



2021 South Dakota Legislature
House Bill 1025
ENROLLED

AN ACT

ENTITLED An Act to delete or revise certain outdated language relating to education.

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

Section 1. That § 1-45-6.2 be AMENDED.

1-45-6.2. Vacancies on board--Meetings of board.

The initial term of office shall be designated by the Governor. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve only the unexpired portion of the term. The South Dakota Board of Education Standards shall meet at least four times annually. Special meetings may be held at the call of the president or, in the president's absence, a majority of the board or at the call of the secretary of the Department of Education.

Section 2. That § 1-45-27.1 be AMENDED.

1-45-27.1. Functions of planning commission transferred to secretary of education.

The functions of the Education and Cultural Affairs Planning Commission are transferred to the secretary of education.

Section 3. That § 13-6-13.1 be AMENDED.

13-6-13.1. Former school district representation areas for consolidated districts--Establishment--Election of board members.

When the reorganization plan is submitted, the school board or the electors of the district may establish school board representation areas to represent each former school district that consolidated to form the reorganized school district. Each former school district representation area shall be formed by adhering to standards of population deviance as established by judicial precedence. The former school district representation areas shall be established after an election is called and held pursuant to §§ 13-8-3 to 13-

8-5, inclusive, by a majority vote of the electors voting at the election. The former school district representation areas, if established, shall become effective January first of the following year. If former board member representation areas are established, the school board member candidate shall be a resident voter and reside within the representation area to qualify. The reorganization plan shall state whether the school board member candidates shall be elected at large or elected by the voters who reside within the representation area.

Any current board members shall serve the balance of their term. At the time of an election or vacancy, board members shall be elected or appointed in order that each representation area shall have a resident board member.

Section 4. That § 13-13-10.1 be AMENDED.

13-13-10.1. Definitions.

The education funding terms and procedures referenced in this chapter are defined as follows:

- (1) 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 fall enrollment of the receiving district when enrolled in the receiving district;
- (2) "Fall enrollment," is calculated as follows:
 - (a) Determine the number of kindergarten through twelfth grade students enrolled in all schools operated by the school district on the last Friday of September of the current school year;
 - (b) Subtract the number of students for whom the district receives tuition except for:
 - (i) Nonresident students who are in the care and custody of a state agency and are attending a public school district; and
 - (ii) Students who are being provided an education pursuant to § 13-28-11;
 - (c) Add the number of students for whom the district pays tuition.When computing state aid to education for a school district pursuant to § 13-13-73, the secretary of the Department of Education shall use the school district's fall enrollment;
- (3) "Target teacher ratio factor," is:

- (a) For school districts with a fall enrollment of two hundred or less, the target teacher ratio factor is 12;
- (b) For districts with a fall enrollment of greater than two hundred, but less than six hundred, the target teacher ratio factor is calculated as follows:
 - (1) Multiplying the fall enrollment by .00750;
 - (2) Adding 10.50 to the product of subsection (b)(1);
- (c) For districts with a fall enrollment of six hundred or greater, the target teacher ratio factor is 15.

The fall enrollment used for the determination of the target teacher ratio for a school district may not include any students residing in a residential treatment facility when the education program is operated by the school district;

- (4) "Limited English proficiency (LEP) adjustment," is calculated by multiplying 0.25 times the number of kindergarten through twelfth grade students who, in the prior school year, scored below level four on the state-administered language proficiency assessment as required in the state's consolidated state application pursuant to 20 USC § 6311(b)(7) as of January 1, 2013;
- (5) "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;
- (6) "Target teacher salary," for the school fiscal year beginning July 1, 2020 is \$51,367.47. Each school fiscal year thereafter, the target teacher salary is the previous fiscal year's target teacher salary increased by the index factor;
- (7) "Target teacher benefits," is the target teacher salary multiplied by twenty-nine percent;
- (8) "Target teacher compensation," is the sum of the target teacher salary and the target teacher benefits;
- (9) "Overhead rate," is thirty-four and ninety-three hundredths percent. Beginning in school fiscal year 2018, the overhead rate shall be adjusted to take into account the sum of the amounts that districts exceed the other revenue base amount;
- (10) "Local need," is calculated as follows:
 - (a) Divide the fall enrollment by the target teacher ratio factor;
 - (b) If applicable, divide Limited English proficiency (LEP) adjustment pursuant to subdivision (4) by the target teacher ratio factor;

