

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

555N0581

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**SB 173** - 03/01/2007

Introduced by: Senators Knudson, Abdallah, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Lintz, McCracken, McNenny, Olson (Ed), and Smidt (Orville) and Representatives Rhoden, Brunner, DeVries, Dykstra, Halverson, Hargens, Jerke, Lucas, Noem, Pederson (Gordon), Pitts, Rave, Tidemann, Turbiville, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the assessment of  
2 real property, to revise certain tax levy limitations for schools, to revise certain provisions  
3 regarding property tax levies for school districts, and to repeal the nonagricultural acreage  
4 classification.

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

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

8 Notwithstanding § 10-6-74, for the taxes payable in 2009, 2010, 2011, 2012, and 2013, the  
9 sales of property on or after November 1, 2006, where the property sells for more than one  
10 hundred fifty percent of its assessed value shall be used to value other real property. However,  
11 for the taxes payable in 2009, 2010, 2011, 2012, and 2013, no property's valuation may increase  
12 more than five percent per year because of these sales. Any such sales shall be used in a sales  
13 ratio study only as allowed in this section.



Section 2. Section 1 of this Act and § 10-6-74 are repealed on July 1, 2013.

Section 3. That § 10-6-33.24 be amended to read as follows:

10-6-33.24. Notwithstanding the provisions of chapter 10-6, agricultural land ~~may~~ shall be assessed based on its agricultural income value ~~if there are less than fifteen arms-length transactions of agricultural land during the three preceding assessment years.~~ The agricultural income value of agricultural land shall be determined on the basis of the ~~capitalized~~ annual cash rent of the agricultural land. The ~~capitalized~~ annual cash rent shall be based on data collected and analyzed pursuant to § 10-6-33.25. ~~For the purposes of this section, arms-length transactions do not include any agricultural land sales subject to the provisions of § 10-6-33.14, 10-6-33.20, or 10-6-74.~~

Section 4. That § 10-6-33.25 be amended to read as follows:

10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be determined using ~~capitalized~~ annual cash rent. The annual cash rent is the annual cash rent, excluding the average per acre tax on agricultural land, ~~determined through an analysis of arms-length rental agreements collected within the county in the three years prior to the year for which the agricultural income value is being determined~~ using cash rent information collected pursuant to § 10-6-33.16. The agricultural income value of cropland shall be based on average rents over a three-year period for cropland under natural conditions. The agricultural income value of noncropland shall be based on average rents over a three-year period for noncropland under natural conditions. ~~However, no arms-length rental agreements for irrigated land may be used to determine the annual cash rent pursuant to this section.~~ The annual cash rent shall be ~~capitalized at seven and three-fourths~~ divided by the adjustment factor of six and sixteen hundredths percent.

~~The secretary of revenue and regulation may enter into a contract for the collection of cash~~

1 ~~rent information by county. Cash rent information shall be adjusted by soil survey statistics, if~~  
2 ~~available, and pursuant to § 10-6-33.26.~~

3 However, for the taxes payable in 2009, 2010, and 2011, the total value of agricultural land  
4 within any county may not increase more than fifteen percent in any year.

5 Section 5. That § 10-6-33.16 be amended to read as follows:

6 10-6-33.16. The secretary of revenue and regulation shall specify the cash rent used to  
7 determine the agricultural income value of agricultural land. The secretary of revenue and  
8 regulation may enter into a contract for the collection of cash rent information by county. Cash  
9 rent information shall be adjusted by soil survey statistics if available.

10 Section 6. That § 10-6-33.26 be amended to read as follows:

11 10-6-33.26. The director of equalization shall annually determine the assessed value of  
12 agricultural land as defined by § 10-6-31.3. ~~Any~~ The assessed valued of agricultural land  
13 ~~assessed based on its agricultural income value pursuant to § 10-6-33.24 and 10-6-33.25 may~~  
14 ~~be value~~ adjusted by the following factors:

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

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

22 Buildings and structures, other than normally occupied dwellings on agricultural land and  
23 automobile garages or portions of buildings used as automobile garages, which are used  
24 exclusively for agricultural purposes and situated on agricultural land, are hereby specifically

classified for tax purposes as agricultural property and shall be assessed as similar nonagricultural property.

