

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

695N0041

SENATE ENGROSSED NO. **HB 1082** - 03/01/2007

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 § 13-13-10.1, of less than one
12 hundred and is not a sparse school district, as defined in § 13-13-78, shall reorganize with
13 another school district or school districts to create a newly reorganized school district with a fall
14 enrollment of one hundred or greater. Any school district that is not sparse and has a fall
15 enrollment of one hundred or less on July 1, 2007, shall prepare a plan for reorganization by



June 30, 2009. After July 1, 2007, if the fall enrollment of any school district that is not sparse falls to one hundred or below, that school district shall prepare a plan for reorganization within two years. If any such district fails to prepare a plan for reorganization by the deadline, the Board of Education shall prepare a reorganization plan for the district. However, the provisions of this section do not apply to any school district that contracts with a school district in another state pursuant to § 13-15-11 to provide for the education of children in grades seven through twelve who reside within the district, that receives no foundation program state aid distributed pursuant to chapter 13-13, and that is located at least twenty-five miles from the nearest high school in an adjoining school district in the state.

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

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

1 from a partial school district as it existed prior to consolidation for the third year after
2 consolidation.

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

5 The consolidation incentives provided for in §§ 13-13-1.4 to 13-13-1.7, inclusive, apply only
6 to those school districts whose consolidations are completed prior to July 1, 2007.

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

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

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

17 13-13-1.5. In years five to eight, inclusive, after the consolidation of two or more school
18 districts, the ~~adjusted average daily membership~~ local need for the newly formed district shall
19 be calculated as follows:

- 20 (1) Calculate ~~adjusted average daily membership~~ local need pursuant to ~~§ 13-13-10.1~~
21 § 13-13-73;
- 22 (2) Notwithstanding the four-year time limit, calculate ~~adjusted average daily~~
23 ~~membership~~ local need pursuant to § 13-13-1.4;
- 24 (3) Subtract the results of subdivision (1) from the results of subdivision (2);

(4) Multiply the results of subdivision (3) by eighty percent in the fifth year, sixty percent in the sixth year, forty percent in the seventh year, and twenty percent in the eighth year;

(5) Add the results of subdivision (1) and the results of subdivision (4).

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

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

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

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

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

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

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

4 ~~(c) For districts with an average daily membership of six hundred or more,~~
5 ~~multiply 1.0 times their average daily membership~~ "Fall enrollment," the
6 number of kindergarten through twelfth grade students enrolled in all schools
7 operated by the school district on the last Friday of September of the previous
8 school year minus the number of students for whom the district receives
9 tuition, except nonresident students who are in the care and custody of a state
10 agency and are attending a public school and students for whom tuition is
11 being paid pursuant to § 13-28-42.1, plus the number of students for whom the
12 district pays tuition. No student who is partially enrolled in a school may be
13 counted in the fall enrollment for that school unless the partial enrollment
14 exceeds fifty percent. When computing state aid to education for a school
15 district under the foundation program pursuant to § 13-13-73, the secretary of
16 the Department of Education shall use either the school district's fall
17 enrollment or the average of the school district's fall enrollment and the school
18 district's fall enrollment from the prior year, whichever is higher;

19 (1A) "Current fall enrollment," the number of kindergarten through twelfth grade students
20 enrolled in all schools operated by the school district on the last Friday of September
21 of the current school year minus the number of students for whom the district
22 receives tuition except nonresident students who are in the care and custody of a state
23 agency and are attending a public school and students for whom tuition is being paid
24 pursuant to § 13-28-42.1, plus the number of students for whom the district pays

1 tuition. No student who is partially enrolled in a school may be counted in the current
2 fall enrollment for that school unless the partial enrollment exceeds fifty percent;

3 (2) "Small school adjustment," calculated as follows:

4 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times
5 the fall enrollment and multiply the product times \$4,237.72;

6 (b) For districts with a fall enrollment of greater than two hundred, but less than
7 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that
8 result; and multiply the sum obtained times \$4,237.72;

9 (3) "Index factor," is the annual percentage change in the consumer price index for urban
10 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
11 the United States Department of Labor for the year before the year immediately
12 preceding the year of adjustment or three percent, whichever is less four and three-
13 tenths percent;

14 (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal
15 year thereafter, the per student allocation is the previous fiscal year's per student
16 allocation increased by the index factor;

17 (5) "Local need," ~~the~~ is the sum of:

18 (a) The per student allocation multiplied by the ~~adjusted average daily~~
19 membership fall enrollment; and

20 (b) The small school adjustment or the sparsity small school adjustment, if
21 applicable, multiplied by the fall enrollment;

22 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
23 applying the levies established pursuant to § 10-12-42;

24 (7) "General fund balance," the unreserved fund balance of the general fund, less general

1 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
2 out of the general fund for the previous school fiscal year;

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

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

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

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

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

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

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

19 ~~—(12)—~~ "General fund exclusions," revenue a school district has received from the imposition
20 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
21 from gifts, contributions, grants, or donations; revenue a school district has received
22 under the provisions of §§ 13-6-92 to 13-6-96, revenue a school district has received
23 as compensation for being a sparse school district under the terms of §§ 13-13-78 and
24 13-13-79, inclusive; and any revenue in the general fund set aside for a noninsurable

1 judgment.