- (c) Add the results of subsections (a) and (b);
 - (d) Multiply the result of subsection (c) by the target teacher compensation;
 - (e) Multiply the product of subsection (d) by the overhead rate;
 - (f) Add the products of subsections (d) and (e);
 - (g) When calculating local need at the statewide level, include the amounts set aside for costs related to technology in schools and statewide student assessments; and
 - (h) When calculating local need at the statewide level, include the amounts set aside for sparse school district benefits, calculated pursuant to §§ 13-13-78 and 13-13-79;
- (11) "Alternative per student need," is calculated as follows:
- (a) Add the total need for each school district for school fiscal year 2016, including the small school adjustment and the limited English proficiency adjustment, to the lesser of the amount of funds apportioned to each school district in the year preceding the most recently completed school fiscal year or school fiscal year 2015 pursuant to §§ 13-13-4, 23A-27-25, 10-33-24, 10-36-10, 11-7-73, 10-35-21, and 10-43-77; and
 - (b) Divide the result of (a) by the September 2015 fall enrollment, excluding any adjustments based on prior year student counts;
- (12) "Alternative local need," is the alternative per student need multiplied by the fall enrollment, excluding any adjustments based on prior year student counts;
- (13) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42. Beginning on July 1, 2017, local effort will include the amount of funds apportioned to each school district in the year preceding the most recently completed school fiscal year pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (15), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 and that exceeds the other revenue base amount;
- (14) "Other revenue base amount," for school districts not utilizing the alternative local need calculation is the amount of funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (15), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25, calculated as follows:
- (a) Beginning on July 1, 2017, equals the greatest of the amounts of the funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (15), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 for school fiscal years 2013, 2014, and 2015;

- (b) Beginning on July 1, 2018, multiply eighty percent times subsection (a);
- (c) Beginning on July 1, 2019, multiply sixty percent times subsection (a);
- (d) Beginning on July 1, 2020, multiply forty percent times subsection (a);
- (e) Beginning on July 1, 2021, multiply twenty percent times subsection (a); and
- (f) Beginning on July 1, 2022, is zero;

For school districts utilizing the alternative local need calculation, the other revenue base amount is zero until such time the school district chooses to no longer utilize the alternative local need calculation. At that time, the other revenue base amount is calculated as defined above.

For a school district created or reorganized after July 1, 2016, the other revenue base amount is the sum of the other revenue base amount for each district before reorganization, and the new school district may not utilize the alternative local need calculation.

In the case of the dissolution and annexation of a district, the other revenue base amount of the dissolved school district will be prorated based on the total number of students in the fall enrollment as defined in subdivision (2) who attend each district to which area of the dissolved district were annexed to in the first year of reorganization. The amount apportioned for each district will be added to the annexed districts' other revenue base;

- (15) "Wind energy tax revenue," any wind energy tax revenue apportioned to school districts pursuant to § 10-35-21 from a wind farm producing power for the first time before July 1, 2016, shall be considered local effort pursuant to subdivision (13) and other revenue base amount pursuant to subdivision (14). However, any wind energy tax revenue apportioned to a school district from a wind farm producing power for the first time after June 30, 2016, one hundred percent shall be retained by the school district to which the tax revenue is apportioned for the first five years of producing power, eighty percent for the sixth year, sixty percent for the seventh year, forty percent for the eighth year, twenty percent for the ninth year, and zero percent thereafter;
- (16) "Per student equivalent," for funding calculations that are determined on a per student basis, the per student equivalent is calculated as follows:
 - (a) Multiply the target teacher compensation times the sum of one plus the overhead rate; and
 - (b) Divide subsection (a) by 15;

- (17) "Monthly cash balance," the total amount of money for each month in the school district's general fund, calculated by adding all deposits made during the month to the beginning cash balance and deducting all disbursements or payments made during the month;
- (18) "General fund base percentage," is determined as follows:
- (a) Forty percent for a school district with a fall enrollment as defined in subdivision (2) of two hundred or less;
 - (b) Thirty percent for a school district with fall enrollment as defined in subdivision (2) of more than two hundred but less than six hundred; and
 - (c) Twenty-five percent for a school district with fall enrollment as defined in subdivision (2) greater than or equal to six hundred.
- When determining the general fund base percentage, the secretary of the Department of Education shall use the lesser of the school district's fall enrollment as defined in subdivision (2) for the current school year or the school district's fall enrollment from the previous two years; and
- (19) "Allowable general fund cash balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school year.

