Senate
Daily Reader

Tuesday, February 27, 2007

Bills Included				
HB 1032	HB 1060	HB 1061	HB 1072	HB 1108
HB 1248	HB 1250	HB 1251	HB 1266	HB 1302

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0328 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**

NO. HB 1032 - 02/09/2007

Introduced by: The Committee on Appropriations at the request of the Department of Health

FOR AN ACT ENTITLED, An Act to make an appropriation to fund a dental externship program.

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

Section 1. There is hereby appropriated from the general fund the sum of forty thousand dollars ($40,000), or so much thereof as may be necessary, to the Department of Health for the purpose of establishing a dental externship program in South Dakota.

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

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

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0381 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**

NO. HB 1060 - 02/09/2007

Introduced by: The Committee on Appropriations at the request of the Department of Corrections

FOR AN ACT ENTITLED, An Act to authorize the Department of Corrections to purchase real property, to make an appropriation therefor, and to declare an emergency.

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

Section 1. The Department of Corrections may purchase real property located in Pennington County, Lawrence County, Meade County, Custer County, or Butte County.

Section 2. There is hereby appropriated from the prison industries revolving fund the sum of one dollar ($1), or so much thereof as may be necessary, to the Department of Corrections for the purchase of property described in section 1 of this Act.

Section 3. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0339

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. HB 1061 - 02/23/2007

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

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

FOR AN ACT ENTITLED, An Act to offer a human papillomavirus (HPV) vaccination initiative, to transfer funds, and to declare an emergency.

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

Section 1. The Department of Health may offer human papillomavirus (HPV) vaccine to any woman who is at least eleven years of age and less than nineteen years of age to help protect against the virus that causes cervical cancer at an estimated cost of nine million two hundred thousand dollars. The Department of Health may expend up to four hundred thousand dollars of general funds and the Department of Social Services may expend up to one million three hundred thousand dollars of general funds from their fiscal year 2007 budgets.

Section 2. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0334

HOUSE ENGROSSED NO. HB 1072 - 02/15/2007

This bill has been extensively amended (hoghoused) 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

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

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

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

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

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

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

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

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

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

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

(1) Regulate the nature and manner of testing;

(2) Provide for procedures and apparatus for testing including electronic monitoring devices;

(3) Set participation and user fees; however, user fees for twice a day testing shall not be less than one dollar per test; and

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

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

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

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

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

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

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

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

the permit upon a showing of proof by a preponderance of the evidence that the person has violated this condition.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Continue foster care placement of the child for a specified period of time, and, if the child is sixteen years of age or older, direct the department to determine the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child;

(3) Place the child in the custody of the department or a child placement agency, with or without guardianship of the child, in another planned permanent living arrangement following a determination that a compelling reason exists that the placement is more appropriate than adoption or with a relative or with a legal guardian other than the

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

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

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

625N0462

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. HB 1108 - 01/29/2007

Introduced by: Representatives Van Etten, Buckingham, Dreyer, Elliott, Faehn, Gilson, Glenski, Halverson, Hanks, Haverly, Hills, Howie, Kirkeby, Lust, McLaughlin, Miles, Moore, Novstrup (Al), Novstrup (David), Nygaard, Olson (Ryan), Pederson (Gordon), Peters, Rausch, Rhoden, Steele, Street, Thompson, Turbiville, Vehle, and Weems and Senators McCracken, Gant, Hanson (Gary), Hundstad, Napoli, Schmidt, and Smidt

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding when and by whom chemical dependency evaluations occur after a conviction of driving while under the influence of drugs or alcohol.

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

Section 1. That § 32-23-2.1 be amended to read as follows:

32-23-2.1. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent or more by weight of alcohol in the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation <u>by a chemical dependency counselor as defined in § 34-20A-2 or a licensed or certified health care professional with specialized training in chemical dependency evaluation</u> to determine if the defendant is chemically dependent. The cost of such evaluation shall be paid by the defendant. <u>The recommendations of the evaluation shall be provided to the referring judge.</u>

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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

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

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

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

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

(1) Notification of the current assessed valuation, the prior year's assessment, and the percentage increase of the assessed valuation;

(2) A statement that the director of equalization will provide to the property owner, upon request, sales of comparable property or other information supporting the increased assessed valuation; and

(3) Information about the appeal process.