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

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

9 Section 9. That § 13-13-72 be amended to read as follows:

10 13-13-72. It is the policy of the Legislature that the appropriation for the state aid to
11 education foundation program increase on an annual basis by the percentage increase in local
12 need on an aggregate statewide basis so that the relative proportion of local need paid by local
13 effort and state aid shall remain constant. However, the increase in the per student allocation on
14 an annual basis that exceeds three percent shall be paid solely by the state and is not a factor in
15 this policy.

16 Section 10. That § 13-13-73 be amended to read as follows:

17 13-13-73. The secretary of the Department of Education shall compute state aid to education
18 for each school district under the foundation program according to the following calculations:

19 (1) Determine each school district's ~~average daily membership~~ fall enrollment;

20 (2) To arrive at the local need per district:

21 (a) Multiply the per student allocation by the ~~adjusted average daily membership~~
22 ~~to arrive at the local need per district~~ fall enrollment;

23 (b) Multiply the small school adjustment if applicable, by the fall enrollment; and

24 (c) Add the product of subsection (a) to the product of subsection (b);

1 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
2 negative number;

3 (4) If the state aid appropriation for the general support of education is in excess of the
4 entitlement provided for in this section, the excess shall be used to fund any shortfall
5 of the appropriation as provided for in §§ 13-37-36.3 and 13-37-43. The secretary
6 shall report to the Governor by January seventh of each year, the amount of state aid
7 necessary to fully fund the general aid formula in the current year. If a shortfall in the
8 state aid appropriation for general education exists that cannot be covered by § 13-
9 37-45, the Governor shall inform the Legislature and provide a proposal to eliminate
10 the shortfall.

11 Section 11. That § 13-13-73.2 be amended to read as follows:

12 13-13-73.2. A school district's state aid for general education as calculated pursuant to § 13-
13 13-73 shall be reduced by ~~the following calculation:~~

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

16 ~~(2) Determine the lower of the general fund base percentage or the general fund balance~~
17 ~~percentage;~~

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

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

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

23 ~~(6) Add the result of (1) and the result of (5) the amount calculated by subtracting the~~
24 ~~allowable general fund balance from the general fund balance. If the result is less~~

1 than zero, the result equals zero.

2 Section 12. That § 13-13-73.3 be amended to read as follows:

3 13-13-73.3. The secretary of education shall determine the reduction in state aid to education
4 pursuant to § 13-13-73.2. The secretary of education shall distribute the amount of money so
5 determined to school districts that received state aid pursuant to chapter 13-13 on a pro rata
6 basis according to the district's ~~average daily membership~~ fall enrollment compared to the total
7 ~~average daily membership~~ fall enrollment of all districts eligible for this distribution.

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

9 13-13-78. Terms used in § 13-13-79 mean:

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

1 hundred thirty-two, is calculated as follows:

2 (a) ~~For sparse school districts with an adjusted average daily membership as~~
3 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~
4 ~~two hundred seventy-five, divide the average daily membership as defined in~~
5 ~~subdivision 13-13-10.1(1)~~ Divide the fall enrollment as defined in this Act by
6 the area of the school district in square miles;

7 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;

8 (c) Add 0.0625 to the product obtained in subsection (b); and

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

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

18 Section 14. That § 13-13-79 be amended to read as follows:

19 13-13-79. At the same time that foundation program state aid is distributed to school
20 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of
21 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~
22 ~~average daily membership calculation or the sparsity adjusted average daily membership~~
23 ~~calculation in § 13-13-78~~ the result of the calculation in either subdivision 13-13-78(2) or
24 subdivision 13-13-78(3) by the per student allocation as defined in § 13-13-10.1. However, no

1 sparse school district may receive a sparsity benefit in any year that exceeds ~~two hundred fifty~~
2 one hundred seventy-five thousand dollars.

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

4 13-13-1.2. Any records related to the reporting of ~~average daily membership~~ fall enrollment
5 of a public school district shall be subject to examination by the Department of Education at all
6 times.

7 Section 16. That § 13-13-1.3 be amended to read as follows:

8 13-13-1.3. If, in the department's examination of ~~average daily membership~~ fall enrollment,
9 it is determined that the data was overreported, the department shall recover the amount of state
10 aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the department
11 shall deposit the overpayment into the state general fund. If the overreporting occurred with the
12 intent to increase the amount of state aid received by overreporting, the ~~individual~~ person
13 responsible for the overreporting may be charged with a Class 1 misdemeanor as provided in
14 § 13-8-44, with the maximum penalty as defined in § 22-6-2.