Section 5. That § 13-13-71 be AMENDED.

13-13-71. Equalizing increase in local effort with increase in need.

If local effort increases on a statewide aggregate basis by a greater percentage than local need on a statewide aggregate basis from any one year to the next, for the following year each of the levies specified in subdivision 13-13-10.1(13) shall be reduced proportionally so that the percentage increase in local effort on a statewide aggregate basis equals the percentage increase in need on a statewide aggregate basis.

Section 6. That § 13-13-73 be AMENDED.

13-13-73. Calculation of state aid for each school district.

No later than July 1, 2016, a school district shall notify the secretary of education in writing as to whether the school district's state aid is to be calculated using the alternative local need calculation. If a school district chooses the alternative local need calculation, the school district shall notify the secretary in writing no later than July first of each subsequent fiscal year as to whether to continue to use the alternative local need calculation for that fiscal year. If a school district chooses not to use the alternative local need calculation, the school district may not use that calculation in any subsequent school

year. The secretary of the Department of Education shall compute state aid to education for each school district according to the following calculations:

- (1) For school districts not utilizing the alternative local need calculation, state aid is local need as defined in § 13-13-10.1 minus local effort, or zero if the calculation is a negative number;
- (2) For school districts utilizing the alternative local need calculation, state aid is the alternative local need as defined in subdivision 13-13-10.1(12) minus local effort, or zero if the calculation is a negative number;
- (3) If the state aid appropriation for the general support of education is in excess of the entitlement provided for in this section and the entitlement provided for in § 13-13-85, the excess shall be used to fund any shortfall of the appropriation as provided for in § 13-37-36.3. The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the general aid formula in the current year. If a shortfall in the state aid appropriation for general education exists that cannot be covered by § 13-37-45, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Section 7. That § 13-13-11 be AMENDED.

13-13-11. Purpose and policy of general school aid.

It is the purpose of §§ 13-13-10.1 to 13-13-41, inclusive, to establish a procedure for the distribution of state funds to local school districts. The following subdivisions are hereby declared to be the policy of this state:

- (1) Education is a state and local function;
- (2) No one source of taxation should bear an excessive burden of the costs of education;
- (3) In order to provide reasonable equality in school tax rates among the various school districts in the state and to provide reasonable equality of educational opportunity for all the children in the state, the state shall assist in giving a basic educational opportunity to each student by contributing state aid to education funds toward the support of the student's educational program;
- (4) State aid to education funds should be distributed to school districts in accordance with the formula as provided in §§ 13-13-10.1 to 13-13-41, inclusive;
- (5) A minimum of twenty-five percent of the total general fund expenditures of the school districts of the state for the preceding school fiscal year should be distributed annually to school districts as state aid to education funding; and

- (6) No school district should be eligible to receive state aid that does not provide an educational program that meets the requirements and standards as provided in §§ 13-13-10.1 to 13-13-41, inclusive.

Section 8. That § 13-25-9 be AMENDED.

13-25-9. Authority to close or vacate school.

If any school governing body or other agency operating a school fails to comply with the order provided by § 13-25-7, and fails to demand a hearing, as is provided in § 13-25-8.1, after the time for the hearing demand has expired, or the time to comply with the order has passed, whichever is later, the state fire marshal may immediately close the school or school facility to further use or occupancy, and may vacate and place out of service the school or school building, or facility until such time as the order's requirements are fulfilled.

Section 9. That § 13-25-12 be AMENDED.

13-25-12. Fire alarm provisions--Exemption by state fire marshal.

If the state fire marshal finds that due to the remote location of the public school attendance center the response time of the local fire department makes saving the attendance center from extensive fire damage unlikely, he may exempt certain remote small public school attendance centers from § 13-25-11.

Section 10. That § 13-33A-8 be AMENDED.

13-33A-8. Immunity from liability--Administering epinephrine.

