2). If the result is less than zero, (3)~~  
11 ~~equals zero;~~

12 ~~(4) Multiply the result of (3) by the district's general fund expenditures in the previous~~  
13 ~~school fiscal year;~~

14 ~~(5) Multiply the result of (4) by the imputed interest rate;~~

15 ~~(6) Add the result of (1) and the result of (5) the amount calculated by subtracting the~~  
16 ~~allowable general fund balance from the general fund balance. If the result is less~~  
17 ~~than zero, the result equals zero.~~

18 Section 11. That § 13-13-73.3 be amended to read as follows:

19 13-13-73.3. The secretary of education shall determine the reduction in state aid to education  
20 pursuant to § 13-13-73.2. The secretary of education shall distribute the amount of money so  
21 determined to school districts that received state aid pursuant to chapter 13-13 on a pro rata  
22 basis according to the district's ~~average daily membership~~ fall enrollment compared to the total  
23 ~~average daily membership~~ fall enrollment of all districts eligible for this distribution.

24 Section 12. That § 13-13-78 be amended to read as follows:

1 13-13-78. Terms used in § 13-13-79 mean:

- 2 (1) "Sparse school district," a school district that meets each of the following criteria:
- 3 (a) Has ~~an average daily membership~~ a fall enrollment per square mile of 0.50 or  
4 less;
- 5 (b) Has ~~an average daily membership~~ a fall enrollment of five hundred or less;
- 6 (c) Has an area of four hundred square miles or more;
- 7 (d) Has at least ~~fifteen~~ twenty miles between its secondary attendance center or  
8 centers and that of an adjoining district;
- 9 (e) Operates a secondary attendance center;
- 10 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42  
11 or more; and
- 12 (g) Has a general fund balance percentage of ~~thirty~~ twenty-five percent or less  
13 excluding revenue received from opting out of property tax limitations  
14 pursuant to chapter 10-12;
- 15 (2) "~~Sparsity average daily membership fall enrollment~~," for sparse school districts with  
16 a fall enrollment as defined in this Act of less than eighty-three or greater than two  
17 hundred thirty-two, is calculated as follows:
- 18 (a) ~~For sparse school districts with an adjusted average daily membership as~~  
19 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~  
20 ~~two hundred seventy-five, divide the average daily membership as defined in~~  
21 ~~subdivision 13-13-10.1(1)~~ Divide the fall enrollment as defined in this Act by  
22 the area of the school district in square miles;
- 23 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;
- 24 (c) Add 0.0625 to the product obtained in subsection (b); and

1 (d) Multiply the sum obtained in subsection (c) times the ~~average daily~~  
2 membership fall enrollment;

3 (3) "Sparsity adjusted ~~average daily membership fall enrollment~~," calculated as follows:  
4 For any sparse school district with an adjusted average daily membership as defined  
5 in ~~subdivision 13-13-10.1(2)~~ of no less than one hundred, but no more than two  
6 ~~hundred seventy-five~~, the sparsity adjusted average daily membership is two hundred  
7 ~~seventy-five~~ for sparse school districts with a fall enrollment as defined in this Act  
8 of at least eighty-three, but no more than two hundred thirty-two, subtract the fall  
9 enrollment from two hundred thirty-two.

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

11 13-13-79. At the same time that foundation program state aid is distributed to school  
12 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of  
13 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~  
14 ~~average daily membership calculation or the sparsity adjusted average daily membership~~  
15 ~~calculation in § 13-13-78~~ the result of the calculation in either subdivision 13-13-78(2) or  
16 subdivision 13-13-78(3) by the per student allocation as defined in § 13-13-10.1. However, no  
17 sparse school district may receive a sparsity benefit in any year that exceeds two hundred fifty  
18 thousand dollars.

19 Section 14. That § 13-3-70 be repealed.

20 ~~—13-3-70. There is hereby appropriated from the state general fund the sum of six million five~~  
21 ~~hundred thousand dollars (\$6,500,000), or so much thereof that may be necessary, to the~~  
22 ~~Department of Education. The secretary of the Department of Education shall distribute the~~  
23 ~~funds to school districts pursuant to §§ 13-3-71 and 13-3-72 based on average daily membership~~  
24 ~~as defined in subdivision 13-13-10.1(1) at the same time that foundation program state aid is~~

1 ~~distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive.~~

2 Section 15. That § 13-3-71 be repealed.

3 ~~—13-3-71. School districts that meet adequate yearly progress in reading and math under the~~  
4 ~~terms of the state's accountability system established in § 13-3-62 shall receive funding~~  
5 ~~according to the provisions of § 13-3-70.~~

6 Section 16. That § 13-3-72 be repealed.

7 ~~—13-3-72. Those school districts that fail to meet adequate yearly progress under the terms~~  
8 ~~of the state's accountability system established in § 13-3-62 may apply to the department for a~~  
9 ~~grant to assist the district in meeting future academic targets. In order to qualify for a grant, a~~  
10 ~~school district shall submit to the department a school district improvement plan outlining the~~  
11 ~~steps the district will undertake to reach adequate yearly progress, and the plan shall be~~  
12 ~~approved by the secretary of education. However, no grant may be awarded to a school district~~  
13 ~~in an amount that exceeds what that school district would have received if it had achieved~~  
14 ~~adequate yearly progress.~~

15 Section 17. That § 13-13-1.2 be amended to read as follows:

16 13-13-1.2. Any records related to the reporting of average daily membership fall enrollment  
17 of a public school district shall be subject to examination by the Department of Education at all  
18 times.

19 Section 18. That § 13-13-1.3 be amended to read as follows:

20 13-13-1.3. If, in the department's examination of average daily membership fall enrollment,  
21 it is determined that the data was overreported, the department shall recover the amount of state  
22 aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the department  
23 shall deposit the overpayment into the state general fund. If the overreporting occurred with the  
24 intent to increase the amount of state aid received by overreporting, the individual person

1 responsible for the overreporting may be charged with a Class 1 misdemeanor as provided in  
2 § 13-8-44, with the maximum penalty as defined in § 22-6-2.

3 Section 19. That § 13-13-1.8 be amended to read as follows:

4 13-13-1.8. ~~Students~~ No student attending the Black Hills Forest High School in Lawrence  
5 County may ~~not~~ be included by any school district in its ~~average daily membership~~ fall  
6 enrollment for purposes of state aid to education.

7 Section 20. That § 13-15-28 be amended to read as follows:

8 13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11  
9 and sends over fifty percent of its resident students enrolled in grades for which it contracts to  
10 an adjoining school district or districts located in South Dakota shall reorganize the school  
11 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes  
12 of this section, the number of students attending adjoining districts shall be based on ~~average~~  
13 ~~daily membership pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this Act.  
14 This section does not apply to a school district located wholly within the boundaries of an Indian  
15 reservation.

16 Section 21. That § 13-28-40 be amended to read as follows:

17 13-28-40. An enrollment options program is established to enable any South Dakota  
18 kindergarten through twelfth grade student to attend any public school that serves the student's  
19 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-  
20 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions  
21 of §§ 13-28-40 to 13-28-47, inclusive, ~~average daily membership as defined in § 13-13-10.1~~  
22 fall enrollment as defined in this Act is used to compute foundation aid and special education  
23 average daily membership as defined in § 13-37-35 is used to determine funding for special  
24 education.

1 Section 22. That § 13-28-49 be amended to read as follows:

2 13-28-49. Notwithstanding the provisions of § 13-28-40, any student who enrolls in another  
3 school district pursuant to the provisions contained in §§ 13-28-40 to 13-28-47, inclusive, from  
4 a district that does not receive state aid pursuant to chapter 13-13 in the succeeding fiscal year  
5 remains the financial obligation of the resident district. For each student, the resident district  
6 shall pay tuition to the nonresident district in the succeeding fiscal year per the following  
7 calculation:

- 8 (1) ~~Multiply~~ Determine the nonresident district's ~~adjusted average daily membership~~  
9 ~~calculated pursuant to subdivision 13-13-10.1(2) by the per student allocation as~~  
10 ~~defined in subdivision 13-13-10.1(4)~~ local need pursuant to subdivision 13-13-73(2);
- 11 (2) Divide the result of (1) by the nonresident district's ~~average daily membership~~  
12 ~~calculated pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this  
13 Act;
- 14 (3) Multiply the result of (2) by the number of days the student was enrolled in the  
15 nonresident district;
- 16 (4) Divide the result of (3) by the number of days the nonresident district was in session.