15 Section 17. That § 13-13-1.8 be amended to read as follows:

16 13-13-1.8. ~~Students~~ No student attending the Black Hills Forest High School in Lawrence
17 County may ~~not~~ be included by any school district in its ~~average daily membership~~ fall
18 enrollment for purposes of state aid to education.

19 Section 18. That § 13-15-28 be amended to read as follows:

20 13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11
21 and sends over fifty percent of its resident students enrolled in grades for which it contracts to
22 an adjoining school district or districts located in South Dakota shall reorganize the school
23 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes
24 of this section, the number of students attending adjoining districts shall be based on ~~average~~

~~daily membership pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this Act.

This section does not apply to a school district located wholly within the boundaries of an Indian reservation.

Section 19. That § 13-28-40 be amended to read as follows:

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

Section 20. That § 13-28-49 be amended to read as follows:

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

- (1) ~~Multiply~~ Determine the nonresident district's ~~adjusted average daily membership calculated pursuant to subdivision 13-13-10.1(2) by the per student allocation as defined in subdivision 13-13-10.1(4)~~ local need pursuant to subdivision 13-13-73(2);
- (2) Divide the result of (1) by the nonresident district's ~~average daily membership calculated pursuant to subdivision 13-13-10.1(1)~~ fall enrollment as defined in this

1 Act;

2 (3) Multiply the result of (2) by the number of days the student was enrolled in the
3 nonresident district;

4 (4) Divide the result of (3) by the number of days the nonresident district was in session.

5 Section 21. That § 13-28A-7 be amended to read as follows:

6 13-28A-7. For the purposes of state aid to education distributed pursuant to chapter 13-13,
7 any student sent to South Dakota from North Dakota is included in the receiving school district's
8 ~~average daily membership~~ fall enrollment.

9 Section 22. That § 13-28A-8 be amended to read as follows:

10 13-28A-8. For the purposes of state aid to education distributed pursuant to chapter 13-13,
11 any student sent to North Dakota from South Dakota may not be included in the resident school
12 district's ~~average daily membership~~ fall enrollment.

13 Section 23. That § 12-25-6.1 be amended to read as follows:

14 12-25-6.1. The provisions of this chapter, except §§ 12-25-27 to 12-25-31, inclusive, do not
15 apply to any candidate or candidate election for judicial, municipal, or other governmental
16 subdivision offices. However, the governing body of any municipality or other governmental
17 subdivision may adopt an ordinance or resolution to make the provisions of chapter 12-25, with
18 or without amendments, applicable to municipal or other governmental subdivision elections.
19 The provisions of this chapter do apply to any candidate or candidate election for any county
20 office or school board seat in a district with ~~an average daily membership~~ a fall enrollment in
21 excess of two thousand students during the previous academic year.

22 Section 24. That § 42-7B-48.1 be amended to read as follows:

23 42-7B-48.1. Disbursements from the Gaming Commission fund shall be as set forth in § 42-
24 7B-48 until such time as the net municipal proceeds paid to the City of Deadwood equals six

1 million eight hundred thousand dollars for each year, and after payment of commission expenses
2 pursuant to subdivision 42-7B-48(2), and after payment of one hundred thousand dollars to the
3 State Historical Preservation Grant and Loan fund pursuant to subdivision 42-7B-48(4).
4 Thereafter, all remaining funds shall be distributed as follows:

- 5 (1) Seventy percent to the state general fund;
- 6 (2) Ten percent to be distributed to municipalities in Lawrence County, except the City
7 of Deadwood, pro rata according to their population;
- 8 (3) Ten percent to be distributed to school districts, pro rata based upon the previous
9 year's ~~average daily membership~~ fall enrollment, located in whole or in part, in
10 Lawrence County. For any school district located only partly in Lawrence County,
11 only that portion of the district's ~~average daily attendance~~ fall enrollment which
12 represents students residing in Lawrence County shall be considered in calculating
13 the proration required by this subdivision; and
- 14 (4) Ten percent to the City of Deadwood for deposit in the historic restoration and
15 preservation fund.

16 Section 25. That § 13-16-26 be amended to read as follows:

17 13-16-26. All or any part of a surplus of any school district fund, except the capital outlay
18 fund provided by §§ 13-16-6 to 13-16-9, inclusive, and the special education fund provided by
19 § 13-37-16 may be transferred to any other school district fund. ~~However, any~~ Only a school
20 district with a plan for reorganization that has been approved by the voters pursuant to § 13-6-47
21 may transfer all or any part of a surplus in the capital outlay fund to the general fund. Any
22 unused portion of money that has been transferred into the special education fund may be
23 transferred from the special education fund within the current fiscal year to the fund from which
24 it originated. All or any part of any school district fund may be loaned to any other school

- 1 district fund for a term not to exceed twenty-four months.