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

The agricultural income value for agricultural land as determined § 10-6-33.24 represents one hundred percent of the market value and that value shall be adjusted to where the median level of assessment represents eighty-five percent of the market value pursuant to §§ 10-3-41, 10-12-42, and 10-13-37.

Section 9. That § 10-6-33.13 be amended to read as follows:

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

- (1) Collection and tabulation of information required to determine median appraisal or sales assessment ratio, and coefficient of dispersion;
- (2) Criteria to be included in a compliance audit of assessment practices; ~~and~~
- (3) Conditions under which a certificate of compliance may be issued to a county;
- (4) Procedures for determining the valuation of agricultural buildings and structures;
- (5) Procedures for determining the valuation of dwellings on agricultural land and automobile garages or portions of buildings used as automobile garages;
- (6) Application of cropland and noncropland income values;
- (7) Soil classification standards; and
- (8) Procedures for making adjustments to the value of agricultural land pursuant to §§ 10-6-33.26 and 10-6-33.27.

Section 10. That § 13-16-7 be amended to read as follows:

13-16-7. The school board of any school district of this state may at its discretion authorize

1 an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation on  
2 the taxable valuation of the district for the capital outlay fund for assets as defined by § 13-16-6  
3 or for its obligations under a resolution, lease-purchase agreement, capital outlay certificate, or  
4 other arrangement with the Health and Educational Facilities Authority. Taxes collected  
5 pursuant to such levy may be irrevocably pledged by the school board to the payment of  
6 principal of and interest on installment purchase contracts or capital outlay certificates entered  
7 into or issued pursuant to § 13-16-6 or 13-16-6.2 or lease-purchase agreements or other  
8 arrangement with the Health and Educational Facilities Authority and, so long as any capital  
9 outlay certificates are outstanding, installment agreement payments, lease-purchase agreements,  
10 or other arrangements are unpaid, the school board of any district may be compelled by  
11 mandamus or other appropriate remedy to levy an annual tax sufficient to pay principal and  
12 interest thereon, but not to exceed the three dollars per thousand dollars of taxable valuation in  
13 any year authorized to be levied hereby.

14 For taxes payable in 2009, the total amount of revenue payable from the levy provided in  
15 this section may not increase more than the lesser of three percent or the index factor, as defined  
16 in § 10-13-38, over the maximum amount of revenue that could have been generated for the  
17 taxes payable in 2008. After applying the index factor, a school district may increase the revenue  
18 payable from taxes on real property above the limitations provided by this section by the  
19 percentage increase of value resulting from any improvements or change in use of real property,  
20 annexation, minor boundary changes, and any adjustments in taxation of real property separately  
21 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,  
22 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value. A school  
23 district may increase the revenue it receives from taxes on real property above the limit provided  
24 by this section for taxes levied to pay the principal, interest, and redemption charges on any

1 bonds issued after January 1, 2007, which are subject to referendum, scheduled payment  
2 increases on bonds and for a levy directed by the order of a court for the purpose of paying a  
3 judgment against such school district. Any school district created or reorganized after January 1,  
4 2007, is exempt from the limitation provided by this section for a period of two years  
5 immediately following its creation.

6 For taxes payable in 2010, 2011, 2012, and 2013, the total amount of revenue payable from  
7 the levy provided in this section may not increase more than the lesser of three percent or the  
8 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have  
9 been generated for the taxes payable in 2008 plus any unused index factor from the previous  
10 years. After applying the index factor, a school district may increase the revenue payable from  
11 taxes on real property above the limitations provided by this section by the percentage increase  
12 of value resulting from any improvements or change in use of real property, annexation, minor  
13 boundary changes, and any adjustments in taxation of real property separately classified and  
14 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,  
15 except § 10-6-31.4, only if assessed the same as property of equal value. A school district may  
16 increase the revenue it receives from taxes on real property above the limit provided by this  
17 section for taxes levied to pay the principal, interest, and redemption charges on any bonds  
18 issued after January 1, 2007, which are subject to referendum, scheduled payment increases on  
19 bonds and for a levy directed by the order of a court for the purpose of paying a judgment  
20 against such school district. Any school district created or reorganized after January 1, 2007, is  
21 exempt from the limitation provided by this section for a period of two years immediately  
22 following its creation.