No school district, administrator, school board, school nurse, or designated school personnel that possess or make available epinephrine auto-injectors pursuant to §§ 13-33A-4 to 13-33A-8, inclusive; authorized health care provider that prescribes epinephrine auto-injectors to a school; or a health care professional that provides training pursuant to § 13-33A-7 may be held liable for any injury or related damage that results from the administration of, self-administration of, or failure to administer an epinephrine auto-injector that may constitute ordinary negligence. This immunity does not apply to an act or omission constituting gross, willful, or wanton negligence. The administration of an epinephrine auto-injector in accordance with the provisions of §§ 13-33A-4 to 13-33A-8, inclusive, does not constitute the practice of medicine. The immunity from liability provided under this section is in addition to, not in lieu of, that provided in any other law.

Section 11. That § 13-36-4 be AMENDED.

13-36-4. High school interscholastic activities--Delegation of control to association.

The school board of a public school, approved and accredited by the secretary of the Department of Education, may delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association that is voluntary and nonprofit if:

- (1) Membership in the association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title;
- (2) The constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board;
- (3) The report of any audit required by § 13-36-5 is made public on the association's website as well as the Department of Legislative Audit's website;
- (4) The association complies with the provisions of chapter 1-25 and chapter 1-27. However, the association, and its employees, meetings, and records, are afforded the same exemptions and protections as a political subdivision or public body is provided under chapter 1-25 and chapter 1-27; and
- (5) The association shall report to the Government Operations and Audit Committee annually, or at the call of the chair.

The governing body of a nonpublic school, approved and accredited by the secretary of the Department of Education, or AdvancED, or the Association of Christian Schools International (ACSI), or the Association of Classical and Christian Schools (ACCS), or Christian Schools International (CSI), or National Lutheran School Accreditation (NLSA), or Commission for Oceti Sakowin Accreditation (COSA), or Wisconsin Evangelical Lutheran Synod School Accreditation, may also delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association that is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title, and if the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school

districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

Any association that complies with this section may exercise the control, supervision, and regulation of interscholastic activities, including interscholastic athletic events of member schools. The association may promulgate reasonable uniform rules, to make decisions and to provide and enforce reasonable penalties for the violation of the rules.

Section 12. That § 13-36-14 be AMENDED.

13-36-14. Cause of action not created.

Sections 13-36-9 to 13-36-13, inclusive, do not create any liability for, or create any cause of legal action against, a school, a school district, or any officer or employee of a school or school district.

Section 13. That § 13-37-16 be AMENDED.

13-37-16. District tax levy for special education--School district special education fund.

For taxes payable in 2021, and each year thereafter, the school board shall levy no more than one dollar and sixty-eight and four-tenths cents per thousand dollars of taxable valuation, as a special levy in addition to all other levies authorized by law for the amount so determined to be necessary, and the levy shall be spread against all of the taxable property of the district. The proceeds derived from the levy shall constitute a school district special education fund of the district for the payment of costs for the special education of all children in need of special education or special education and related services who reside within the district pursuant to the provisions of §§ 13-37-8.4 to 13-37-8.10, inclusive. The levy in this section shall be based on valuations such that the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. The total amount of taxes that would be generated at the levy pursuant to this section shall be considered local effort. Money in the special education fund may be expended for the purchase or lease of any assistive technology that is directly related to special education and specified in a student's individualized education plan. This section does not apply to real property improvements.

Section 14. That § 13-37-40.1 be AMENDED.

13-37-40.1. Certification required for funding.

A school district is not eligible for funding from the money set aside in § 13-37-40 unless the school district certifies to the secretary of education that its ending special education fund balance will not exceed ten percent of its special education expenditures for the current fiscal year.

Section 15. That § 13-37-44 be AMENDED.

13-37-44. Reduction of district's aid for special education for excess balance in fund.

A school district's state aid for special education as calculated pursuant to § 13-37-36.1 shall be reduced by the amount that its ending special education fund balance exceeds twenty-five percent of its special education expenditures for the prior fiscal year or one hundred thousand dollars, whichever is greater, if the school district did not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount that its ending special education fund balance exceeds ten percent of its special education expenditures for the prior fiscal year if the school district received money set aside in § 13-37-40 during the prior fiscal year.

Section 16. That § 13-37-45 be AMENDED.

13-37-45. Allocation of undistributed appropriations.