17 Section 23. That § 13-28A-7 be amended to read as follows:

18 13-28A-7. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
19 any student sent to South Dakota from North Dakota is included in the receiving school district's  
20 ~~average daily membership~~ fall enrollment.

21 Section 24. That § 13-28A-8 be amended to read as follows:

22 13-28A-8. For the purposes of state aid to education distributed pursuant to chapter 13-13,  
23 any student sent to North Dakota from South Dakota may not be included in the resident school  
24 district's ~~average daily membership~~ fall enrollment.

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

2 12-25-6.1. The provisions of this chapter, except §§ 12-25-27 to 12-25-31, inclusive, do not  
3 apply to any candidate or candidate election for judicial, municipal, or other governmental  
4 subdivision offices. However, the governing body of any municipality or other governmental  
5 subdivision may adopt an ordinance or resolution to make the provisions of chapter 12-25, with  
6 or without amendments, applicable to municipal or other governmental subdivision elections.  
7 The provisions of this chapter do apply to any candidate or candidate election for any county  
8 office or school board seat in a district with ~~an average daily membership~~ a fall enrollment in  
9 excess of two thousand students during the previous academic year.

10 Section 26. That § 42-7B-48.1 be amended to read as follows:

11 42-7B-48.1. Disbursements from the Gaming Commission fund shall be as set forth in § 42-  
12 7B-48 until such time as the net municipal proceeds paid to the City of Deadwood equals six  
13 million eight hundred thousand dollars for each year, and after payment of commission expenses  
14 pursuant to subdivision 42-7B-48(2), and after payment of one hundred thousand dollars to the  
15 State Historical Preservation Grant and Loan fund pursuant to subdivision 42-7B-48(4).  
16 Thereafter, all remaining funds shall be distributed as follows:

- 17 (1) Seventy percent to the state general fund;
- 18 (2) Ten percent to be distributed to municipalities in Lawrence County, except the City  
19 of Deadwood, pro rata according to their population;
- 20 (3) Ten percent to be distributed to school districts, pro rata based upon the previous  
21 year's ~~average daily membership~~ fall enrollment, located in whole or in part, in  
22 Lawrence County. For any school district located only partly in Lawrence County,  
23 only that portion of the district's ~~average daily attendance~~ fall enrollment which  
24 represents students residing in Lawrence County shall be considered in calculating

1 the proration required by this subdivision; and

2 (4) Ten percent to the City of Deadwood for deposit in the historic restoration and  
3 preservation fund.

4 Section 27. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The school district other revenue fund is hereby created in the state treasury.

7 Section 28. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 The secretary of the Department of Education shall distribute the funds from the school  
10 district other revenue fund to the school districts on the basis of fall enrollment as defined in this  
11 Act, at the same time that foundation program state aid is distributed to school districts pursuant  
12 to §§ 13-13-10.1 to 13-13-41, inclusive.

13 Section 29. That § 13-13-4 be repealed.

14 ~~13-13-4. The county general school fund to be apportioned pursuant to § 13-13-5 shall~~  
15 ~~consist of the net proceeds of all fines for violation of state laws and any tax so designated in~~  
16 ~~Title 10.~~

17 Section 30. That § 13-13-5 be repealed.

18 ~~13-13-5. The county treasurer shall on or before the fifth day of January and July furnish the~~  
19 ~~county auditor with a statement of all money in the county treasury belonging to the county~~  
20 ~~general school fund and shall pay the money, upon the order of the auditor to the public school~~  
21 ~~districts having land area within the county in proportion to the average daily membership of~~  
22 ~~children residing in the school districts as certified by the Division of Education Services and~~  
23 ~~Resources.~~

24 Section 31. That § 10-33-21 be amended to read as follows:

1       10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing  
2 and providing telephone and exchange service comprising rental and toll service by means of  
3 wired circuits and otherwise and whose annual gross receipts are less than fifty million dollars  
4 shall be taxed on the basis of gross receipts at the rate of four percent.

5       However, no telephone company operating in this state may be taxed less than an amount  
6 equal to fifty cents per year per telephone serviced. ~~Further, each telephone company that was~~  
7 ~~taxed in the five percent tax category for the calendar year 2001 shall pay an amount of tax to~~  
8 ~~each school district of not less than the tax received by such school district in 2002 for the years~~  
9 ~~2003 and 2004.~~

10       Section 32. That § 10-33-24 be amended to read as follows:

11       10-33-24. ~~It shall be the duty of the~~ The secretary of revenue and regulation ~~to shall~~ compute  
12 and determine the amount of tax to be paid by such company as provided in § 10-33-21 ~~and he~~  
13 ~~shall on or before July first following certify to the county auditor of each county in the state in~~  
14 ~~which such company operates the amount of the tax to be paid in such county on the basis of~~  
15 ~~the gross receipts received by such company from its operations in such county and shall further~~  
16 ~~certify to the county auditor the amount to which each school district shall be entitled in each~~  
17 ~~such county on the basis of the gross receipts received by such company in each school district.~~  
18 ~~The county auditor shall extend such tax on his books and certify the same to the county~~  
19 ~~treasurer and certify the amount to the company by July first.~~

20       Section 33. That § 10-33-25 be amended to read as follows:

21       10-33-25. The tax levied in § 10-33-21 ~~shall become~~ is due and be payable to the county  
22 ~~treasurer of each county in which such company operates and as certified by the secretary of~~  
23 ~~revenue and regulation on September first of each year following the filing of the report of such~~  
24 ~~gross receipts. The secretary of revenue and regulation shall deposit the taxes paid pursuant to~~

1 § 10-33-21 in the school district other revenue fund.

2 Section 34. That § 10-33-28 be repealed.

3 ~~—10-33-28. The county treasurer shall allocate and transmit the taxes imposed by § 10-33-21~~  
4 ~~and collected from each such company to the school treasurers of each school district in which~~  
5 ~~such company operates on the basis of the gross receipts received by such company from its~~  
6 ~~operations within each such school district within the county.~~

7 Section 35. That § 10-36-7 be amended to read as follows:

8 10-36-7. The secretary of revenue and regulation shall compute ~~and determine~~ the amount  
9 of tax to be paid by ~~such~~ each company as provided in § 10-36-6 and shall ~~on or before July first~~  
10 ~~following~~ certify to the county auditor of each county in the state in which such company  
11 operates the amount of the tax to be paid in such county on the basis of the gross receipts  
12 received by such company from its operations in such county and shall further certify to the  
13 county auditor the amount to which each school district shall be entitled in each such county on  
14 the basis of the gross receipts received by such company in each school district. The county  
15 auditor shall extend such tax on his books and certify the same to the county treasurer certify  
16 the amount to the company by July first.

17 Section 36. That § 10-36-8 be amended to read as follows:

18 10-36-8. The tax levied by § 10-36-6 ~~shall become~~ is due and be payable to the county  
19 treasurer of each county in which such company operates and as certified by the secretary of  
20 revenue and regulation on September first of each year following the filing of the report of ~~such~~  
21 gross receipts. The secretary of revenue and regulation shall deposit the taxes paid pursuant to  
22 § 10-36-6 in the school district other revenue fund.