23 For taxes payable in 2009, 2010, 2011, 2012, and 2013, the levy limitation of three dollars  
24 per thousand dollars of taxable valuation does not apply to any school district.

Section 11. That § 10-12-31.1 be amended to read as follows:

10-12-31.1. Notwithstanding other provision of law, when applying the levies for school purposes, the county director of equalization of each county shall adjust the level of assessment in that district so that the level of assessment as indicated by the most recent assessment to sales ratio as provided for in § 10-11-55 and the most recent ~~assessment to full agricultural land value ratio~~ agricultural income value as provided for in ~~§ 10-11-57~~ §10-6-33.24 in that district are equal to eighty-five percent of market value or agricultural income value. The Department of Revenue and Regulation shall provide the director of equalization of each county all of the factors of adjustment necessary for the computations required in this section.

Section 12. That § 10-6-31.3 be amended to read as follows:

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

- (1) At least thirty-three and one-third percent of the total family gross income of the owner is derived from the pursuit of agriculture as defined in subdivision (2) of this section or it is a state-owned public shooting area or a state-owned game production area as identified in § 41-4-8 and it is owned and managed by the Department of Game, Fish and Parks;
- (2) Its principal use is devoted to the raising and harvesting of crops or timber or fruit trees, the rearing, feeding, and management of farm livestock, poultry, fish, or nursery stock, the production of bees and apiary products, or horticulture, all for intended profit pursuant to subdivision (1) of this section. Agricultural real estate also includes woodland, wasteland, and pasture land, but only if the land is held and operated in conjunction with agricultural real estate as defined and it is under the same ownership;

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

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

Section 13. That § 10-6-33.3 be amended to read as follows:

10-6-33.3. Land or improvement on land within an operating unit which is not used incident to an agricultural pursuit shall be separately listed and assessed ~~and the income therefrom shall not be used in determining the values for the purposes of §§ 10-6-33.1 and 10-6-33.2.~~

Section 14. That § 10-6-33.5 be amended to read as follows:

10-6-33.5. The assessment, valuation, equalization, and taxation of school and endowment lands shall be at the same level and on the same basis as lands assessed, valued, and equalized according to ~~§§ 10-6-33.1 to 10-6-33.4~~ §§ 10-6-33.24 to 10-6-33.27, inclusive.

Section 15. That § 10-6-33.7 be amended to read as follows:

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

Section 16. That §§ 10-6-33.1, 10-6-33.4, 10-6-33.6, 10-6-33.14, 10-6-33.15, 10-6-33.17,



1 10-6-33.18, 10-6-33.19, 10-6-33.20, and 10-6-33.23 be repealed.

2 Section 17. That § 13-13-72.1 be amended to read as follows:

3 13-13-72.1. Any adjustments in the levies specified in ~~subdivision 13-13-10.1(6)~~ § 10-12-42  
4 made pursuant to §§ 13-13-71 and 13-13-72 shall be based on maintaining the relationship  
5 between statewide local effort as a percentage of statewide local need in the fiscal year  
6 succeeding the fiscal year in which the adjustment is made. In addition to the adjustments in the  
7 levies provided by this section, the levies for nonagricultural property and owner-occupied  
8 single-family dwellings shall also be adjusted as necessary to account for the additional increase  
9 in the total assessed value for nonagricultural property and owner-occupied single-family  
10 dwellings pursuant to section 1 of this Act.

11 Section 18. That § 13-37-16 be amended to read as follows:

12 13-37-16. For taxes payable in 1997, and each year thereafter, the school board shall levy  
13 no more than one dollar and forty cents per thousand dollars of taxable valuation, as a special  
14 levy in addition to all other levies authorized by law for the amount so determined to be  
15 necessary, and such levy shall be spread against all of the taxable property of the district. The  
16 proceeds derived from such levy shall constitute a school district special education fund of the  
17 district for the payment of costs for the special education of all children in need of special  
18 education or special education and related services who reside within the district pursuant to the  
19 provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this section shall be based on  
20 valuations such that the median level of assessment represents 85% of market value as  
21 determined by the Department of Revenue and Regulation. The total amount of taxes that would  
22 be generated at the levy pursuant to this section shall be considered local effort. Money in the  
23 special education fund may be expended for the purchase or lease of any assistive technology  
24 that is directly related to special education and specified in a student's individualized education

1 plan. This section does not apply to real property improvements.