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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

449N0725 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**

NO. HB 1250 - 02/14/2007

Introduced by: Representatives Dennert, Burg, Carson, Davis, Glenski, Hargens, Haverly, Miles, Moore, Putnam, Rausch, and Tidemann and Senators Hunhoff, Bartling, Dempster, Duenwald, Garnos, Hauge, Hoerth, Hundstad, Maher, Napoli, Smidt (Orville), and Sutton

FOR AN ACT ENTITLED, An Act to revise the process regarding cochlear implants.

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

Section 1. That § 49-31-50 be amended to read as follows:

49-31-50. There is created in the state treasury the telecommunication fund for the deaf and the telecommunication fund for other disabilities for the deposit and disbursement of money collected under §§ 49-31-49 and 49-31-51. There is hereby continuously appropriated the sum of two hundred thousand dollars ($200,000), or so much thereof as may be necessary, each year from the telecommunication fund for the deaf to the Department of Human Services to provide <u>one or two</u> cochlear implants to ~~children who are less than five years of age and who suffer~~ <u>any child who suffers</u> from severe to profound hearing loss. <u>The child shall be less than five years of age at the time of the first implant. However, if the child has a documented progressive hearing loss that leads to deafness after speech and language are developed, the child may be less than twenty-one years of age at the time of the implant.</u>

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

339N0695 **SENATE TAXATION COMMITTEE ENGROSSED NO.**

HB 1251 - 02/23/2007

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

Introduced by: Representatives Juhnke, Deadrick, and Faehn and Senators Garnos and Bartling

FOR AN ACT ENTITLED, An Act to exempt the gross receipts received from certain controlled groups from the contractor's excise tax.

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

Section 1. Any federal funds received pursuant to section 2(i) of S. 2205 ES, 109th Cong., 2d Session, an Act to direct the Secretary of Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of School and Public Lands and the Department of Game, Fish and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the commission, and for other purposes, are hereby continuously appropriated to the Commissioner of School and Public Lands for the purposes set out in S. 2205 ES, 109th Cong., 2d Session. All money received by the commissioner under the provisions of S. 2205 ES, 109th Cong., 2d Session shall be set forth in the commissioner's annual budget as an informational item, and shall be annually reviewed by the legislature as required

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1 by § 2-7-7.2.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

893N0703 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**

HB 1266 - 02/22/2007

Introduced by: Representatives Brunner, Buckingham, DeVries, Hackl, Heineman, Howie, Hunt, Novstrup (Al), and Novstrup (David) and Senators Napoli and Lintz

FOR AN ACT ENTITLED, An Act to allow a home school student to partially enroll in the student's resident school district or in another school district under certain circumstances and to clarify certain testing requirements for students who are partially enrolled.

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

Section 1. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

The resident school district of a child excused from school attendance pursuant to § 13-27-2 shall admit that child to a public school in the district upon request from the child's parent or legal guardian. A child enrolled in a school district pursuant to this section may be enrolled in a school of the school district on only a partial basis and shall continue to also receive alternative instruction pursuant to § 13-27-3.

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

For purposes of state aid to education, a student enrolled pursuant to this Act shall be counted in a school's average daily membership as defined in subdivision 13-13-10.1(1) in a

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proportion equal to the share of the student's enrollment in the school.

Section 3. That § 13-28-41 be amended to read as follows:

13-28-41. A school district shall grant a request for a transfer into the district or within the district unless the transfer would result in an inability to provide a quality educational program based on criteria established by the district pursuant to § 13-28-44.

<u>In addition, a school district shall grant a request to admit into the district a child who is a resident of another school district and who is excused from attending school in the resident district pursuant to § 13-27-2, unless admitting the nonresident child would result in an inability to provide a quality educational program based on criteria established by the district pursuant to § 13-28-44.</u>

Section 4. If a student is partially enrolled in a school district pursuant to this Act, and the student's enrollment is equal to or greater than fifty percent, that student is required to take any academic achievement test administered by the school district pursuant to § 13-3-55. If a student's partial enrollment in a school district is less than fifty percent, the student is not required to take any academic achievement test administered by the school district pursuant to § 13-3-55.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

177N0678

HOUSE ENGROSSED NO. HB 1302 - 02/15/2007

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

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

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

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

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

Section 2. This Act is effective on January 1, 2009.

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