23 Section 37. That § 10-36-10 be repealed.

24 ~~—10-36-10. The county treasurer shall allocate and transmit the taxes collected from each such~~

1 ~~company to the school treasurers of each school district in which such company operates on the~~  
2 ~~basis of the gross receipts received by such company from its operations within each such~~  
3 ~~school district within the county.~~

4 Section 38. That § 10-43-76 be amended to read as follows:

5 10-43-76. Upon the receipt of the funds referred to in this chapter, the secretary of revenue  
6 and regulation shall deposit ninety-five percent of the taxes paid by banks organized under  
7 §§ 51A-2-38 to 51A-2-43, inclusive, and twenty-six and two-thirds percent of all other revenue  
8 to the general fund. The secretary of revenue and regulation shall remit the remainder excluding  
9 the amount assigned to school districts pursuant to § 10-43-77, on or before February first of  
10 each year, to the county treasurer of the county wherein is situated the bank or financial  
11 institution remitting the tax. However, the remittance of tax from all branch banks, branch  
12 offices, or branches of other financial institutions subject to this tax shall be separated from the  
13 remittance of the parent bank or financial institution and shall be remitted to the county treasurer  
14 of the county wherein said branch bank, branch office, or financial institution is located.

15 Section 39. That § 10-43-77 be amended to read as follows:

16 10-43-77. The county treasurer upon receipt of the funds, remitted to the county pursuant  
17 to §§ 10-43-75.1 and 10-45-76, shall apportion and distribute the funds between the taxing  
18 subdivisions, including the county and excluding the school districts, in the same proportion as  
19 the average of personal property taxes assessed in each taxing subdivision, including the county  
20 and the school districts, for calendar years 1972, 1973, 1974, 1975, and 1976 were distributed  
21 as determined and certified by the secretary of revenue and regulation.

22 The county treasurer shall certify to the secretary of revenue and regulation the proportion  
23 of personal property taxes assessed that is assigned to the school districts under the provisions  
24 of this section. For any school district affected by a consolidation on or after July 1, 2003, as

1 defined in § 13-6-1, the successor school district shall ~~receive~~ be assigned the funds ~~allocated~~  
2 assigned to each of the former school districts. For any school district eliminated or subdivided  
3 by a reorganization on or after July 1, 2003, as defined in § 13-6-1, each successor school  
4 district shall ~~receive~~ be assigned a portion of the funds allocated to the former school district.  
5 Each successor school district's portion of the funds shall be based upon the percentage of the  
6 total taxable valuation of the former school district transferred to the successor school district,  
7 at the time of the reorganization. The secretary of revenue and regulation shall determine the  
8 amount of funds assigned to school districts and shall deposit those funds in the school district  
9 other revenue fund. Any amount received by the county and taxing subdivisions pursuant to this  
10 section may upon receipt be used to support the functions of such taxing subdivision.

11 Section 40. That § 10-6-22 be amended to read as follows:

12 10-6-22. The director of equalization shall ~~forthwith~~ notify the state's attorney of any ~~such~~  
13 delinquency or offense as described by § 10-6-21 and ~~he~~ the state's attorney shall prosecute ~~such~~  
14 the offender to final judgment and execution, and ~~such any~~ fine ~~when~~ collected shall be paid into  
15 the county treasury ~~for the use of the public schools.~~ The county treasurer shall remit those  
16 revenues to the state treasurer for deposit into the school district other revenue fund.

17 Section 41. That § 23A-27-25 be amended to read as follows:

18 23A-27-25. All fines and pecuniary penalties, other than forfeitures provided for in § 23A-  
19 43-23, costs as provided in §§ 23-3-52, 23A-27-26, and 23A-27-27, restitution and civil  
20 penalties assessed under the state's environmental laws, for the violation of any state law, when  
21 collected, shall be paid into the treasury of the proper county, ~~the net proceeds of which shall~~  
22 ~~be applied and used each year for the benefit of the public schools of this state.~~ The county  
23 treasurer shall remit those revenues to the state treasurer for deposit into the school district other  
24 revenue fund.

1 Section 42. That § 10-59-1 be amended to read as follows:

2 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
3 or fees imposed by, and to any civil or criminal investigation authorized by, chapters 10-33, 10-  
4 36, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E,  
5 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-  
6 25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

7 Section 43. That § 13-16-26 be amended to read as follows:

8 13-16-26. All or any part of a surplus of any school district fund, except the capital outlay  
9 fund provided by §§ 13-16-6 to 13-16-9, inclusive, and the special education fund provided by  
10 § 13-37-16 may be transferred to any other school district fund. ~~However, any~~ Only a school  
11 district with a plan for reorganization that has been approved by the voters pursuant to § 13-6-47  
12 may transfer all or any part of a surplus in the capital outlay fund to the general fund. Any  
13 unused portion of money that has been transferred into the special education fund may be  
14 transferred from the special education fund within the current fiscal year to the fund from which  
15 it originated. All or any part of any school district fund may be loaned to any other school  
16 district fund for a term not to exceed twenty-four months.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

914N0392      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1101 - 02/13/2007**

Introduced by: Representatives Juhnke, Deadrick, and Putnam and Senator Garnos

1    FOR AN ACT ENTITLED, An Act to make an appropriation to support the South Dakota Hall  
2        of Fame.

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

4        Section 1. There is hereby appropriated from the general fund the sum of fifty thousand  
5    dollars (\$50,000), or so much thereof as may be necessary, to the Department of Education to  
6    be used to fund a grant to the official Hall of Fame of South Dakota as established in § 1-6-16.6.

7        Section 2. The secretary of the Department of Education shall approve vouchers and the  
8    state auditor shall draw warrants to pay expenditures authorized by this Act.

9        Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
10   June 30, 2008, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

768N0548      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1138 - 02/13/2007**

Introduced by: Representatives Haverly, Buckingham, Kirkeby, and Peters and Senators Greenfield, Gant, Katus, Napoli, and Olson (Ed)

1    FOR AN ACT ENTITLED, An Act to appropriate money to postsecondary technical institutes  
2        for the maintenance and repair of buildings.

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

4        Section 1. There is hereby appropriated from the general fund the sum of one dollar (\$1),  
5    or so much thereof as may be necessary, to the Department of Education for the maintenance  
6    and repair of buildings of postsecondary technical institutes.

7        Section 2. The secretary of the Department of Education shall approve vouchers and the  
8    state auditor shall draw warrants to pay expenditures authorized by this Act.

9        Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
10    June 30, 2008, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

884N0576

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**HB 1141** - 02/13/2007

Introduced by: Representatives Buckingham, Hackl, Kirkeby, Miles, Olson (Betty), Weems,  
and Wick and Senators Napoli, Greenfield, Jerstad, Katus, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to create the health and safety facility equity program to  
2 assist certain school districts with critical need for capital construction.

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

4 Section 1. There is hereby created within the Department of Education the health and safety  
5 facility equity program to assist certain school districts with critical need for capital  
6 construction. The program shall be administered by the secretary of education.

7 Section 2. As used in this Act, a school district with critical need for capital construction is  
8 one which:

9 (1) Has an urgent need for a new academic building or for a replacement of an academic  
10 building due to a catastrophe or due to condemnation by the state fire marshal for  
11 structural or health and safety concerns; and

12 (2) Levies taxes at the maximum levels prescribed in § 13-6-7 and still does not have the  
13 ability to raise local effort sufficient enough to build or acquire adequate, permanent  
14 academic building space.

15 Section 3. Any school district seeking assistance through the health and safety facility equity



1 program shall apply to the secretary of education. The application shall document the district's  
2 critical need and include the district's plan to add or replace the academic building.

3 Section 4. There is hereby created the Health and Safety Facility Equity Program Board  
4 within the Department of Education. The board shall consist of five members appointed by the  
5 Governor. The members shall serve at the pleasure of the Governor. The board shall meet at the  
6 call of the secretary of education to review and act upon applications from school districts.  
7 When considering whether to approve an application, the board shall take into consideration the  
8 following factors:

- 9 (1) If the school district is a sparse district as defined in § 13-13-78;
- 10 (2) If the school district's board has discussed the possibility of reorganizing with the  
11 school boards of adjoining school districts, but the adjoining school districts are not  
12 interested in reorganization;
- 13 (3) If the plan to add or replace the academic building is adequate to meet the district's  
14 needs, but not excessive based on enrollment projections; and
- 15 (4) If the district will likely continue to need the planned academic building ten to twenty  
16 years into the future.