2 For taxes payable in 2009, the total amount of revenue payable from the levy provided in  
3 this section may not increase more than the lesser of three percent or the index factor, as defined  
4 in § 10-13-38, over the maximum amount of revenue that could have been generated for the  
5 taxes payable in 2008. After applying the index factor, a school district may increase the revenue  
6 payable from taxes on real property above the limitations provided by this section by the  
7 percentage increase of value resulting from any improvements or change in use of real property,  
8 annexation, minor boundary changes, and any adjustments in taxation of real property separately  
9 classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A,  
10 and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

11 Any school district created or reorganized after January 1, 2007, is exempt from the  
12 limitation provided by this section for a period of two years immediately following its creation.

13 For taxes payable in 2010, 2011, 2012, and 2013, the total amount of revenue payable from  
14 the levy provided in this section may not increase more than the lesser of three percent or the  
15 index factor, as defined in § 10-13-38, over the maximum amount of revenue that could have  
16 been generated for the taxes payable in 2008 plus any unused index factor from the previous  
17 years. After applying the index factor, a school district may increase the revenue payable from  
18 taxes on real property above the limitations provided by this section by the percentage increase  
19 of value resulting from any improvements or change in use of real property, annexation, minor  
20 boundary changes, and any adjustments in taxation of real property separately classified and  
21 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,  
22 except § 10-6-31.4, only if assessed the same as property of equal value.

23 For taxes payable in 2009, 2010, 2011, 2012, and 2013, the levy limitation of one dollar and  
24 forty cents per thousand dollars of taxable valuation does not apply to any school district.

Section 19. That § 13-37-35.1 be amended to read as follows:

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

- (1) "Level one disability," a mild disability;
- (2) "Level two disability," a mental retardation or emotional disorder;
- (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury;
- (4) "Level four disability," autism;
- (5) "Level five disability," multiple disabilities;
- (5A) "Level six disability," prolonged assistance;
- (6) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;
- (7) "Local effort," shall be calculated for taxes payable in 2006 and thereafter using a special education levy of one dollar and twenty cents per one thousand dollars of valuation 2009 shall be the amount of revenue that could have been generated for the taxes payable in 2008 using a special education levy of one dollar and twenty cents per one thousand dollars of valuation increased by the lesser of three percent or the index factor, as defined in § 10-13-38, plus a percentage increase of value resulting from any improvements or change in use of real property, annexation, minor boundary changes, and any adjustments in taxation of real property separately classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

For taxes payable in 2010, 2011, 2012, and 2013, the total amount of local effort shall be increased by the lesser of three percent or the index factor, established pursuant to § 10-13-38 plus a percentage increase of value resulting from any improvements or change in use of real property, annexation, minor boundary changes, and any adjustments in taxation of real property separately classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.;

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

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

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

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

(12) "Allocation for a student with a level five disability," for the school fiscal year

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

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

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

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

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

(16) "Nonpublic average daily membership," the average number of children under age sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the previous school year plus:

(a) For nonpublic schools located within the boundaries of a public school district with an average daily membership of six hundred or more during the previous

1 school year, the average number of kindergarten through twelfth grade pupils  
2 enrolled during the previous regular school year in all nonpublic schools  
3 located within the boundaries of the public school district;

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

9 (17) "Special education average daily membership," average daily membership plus  
10 nonpublic average daily membership;

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

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

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

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

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

23 (e) Multiply the number of students having a level five disability as reported on  
24 the child count for the previous school fiscal year by the allocation for a

1 student with a level five disability;

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

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

6 (19) "Effort factor," ~~the school district's special education tax levy in dollars per thousand~~  
7 ~~divided by \$1.20 for taxes payable 2009, 2010, 2011, 2012, and 2013 shall be the~~  
8 amount of taxes payable for the year divided by the amount of local effort as  
9 calculated in subdivision (7). The maximum effort factor is 1.0.