17 All applications approved by the Health and Safety Facility Equity Program Oversight Board  
18 shall be forwarded to the Department of Education with recommendations.

19 Section 5. The secretary of education shall promulgate rules pursuant to chapter 1-26 to  
20 establish application procedures, application timelines, and the procedures and timelines.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

776N0200

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1149** - 02/12/2007

Introduced by: Representatives Lucas, Ahlers, Bradford, DeVries, Elliott, Gassman, Gilson, Hills, McLaughlin, Novstrup (Al), Olson (Ryan), Thompson, and Weems and Senators Two Bulls, Hanson (Gary), Olson (Ed), and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to prohibit the firing of a firearm at any school building,  
2 vehicle, or premises.

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

4 Section 1. That § 13-32-4 be amended to read as follows:

5 13-32-4. The school board of every school district shall assist and cooperate with the  
6 administration and teachers in the government and discipline of the schools. The board may  
7 suspend or expel from school any student for violation of rules or policies or for insubordination  
8 or misconduct, and the superintendent or principal in charge of the school may temporarily  
9 suspend any student in accordance with § 13-32-4.2. The rules or policies may include  
10 prohibiting the following:

11 (1) The consumption or possession of beer or alcoholic beverages on the school premises  
12 or at school activities;

13 (2) The use or possession of a controlled substance, without a valid prescription, on the  
14 school premises or at school activities; and



1       (3)    The use or possession of a firearm, as provided in § 13-32-7, on or in any elementary  
2            or secondary school premises, vehicle, or building or any premises, vehicle, or  
3            building used or leased for elementary or secondary school functions or activities; or  
4            the intentional firing of a firearm, as provided in § 13-32-7, at or upon any  
5            elementary or secondary school premises, vehicle, or building or any premises,  
6            vehicle, or building used or leased for elementary or secondary school functions or  
7            activities.

8            In addition to administrative and school board disciplinary action, any violation of § 13-32-7  
9            shall be reported to local law enforcement authorities.

10          The period of expulsion may extend beyond the semester in which the violation,  
11          insubordination, or misconduct occurred. Any expulsion for consumption or possession of beer  
12          or alcoholic beverages may not extend beyond ninety school days. If a student has intentionally  
13          brought a firearm onto school premises, the expulsion may not be for less than twelve months.

14          However, the superintendent or chief administering officer of each local school district or  
15          system may increase or decrease the length of a firearm-related expulsion on a case-by-case  
16          basis. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 to  
17          establish administrative due process procedures for the protection of a student's rights. The  
18          administrative due process procedures shall include a requirement that the school give notice  
19          of a student's due process rights to the parent or guardian of the student at the time of suspension  
20          or expulsion. Each school district board shall provide a procedural due process hearing, if  
21          requested, for a student in accordance with such rules if the suspension or expulsion of the  
22          student extends into the eleventh school day.

23          This section does not preclude other forms of discipline which may include suspension or  
24          expulsion from a class or activity.

1 This section does not prohibit a local school district from providing educational services to  
2 an expelled student in an alternative setting.

3 Section 2. That § 13-32-7 be amended to read as follows:

4 13-32-7. Any person, other than a law enforcement officer, who intentionally carries, has  
5 in his possession, stores, keeps, leaves, places, or puts into the possession of another person, any  
6 firearm, or air gun, whether or not the firearm or air gun is designed, adapted, used, or intended  
7 primarily for imitative or noisemaking purposes, or any dangerous weapon, on or in any  
8 elementary or secondary school premises, vehicle, or building or any premises, vehicle, or  
9 building used or leased for elementary or secondary school functions or who intentionally fires  
10 a firearm at or upon any elementary or secondary school premises, vehicle, or building or any  
11 premises, vehicle, or building used or leased for elementary or secondary school functions,  
12 whether or not any person is endangered by such actions, is guilty of a Class 1 misdemeanor.

13 This section does not apply to starting guns while in use at athletic events, firearms, or air guns  
14 at firing ranges, gun shows, and supervised schools or sessions for training in the use of  
15 firearms. This section does not apply to the ceremonial presence of unloaded weapons at color  
16 guard ceremonies.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

696N0188      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1176 - 02/13/2007**

Introduced by: Representatives Dykstra, Brunner, Cutler, Deadrick, Faehn, Gillespie, Hackl, Halverson, Heineman, Hunt, Krebs, Lust, Novstrup (David), Nygaard, Olson (Russell), Peters, Rave, Rhoden, Sigdestad, Tidemann, Turbiville, and Wick and Senator Dempster

1    FOR AN ACT ENTITLED, An Act to establish international trade representation and stimulate  
2        economic development.

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

4        Section 1. The department shall establish a coordinating effort for international trade and  
5    business development to assist South Dakota businesses in finding customers, suppliers, and  
6    investors in foreign countries by helping them access existing programs, introducing them to  
7    available resources including government programs, private consultants or other businesses  
8    currently doing business in targeted markets.

9        The department shall:

10      (1)    Develop the capability and resources necessary to provide representation for South  
11            Dakota business development in foreign countries; develop and promote services  
12            within South Dakota to encourage use of the services of South Dakota companies;  
13            and provide a focal point of contact for South Dakota companies to facilitate the  
14            identification of appropriate services for their requirements whether through this state



1 function or other resources, or for a contract with a group or organization outside  
2 state government;

3 (2) Provide South Dakota business development services internationally or coordinate  
4 those services available to South Dakota companies in-state;

5 (3) Investigate international trade support initiatives in neighboring states and leverage  
6 the combined assets in coordinated regional projects for the benefit of South Dakota  
7 enterprises.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

806N0453

HOUSE TRANSPORTATION COMMITTEE  
ENGROSSED NO. **HB 1189** - 02/13/2007

Introduced by: Representatives Willadsen, Cutler, Dykstra, Gilson, Glenski, Hills, Nelson, Rausch, Steele, Street, and Weems and Senators Koetzle, Albers, McCracken, Olson (Ed), Smidt (Orville), and Sutton

1 FOR AN ACT ENTITLED, An Act to require certain children to be in booster seats when in  
2 motor vehicles.

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

4 Section 1. That § 32-37-1 be amended to read as follows:

5 32-37-1. Any operator of any passenger vehicle transporting a child under five years of age  
6 on the streets and highways of this state shall properly secure the child in a child passenger  
7 restraint system according to its manufacturer's instructions. The child passenger restraint  
8 system shall meet Department of Transportation Motor Vehicle Safety Standard 213 as in effect  
9 ~~January 1, 1981~~ at the time the system was manufactured and not later than January 1, 2006. The  
10 requirements of this section are met if the child is under five years of age and is at least forty  
11 pounds in weight by securing the child in a ~~seat belt~~ booster seat properly secured by a lap and  
12 shoulder belt system. An operator who violates this section commits a petty offense.

13 Section 2. That § 32-37-1.1 be amended to read as follows:

14 32-37-1.1. Any operator of a passenger vehicle operated on a public street or highway in this



1 state transporting a passenger who is at least five and ~~under~~ less than eight years of age shall  
2 assure that the passenger is seated in a booster seat properly secured by a lap and shoulder belt  
3 system. If the passenger is less than eight years old and weighs at least eighty pounds or is at  
4 least fifty-seven inches in height, a booster seat is not required, but the operator shall ensure that  
5 the passenger is wearing a properly adjusted and fastened safety seat belt system as provided in  
6 this section. Any operator of a passenger vehicle operated on a public street or highway in this  
7 state transporting a passenger who is at least eight and less than eighteen years of age shall  
8 assure that the passenger is wearing a properly adjusted and fastened safety seat belt system,  
9 required to be installed in the passenger vehicle if manufactured pursuant to Federal Motor  
10 Vehicle Safety Standard Number 208 (49 C.F.R. 571.208) as in effect January 1, ~~1989~~ 2006, at  
11 all times when the vehicle is in motion. A violation of this section is a petty offense.

12 Section 3. That chapter 32-37 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 For the purposes of this chapter, the term, booster seat, means a backless child passenger  
15 restraint system meeting the requirements of Federal Motor Vehicle Safety Standard Number  
16 213 (49 C.F.R 571.213), as in effect at the time the system was manufactured and not later than  
17 January 1, 2006, or a belt-positioning seat meeting the requirements of Federal Motor Vehicle  
18 Safety Standard Number 213 (49 C.F.R 571.213), as in effect at the time the seat was  
19 manufactured and not later than January 1, 2006.

20 Section 4. Any person failing to secure a child in a booster seat pursuant to this Act may  
21 only be issued a warning ticket.

22 Section 5. Enforcement of booster seat violations by state or local law enforcement agencies  
23 shall be accomplished as a secondary action.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

508N0386

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1197** - 02/13/2007

Introduced by: Representatives Rounds, Faehn, Halverson, Hunt, Juhnke, Krebs, Noem, Pederson (Gordon), Peters, Street, Vanneman, and Willadsen and Senators Abdallah, Bartling, Dempster, Gant, Garnos, Gray, Hauge, Hoerth, Jerstad, Koetzle, McCracken, Peterson (Jim), and Turbak

1 FOR AN ACT ENTITLED, An Act to allow the Department of Public Safety to regulate  
2 installers of manufactured homes and to allow the department to establish an installation  
3 inspection program.

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

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

7 The Department of Public Safety may require that manufactured homes be installed by a  
8 licensed installer. The department shall allow a homeowner to install his or her own  
9 manufactured home but may require the homeowner to have such installation inspected by a  
10 certified inspector.

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

13 The Department of Public Safety may license installers of manufactured homes. The  
14 department may promulgate rules pursuant to chapter 1-26 to provide for the qualifications for



1 licensure and the procedure to be used for licensure. The department may, by rules promulgated  
2 pursuant to chapter 1-26, establish a licensure fee not to exceed one hundred dollars. The license  
3 expires two years after its issuance and may be renewed by complying with the renewal  
4 requirements, and paying the renewal fee, as established by the department in rules promulgated  
5 pursuant to chapter 1-26.

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

8 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26,  
9 provide for an installation inspection program to ensure that licensees are complying with  
10 installation standards. The program may include provisions that allow an installer to conduct  
11 an inspection of the installer's own work. However, if the department receives more than three  
12 complaints within a calendar year, that the department determines to be valid, the department  
13 may eliminate the installer's right to inspect the installer's own work.

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

16 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26,  
17 require licensed installers to have proof of contractor's liability insurance in an amount not less  
18 than one hundred thousand dollars, and may require this insurance policy to contain a provision  
19 for the immediate notification of the department upon cancellation.

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

22 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26,  
23 require licensed installers to have a letter of credit, certificate of deposit issued by a licensed  
24 financial institution, or surety bond issued by an authorized insurer in the amount of ten

1 thousand dollars for the performance of installation pursuant to the manufacturer's installation  
2 instructions. The department may require immediate notification of the department upon  
3 cancellation.

4 Section 6. That chapter 34-34A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 The Department of Public Safety may certify manufactured home installer inspectors. The  
7 department may, by rules promulgated pursuant to chapter 1-26, provide for the qualifications  
8 of certified manufactured home installer inspectors. The department may, by rules promulgated  
9 pursuant to chapter 1-26, establish a certification fee not to exceed one hundred dollars. The  
10 certification expires two years after issuance and may be renewed by complying with the  
11 renewal requirements, and paying the renewal fee, as established by the department in rules  
12 promulgated pursuant to chapter 1-26.

13 Section 7. That chapter 34-34A be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26,  
16 prescribe an installation insignia and establish an insignia fee not to exceed fifty dollars for each  
17 insignia. The insignia shall be placed on a home in a location as prescribed by the department  
18 to indicate that the manufactured home was installed in accordance with manufacturer's  
19 installation instructions.

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

22 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26, adopt  
23 a procedure to receive and investigate complaints concerning the installation of manufactured  
24 homes and determine if such complaints are valid. If a manufactured home installation

1 complaint is determined to be valid, the department may require the installer to pay for the  
2 repairs to bring the installation into compliance and for costs associated with complaint  
3 inspection and subsequent inspections.

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

6 The Department of Public Safety may, by rules promulgated pursuant to chapter 1-26,  
7 establish criteria to suspend, revoke, or not renew an installer's license or an inspector's  
8 certification. Any installer or inspector may appeal the suspension, revocation, or nonrenewal  
9 of a license or certification in accordance with chapter 1-26.

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

12 The Department of Public Safety may enter into joint agreements with other agencies in  
13 other states to administer a licensure program or an installation inspection program.

14 Section 11. That chapter 34-34A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 The provisions of this Act only apply to a manufactured home for which a manufacturer's  
17 statement of origin has not been transferred, or a manufactured home for which title was issued  
18 from the manufacturer's statement of origin or manufacturer's certificate of origin and ownership  
19 is still in the name of the first person who took title to the manufactured home.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

669N0700      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1205 - 02/13/2007**

Introduced by: Representatives Peters, Dennert, Halverson, Haverly, Kirkeby, Rausch,  
Street, and Tidemann and Senators Gant, Napoli, and Smidt (Orville)

1    FOR AN ACT ENTITLED, An Act to provide funds to the state technical institutes.

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

3        Section 1. There is hereby appropriated from the general fund the sum of one dollar (\$1),  
4    or so much thereof as may be necessary, to the Department of Education for the purposes of  
5    fulfilling the mission of South Dakota technical institutes.

6        Section 2. The secretary of education shall approve vouchers and the state auditor shall draw  
7    warrants to pay expenditures authorized by this Act.

8        Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
9    June 30, 2009, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

825N0611

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1248** - 02/13/2007

Introduced by: Representatives Pitts, Buckingham, Elliott, Hargens, Lust, Turbiville, and  
Vehle and Senators Hansen (Tom), Albers, and Bartling

1 FOR AN ACT ENTITLED, An Act to provide information to owners of certain property that  
2 had a significant increase in the assessed valuation of the property.

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

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

6 If the assessed valuation of any real property increases by more than twenty percent in a  
7 year, the director of equalization shall provide written notice to the property owner, unless the  
8 property was subject to an addition, improvement, or change in use or classification. The written  
9 notice shall provide:

- 10 (1) Notification of the current assessed valuation, the prior year's assessment, and the  
11 percentage increase of the assessed valuation;
- 12 (2) A statement that the director of equalization will provide to the property owner, upon  
13 request, sales of comparable property or other information supporting the increased  
14 assessed valuation; and
- 15 (3) Information about the appeal process.



1       The secretary of the Department of Revenue and Regulation may promulgate rules, pursuant  
2       to chapter 1-26, concerning the form and content of the notice.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

399N0764      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1279 - 02/13/2007**

Introduced by: Representatives Haverly, Burg, Rausch, and Tidemann and Senators Smidt  
(Orville), Apa, Greenfield, and Koetzle

1    FOR AN ACT ENTITLED, An Act to create a task force to study permanent funding options  
2        for the state technical institutes, to provide for its composition, and to declare an emergency.

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

4        Section 1. There is hereby established the Technical Institute Funding Task Force. The task  
5    force shall consist of the following twenty members:

6        (1)    The speaker of the House of Representatives shall appoint four members of the  
7            House of Representatives, no more than three of whom may be from one political  
8            party;

9        (2)    The president pro tempore of the Senate shall appoint four members of the Senate,  
10        no more than three of whom may be from one political party;

11       (3)    The Executive Board of the Legislative Research Council shall appoint eight private  
12        employers or members of the general public representing business and industry from  
13        the four technical institute regions, no more than five of whom may be from one  
14        political party; and

15       (4)    Each president of the four state technical institutes shall serve ex officio.



1 The initial appointments shall be made no later than May 10, 2007. If there is a vacancy on the  
2 task force, the vacancy shall be filled in the same manner as the original appointment.

3 Section 2. The task force shall be under the supervision of the Executive Board of the  
4 Legislative Research Council and staffed and funded as an interim legislative committee. The  
5 Executive Board shall appoint the chair and the vice chair from among the legislators appointed  
6 to the commission.

7 Section 3. The task force shall evaluate the current system of technical institute funding and  
8 recommend alternative financing and allocation options. Based on these recommendations, the  
9 task force shall submit a report and draft legislation to the Executive Board of the Legislative  
10 Research Council no later than November 1, 2007.

11 Section 4. Whereas, this Act is necessary for the support of the state government and its  
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
13 full force and effect from and after its passage and approval.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

177N0678

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1302** - 02/13/2007

Introduced by: Representatives Vehle, Boomgarden, Kirkeby, Moore, Peters, and Van Etten  
and Senators Hanson (Gary) and Jerstad

1 FOR AN ACT ENTITLED, An Act to revise the requirements for certain on-sale alcoholic  
2 beverage licenses.

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

4 Section 1. That § 35-2-5.3 be amended to read as follows:

5 35-2-5.3. No licensing authority ~~shall~~ may reissue any on-sale ~~or off-sale~~ license issued  
6 pursuant to subdivision 35-4-2.2(4), (6), or (13) to the same applicant for a one-year period if  
7 said licensee or the licensee's transferee if the license has not been actively used by the applicant  
8 during the two years preceding the date of the current application. For purposes of this section,  
9 the term, actively used, means that the licensed premise was open to the public during regular  
10 business hours for the sale and consumption of distilled spirits for at least sixty days during the  
11 two preceding years. However, the licensed premise is only required to be open five days per  
12 year if it is open to the public during a special event that has at least twenty-five thousand  
13 visitors.

14 Section 2. This Act is effective on July 1, 2008.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

983N0164                    **HOUSE EDUCATION COMMITTEE ENGROSSED NO.**  
**HB 1307 - 02/13/2007**

Introduced by: Representatives Olson (Ryan), Novstrup (Al), and Weems and Senators Gray and Garnos

1    FOR AN ACT ENTITLED, An Act to appropriate money to pay for the development of end of  
2            course exams.

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

4            Section 1. There is hereby appropriated from the general fund, after the transfer of earnings  
5    from the education enhancement trust fund created in S. D. Const., Art. XII, § 6, pursuant to § 4-  
6    5-29.2, the sum of one dollar (\$1), or so much thereof as may be necessary, to the Department  
7    of Education to pay for the development of end of course exams.

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

10           Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
11    June 30, 2008, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0236

## HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 15** - 02/02/2007

Introduced by: The Committee on Health and Human Services at the request of the  
Department of Health

1 FOR AN ACT ENTITLED, An Act to require certain immunizations for students attending  
2 postsecondary educational institutions.

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

4 Section 1. Terms in this Act mean:

5 (1) "Public or private postsecondary educational institution" or "institution," any entity  
6 permitted to offer postsecondary education credits or degrees in South Dakota under  
7 § 13-49-27.1;

8 (2) "Student," any person born after 1956 who is registering for more than one class  
9 during an academic term, such as a quarter or a semester. The term includes any  
10 person who meets face-to-face at least once per week to receive instruction. The term  
11 does not include any person who receives non-credit-bearing or on-the-job training  
12 services.

13 Section 2. Any student entering a public or private postsecondary education institution in  
14 this state for the first time after July 1, 2008, shall, within forty-five days after the start of  
15 classes, present to the appropriate institution certification from a licensed physician that the



1 student has received or is in the process of receiving the required two doses of immunization  
2 against measles, rubella, and mumps. As an alternative to the requirement for a physicians's  
3 certification, the student may present:

4 (1) Certification from a licensed physician stating the physical condition of the student  
5 would be such that immunization would endanger the student's life or health;

6 (2) Certification from a licensed physician stating the student has experienced the natural  
7 disease against which the immunization protects;

8 (3) Confirmation from a laboratory of the presence of adequate immunity; or

9 (4) A written statement signed by the student that the student is an adherent to a religious  
10 doctrine whose teachings are opposed to such immunizations. If the student is under  
11 the age of eighteen, the written statement shall be signed by one parent or guardian.

12 Section 3. The institution shall require that the documentation from the student, provided  
13 for by section 2 of this Act, be submitted within forty-five days after the start of classes.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0295

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 25** - 02/02/2007

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain requirements regarding the ability of the  
2 Public Utilities Commission to regulate the sale or other disposition of the property, plant,  
3 business, or stock of electric or gas public utilities.

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

5 Section 1. That § 49-34A-35 be amended to read as follows:

6 49-34A-35. ~~No public utility shall sell, lease or otherwise dispose of its property or business~~  
7 ~~constituting an operating unit or system in this state to another public utility or purchase the~~  
8 ~~property or business constituting an operating unit or system in this state to another public utility~~  
9 ~~or merge or consolidate with another public utility operating in this state, without first being~~  
10 ~~authorized to do so by the Public Utilities Commission; provided, that in the event such sale,~~  
11 ~~lease or other disposition of the property or business of one public utility to another public~~  
12 ~~utility does not involve a sale, lease or disposition wherein the actual consideration exceeds two~~  
13 ~~hundred thousand dollars, such sale, lease or disposition shall not be subject to the provisions~~  
14 ~~of this section~~ No public utility, without first being authorized to do so by the commission, may:

15 (1) Sell, lease, or otherwise dispose of its property or business constituting an operating



1 unit or system in this state to another person;

2 (2) Sell, lease, or otherwise dispose of its operating property or plant used to provide gas  
3 or electric service to its customers in this state to another person;

4 (3) Purchase the property or business constituting an operating unit or system in this state  
5 of another public utility; or

6 (4) Merge or consolidate with another public utility operating in this state.

7 However, if the sale, lease, merger, consolidation, or other disposition of the property or  
8 business of one public utility to another person, as provided in subdivisions (1) to (4), inclusive,  
9 does not involve a sale, lease, merger, consolidation, or disposition wherein the fair market  
10 value exceeds ten million dollars, the sale, lease, merger, consolidation, or disposition is not  
11 subject to the restrictions of this section.

12 No person may acquire or gain control either directly or indirectly of any public utility doing  
13 business in this state that has a fair market value exceeding ten million dollars without the  
14 commission's prior authorization. As used in this section, the term, control, means the right to  
15 direct or cause the direction of the management and policies of the public utility, whether  
16 through the ownership of voting securities, by contract, or otherwise.

17 Section 2. That § 49-34A-36 be amended to read as follows:

18 49-34A-36. Upon the filing of an application for the approval ~~and consent~~ of the ~~Public~~  
19 ~~Utilities Commission~~ commission to an action described in § 49-34A-35, the commission shall  
20 investigate the ~~same~~ application, with or without public hearing, and in case of a public hearing,  
21 upon such notice as the commission may require, ~~and if it shall find that the proposed action is~~  
22 ~~consistent with the public interests it shall give its consent and approval in writing. In reaching~~  
23 ~~its determination, the commission shall take into consideration the reasonable value of the~~  
24 ~~property, plant, equipment or securities to be acquired or disposed of or merged and~~

1 ~~consolidated. The commission shall act on the application within one hundred eighty days and~~  
2 ~~shall approve the proposed action unless the commission finds that there is a likelihood of~~  
3 ~~significant adverse impacts to customers in this state.~~

4 Section 3. That § 49-34A-37 be amended to read as follows:

5 49-34A-37. No public utility subject to the jurisdiction of the ~~Public Utilities Commission~~  
6 ~~commission~~ may purchase voting stock in another public utility doing business in South Dakota  
7 without first having made application to and received the ~~consent~~ approval of the commission  
8 ~~in writing or by order within the time and in the manner provide in section 2 of this Act.~~ An  
9 intentional violation of this section is a petty offense. After the first judgment, each day's  
10 violation is a separate offense.

11 Section 4. That § 49-34A-38 be repealed.

12 ~~—49-34A-38. The provisions of §§ 49-34A-35 to 49-34A-37, inclusive, shall not apply to any~~  
13 ~~transaction which is subject to the jurisdiction of a federal agency or authority.~~

14 Section 5. That § 49-34A-38.1 be repealed.

15 ~~—49-34A-38.1. Notwithstanding the provisions of §§ 49-34A-35 to 49-34A-38, inclusive, no~~  
16 ~~person may acquire or control either directly or indirectly more than ten percent of the total~~  
17 ~~capital stock of any public utility organized and doing business in this state or of any public~~  
18 ~~utility organized under the laws of any other state receiving more than twenty-five percent of~~  
19 ~~its gross revenue in this state without first securing authorization to do so from the Public~~  
20 ~~Utilities Commission. Any such acquisition or control without the commission's prior~~  
21 ~~authorization is void.~~

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0306                    **HOUSE COMMERCE COMMITTEE ENGROSSED NO.**  
**SB 39 - 01/29/2007**

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

1    FOR AN ACT ENTITLED, An Act to provide claims information to commercial property  
2        casualty insureds.

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

4        Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as  
5    follows:

6        Any carrier who is or has provided commercial property casualty coverage in this state shall  
7    provide, at the written request of the insured, annual reports of the claims experience of that  
8    insured for the immediate past policy period and for any time frames which are not in excess  
9    of three years prior to the policy period for which the request was made. A carrier is not required  
10   to provide any claim information that pertains to a prior carrier's experience with that insured.  
11   The claims report shall be in sufficient detail so as to provide the insured with data sufficient  
12   to assess the insured's future commercial property casualty insurance needs. The director may  
13   promulgate rules pursuant to chapter 1-26 regarding the content and time frames for the annual  
14   reports.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

445N0172

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 89** - 01/24/2007

Introduced by: Senators Knudson and Heidepriem and Representatives Lust, Cutler, and Engels

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Prudent Management of Institutional  
2 Funds Act.

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

4 Section 1. This Act may be cited as the Uniform Prudent Management of Institutional Funds  
5 Act.

6 Section 2. In this Act:

7 (1) "Charitable purpose" means the relief of poverty, the advancement of education or  
8 religion, the promotion of health, the promotion of a governmental purpose, or any  
9 other purpose the achievement of which is beneficial to the community.

10 (2) "Endowment fund" means an institutional fund or part thereof that, under the terms  
11 of a gift instrument, is not wholly expendable by the institution on a current basis.  
12 The term does not include assets that an institution designates as an endowment fund  
13 for its own use.

14 (3) "Gift instrument" means a record or records, including an institutional solicitation,  
15 under which property is granted to, transferred to, or held by an institution as an



1 institutional fund.

2 (4) "Institution" means:

3 (A) A person, other than an individual, organized and operated exclusively for  
4 charitable purposes;

5 (B) A government or governmental subdivision, agency, or instrumentality, to the  
6 extent that it holds funds exclusively for a charitable purpose; and

7 (C) A trust that had both charitable and noncharitable interests, after all  
8 noncharitable interests have terminated.

9 (5) "Institutional fund" means a fund held by an institution exclusively for charitable  
10 purposes. The term does not include:

11 (A) Program-related assets;

12 (B) A fund held for an institution by a trustee that is not an institution; or

13 (C) A fund in which a beneficiary that is not an institution has an interest, other  
14 than an interest that could arise upon violation or failure of the purposes of the  
15 fund.

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

20 (7) "Program-related asset" means an asset held by an institution primarily to accomplish  
21 a charitable purpose of the institution and not primarily for investment.

22 (8) "Record" means information that is inscribed on a tangible medium or that is stored  
23 in an electronic or other medium and is retrievable in perceivable form.

24 Section 3. (a) Subject to the intent of a donor expressed in a gift instrument, an institution,

1 in managing and investing an institutional fund, shall consider the charitable purposes of the  
2 institution and the purposes of the institutional fund.

3 (b) In addition to complying with the duty of loyalty imposed by law other than this Act,  
4 each person responsible for managing and investing an institutional fund shall manage and  
5 invest the fund in good faith and with the care an ordinarily prudent person in a like position  
6 would exercise under similar circumstances.

7 (c) In managing and investing an institutional fund, an institution:

8 (1) May incur only costs that are appropriate and reasonable in relation to the assets, the  
9 purposes of the institution, and the skills available to the institution; and

10 (2) Shall make a reasonable effort to verify facts relevant to the management and  
11 investment of the fund.

12 (d) An institution may pool two or more institutional funds for purposes of management and  
13 investment.

14 (e) Except as otherwise provided by a gift instrument, the following rules apply:

15 (1) In managing and investing an institutional fund, the following factors, if relevant,  
16 must be considered:

17 (A) General economic conditions;

18 (B) The possible effect of inflation or deflation;

19 (C) The expected tax consequences, if any, of investment decisions or strategies;

20 (D) The role that each investment or course of action plays within the overall  
21 investment portfolio of the fund;

22 (E) The expected total return from income and the appreciation of investments;

23 (F) Other resources of the institution;

24 (G) The needs of the institution and the fund to make distributions and to preserve

1 capital; and

2 (H) An asset's special relationship or special value, if any, to the charitable  
3 purposes of the institution.

4 (2) Management and investment decisions about an individual asset must be made not  
5 in isolation but rather in the context of the institutional fund's portfolio of  
6 investments as a whole and as a part of an overall investment strategy having risk and  
7 return objectives reasonably suited to the fund and to the institution.

8 (3) Except as otherwise provided by law other than this Act, an institution may invest in  
9 any kind of property or type of investment consistent with this section.

10 (4) An institution shall diversify the investments of an institutional fund unless the  
11 institution reasonably determines that, because of special circumstances, the purposes  
12 of the fund are better served without diversification.

13 (5) Within a reasonable time after receiving property, an institution shall make and carry  
14 out decisions concerning the retention or disposition of the property or to rebalance  
15 a portfolio, in order to bring the institutional fund into compliance with the purposes,  
16 terms, and distribution requirements of the institution as necessary to meet other  
17 circumstances of the institution and the requirements of this Act.

18 (6) A person that has special skills or expertise, or is selected in reliance upon the  
19 person's representation that the person has special skills or expertise, has a duty to  
20 use those skills or that expertise in managing and investing institutional funds.

21 Section 4. (a) Subject to the intent of a donor expressed in the gift instrument, an institution  
22 may appropriate for expenditure or accumulate so much of an endowment fund as the institution  
23 determines is prudent for the uses, benefits, purposes, and duration for which the endowment  
24 fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment

1 fund are donor-restricted assets until appropriated for expenditure by the institution. In making  
2 a determination to appropriate or accumulate, the institution shall act in good faith, with the care  
3 that an ordinarily prudent person in a like position would exercise under similar circumstances,  
4 and shall consider, if relevant, the following factors:

- 5 (1) The duration and preservation of the endowment fund;
- 6 (2) The purposes of the institution and the endowment fund;
- 7 (3) General economic conditions;
- 8 (4) The possible effect of inflation or deflation;
- 9 (5) The expected total return from income and the appreciation of investments;
- 10 (6) Other resources of the institution; and
- 11 (7) The investment policy of the institution.

12 (b) To limit the authority to appropriate for expenditure or accumulate under subsection (a),  
13 a gift instrument must specifically state the limitation.

14 (c) Terms in a gift instrument designating a gift as an endowment, or a direction or  
15 authorization in the gift instrument to use only "income", "interest", "dividends", or "rents,  
16 issues, or profits", or "to preserve the principal intact", or words of similar import:

- 17 (1) Create an endowment fund of permanent duration unless other language in the gift  
18 instrument limits the duration or purpose of the fund; and
- 19 (2) Do not otherwise limit the authority to appropriate for expenditure or accumulate  
20 under subsection (a).

21 Section 5. (a) Subject to any specific limitation set forth in a gift instrument or in law other  
22 than this Act, an institution may delegate to an external agent the management and investment  
23 of an institutional fund to the extent that an institution could prudently delegate under the  
24 circumstances. An institution shall act in good faith, with the care that an ordinarily prudent

1 person in a like position would exercise under similar circumstances, in:

2 (1) Selecting an agent;

3 (2) Establishing the scope and terms of the delegation, consistent with the purposes of  
4 the institution and the institutional fund; and

5 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance  
6 and compliance with the scope and terms of the delegation.

7 (b) In performing a delegated function, an agent owes a duty to the institution to exercise  
8 reasonable care to comply with the scope and terms of the delegation.

9 (c) An institution that complies with subsection (a) is not liable for the decisions or actions  
10 of an agent to which the function was delegated.

11 (d) By accepting delegation of a management or investment function from an institution that  
12 is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state  
13 in all proceedings arising from or related to the delegation or the performance of the delegated  
14 function.

15 (e) An institution may delegate management and investment functions to its committees,  
16 officers, or employees as authorized by law of this state other than this Act.

17 Section 6. (a) If the donor consents in a record, an institution may release or modify, in  
18 whole or in part, a restriction contained in a gift instrument on the management, investment, or  
19 purpose of an institutional fund. A release or modification may not allow a fund to be used for  
20 a purpose other than a charitable purpose of the institution.

21 (b) The court, upon application of an institution, may modify a restriction contained in a gift  
22 instrument regarding the management or investment of an institutional fund if the restriction has  
23 become impracticable or wasteful, if it impairs the management or investment of the fund, or  
24 if, because of circumstances not anticipated by the donor, a modification of a restriction will

1 further the purposes of the fund. To the extent practicable, any modification must be made in  
2 accordance with the donor's probable intention.

3 (c) If a particular charitable purpose or a restriction contained in a gift instrument on the use  
4 of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful,  
5 the court, upon application of an institution, may modify the purpose of the fund or the  
6 restriction on the use of the fund in a manner consistent with the charitable purposes expressed  
7 in the gift instrument.

8 (d) If an institution determines that a restriction contained in a gift instrument on the  
9 management, investment, or purpose of an institutional fund is unlawful, impracticable,  
10 impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole  
11 or part, if:

- 12 (1) The institutional fund subject to the restriction has a total value of less than twenty-  
13 five thousand dollars;
- 14 (2) More than twenty years have elapsed since the fund was established; and
- 15 (3) The institution uses the property in a manner consistent with the charitable purposes  
16 expressed in the gift instrument.

17 Section 7. Compliance with this Act is determined in light of the facts and circumstances  
18 existing at the time a decision is made or action is taken, and not by hindsight.

19 Section 8. This Act applies to institutional funds existing on or established after July 1,  
20 2007. As applied to institutional funds existing on July 1, 2007, this Act governs only decisions  
21 made or actions taken on or after that date. This Act does not apply to any funds directly held  
22 or managed by a governmental agency.

23 Section 9. This Act modifies, limits, and supersedes the Electronic Signatures in Global and  
24 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or

1   supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery  
2   of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

3       Section 10. In applying and construing this uniform act, consideration shall be given to the  
4   need to promote uniformity of the law with respect to its subject matter among states that enact  
5   it.

6       Section 11. That §§ 55-14-1 to 55-14-7, inclusive, be repealed.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

824N0518

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 125** - 02/13/2007

Introduced by: Senators Napoli, Gray, Greenfield, Hundstad, Koetzle, Maher, McCracken, McNenny, Olson (Ed), Peterson (Jim), and Schmidt (Dennis) and Representatives Hunt, Brunner, Dennert, Dykstra, Gillespie, Koistinen, Moore, Novstrup (Al), Rave, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to allow an abandoned mobile home or manufactured home  
2 to be moved under certain conditions and to require property taxes to be abated on certain  
3 abandoned mobile homes and manufactured homes.

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

5 Section 1. If a mobile home or manufactured home as defined in chapter 32-7A has been  
6 abandoned and left on leased real property, the owner of real property may sell the mobile home  
7 or manufactured home under the provisions of chapter 21-54. A mobile home or manufactured  
8 home is considered abandoned if the owner of the mobile home or manufactured home has not  
9 removed the home from the real property owner's land within thirty days of the court issuing a  
10 writ of possession as provided in chapter 21-16. Upon issuance of the writ of possession by the  
11 court, the owner of real property shall give the owner of the mobile home or manufactured home  
12 and any lienholder with a lien properly noted pursuant to chapter 32-3, written notice of intent  
13 to sell the home pursuant to chapter 21-54 if the home is not removed from the real property  
14 owner's property within thirty days. The notice shall be sent to the owner of the mobile home



1 or manufactured home at the owner's last known address. The Department of Revenue and  
2 Regulation shall promulgate rules pursuant to chapter 1-26 to prescribe a form for the written  
3 notice. Any written notice shall be sent by certified mail. The sale is subject to any taxes owed  
4 on the home and unpaid lot rent but such unpaid lot rent lien may not exceed two month's lot  
5 rent at the price previously agreed to by the owner of real property and owner of the mobile  
6 home or manufactured home.

7 Section 2. After the owner of the abandoned mobile home or manufactured home has been  
8 provided thirty days written notice, and before the owner of real property proceeds with the sale  
9 of the abandoned mobile home or manufactured home, the owner of the real property shall  
10 provide written notice of intent to sell the abandoned property to the county treasurer where the  
11 home is located. The Department of Revenue and Regulation shall promulgate rules pursuant  
12 to chapter 1-26 to prescribe a form for the written notice. If the treasurer has not issued a distress  
13 warrant and informed the owner of real property of such issuance within thirty days of the notice  
14 required by this section or the mobile home or manufactured home has not been removed by its  
15 owner or any lien holder within thirty days of the notice provided by section 1 of this Act, the  
16 owner of real property may proceed with the sale pursuant to chapter 21-54.

17 Section 3. If an abandoned mobile home or manufactured home fails to sell at a sale held  
18 pursuant to chapter 21-54, title to the mobile home or manufactured home is irrevocably vested  
19 with the owner of the real property. The owner of the real property on which the mobile home  
20 or manufactured home resides, may obtain an abandoned title without payment or obligation to  
21 pay any taxes owed on the home or any lien on the home at the time of acquisition. However,  
22 if the owner of the real property intends any use of the abandoned mobile home or manufactured  
23 home other than disposal, the owner of the real property may obtain an abandoned title after  
24 paying any taxes owed on the home. The department shall promulgate rules pursuant to chapter

1 1-26 to prescribe a form that shall be used to apply for the abandoned title.

2 Section 4. If an owner of the real property obtains a title to a mobile home or manufactured  
3 home pursuant to section 3 of this Act, the owner of the real property shall obtain a permit  
4 pursuant to § 32-5-16.3 to move the abandoned mobile home or manufactured home. If the  
5 owner of the real property files an affidavit with the county treasurer stating that the owner is  
6 going to move the abandoned mobile home or manufactured home for the sole purpose of  
7 disposal, the county treasurer shall issue the permit provided by § 32-5-16.3 without receiving  
8 payment of the current year's taxes. The Department of Revenue and Regulation shall  
9 promulgate rules pursuant to chapter 1-26 to prescribe a form for the affidavit.

10 Section 5. The county treasurer shall deliver the affidavit filed pursuant to section 4 of this  
11 Act to the board of county commissioners after issuance of the permit. Upon receipt of the  
12 affidavit, the board of county commissioners shall abate any taxes owed on the mobile home  
13 or manufactured home.