Any funds appropriated as state aid for special education that are not distributed according to § 13-37-36.3 shall be used to fund any shortfall of the appropriation provided for in § 13-13-73. The remaining funds shall be allocated by the secretary of the Department of Education for the purposes specified in § 13-37-40. The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the special education formula in the current year. If a shortfall in the state aid appropriation for special education exists that cannot be covered by § 13-13-73, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Section 17. That § 13-42-5.1 be AMENDED.

13-42-5.1. Use of institute funds--Vouchers and warrants.

The state institute fund shall be used for the purpose of writing and publishing bulletins, accreditation rules, and materials essential to the school systems of this state, and to support activities related to school accreditation and teacher training and retention,

and as otherwise may be provided by law; and the state institute fund is hereby appropriated for such purposes and shall be paid out upon warrants drawn by the state auditor on duly itemized vouchers approved by the secretary of the Department of Education.

Section 18. That § 13-13-73.6 be AMENDED.

13-13-73.6. Increases in teacher compensation.

The Department of Education shall calculate the following for each school district:

- (1) The average teacher salary, based on data collected pursuant to §§ 13-3-51 and 13-8-47;
- (2) The increase in local need pursuant to § 13-13-10.1, excluding any effect due to change in the school district's fall enrollment and less the amount of revenue generated in school fiscal year 2016 as a percentage increase, from fiscal year 2016 to fiscal year 2017; and
- (3) The increase in average teacher compensation as a percentage increase, as defined in § 13-8-47, from fiscal year 2016 to fiscal year 2017.

For each school district, the district's increase in average teacher compensation from fiscal year 2016 to 2017 shall be equal to at least eighty-five percent of the district's increase in local need, as defined in subdivision (2), from fiscal year 2016 to fiscal year 2017 and, notwithstanding any negotiated agreement, at least eighty-five percent of the increase in state aid to general education funding the school district receives for fiscal year 2017, less the amount of revenue generated in fiscal year 2016, shall be used to increase instructional salaries and benefits for certified instructional staff.

If a district fails to comply with the requirements of this section, state aid to general education funding to the district in fiscal year 2018 shall be decreased by an amount equal to fifty percent of the amount calculated in subdivision (2). For fiscal years 2019, 2020, and 2021, if a district's average teacher compensation is less than the district's average teacher compensation in fiscal year 2017, state aid to general education funding to the district in the following fiscal year shall be reduced by an amount equal to five hundred dollars for each teacher employed in the school district.

A school district may request a waiver from any penalty imposed under this section from the School Finance Accountability Board.

Section 19. That § 13-6-85.2 be AMENDED.

13-6-85.2. Amendment, addition, or deletion of information--Time limits.

The information required as part of a petition for a minor boundary change must be final with no amendments, additions, or deletions. If the petition is amended or the information to support it is added or deleted in any way, the requirement for a school board to approve or disapprove the petition by resolution within sixty days of receipt of the petition is suspended. The sixty-day timeframe begins to run again beginning with the date of the amendment, addition, or deletion of information to the original petition.

Section 20. That § 13-19-2.1 be REPEALED.

13-19-2.1. Promissory note in anticipation of special education funds limited.

Section 21. That § 13-37-24.3 be REPEALED.

13-37-24.3. Notice of amount of entitlement.

Section 22. That § 3-23-1.1 be AMENDED.

3-23-1.1. Definitions.

Terms used in this chapter mean:

- (1) "Board member," an elected or appointed member of the governing board;
- (2) "Cooperative education service unit," a legal entity created pursuant to §§ 13-5-31 to 13-5-33, inclusive, including subcontractors, agents or assigns of the cooperative education service unit;
- (3) "Disgorgement," the act of giving up on demand or by legal compulsion something that was obtained by illegal or unethical acts; and
- (4) "School district," a school district as defined in § 13-5-1.

Section 23. That § 3-23-6 be AMENDED.

3-23-6. School districts and cooperative education service units--Officials with contract authority--Prohibitions on interest in or direct benefit from contract.

No board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars of a school district, cooperative education service unit, or jointly governed education service entity that receives money

from or through the state may have an interest in a contract nor receive a direct benefit from a contract in amount greater than five thousand dollars or multiple contracts in an amount greater than five thousand dollars with the same party within a twelve-month period to which the school district or cooperative education service unit is a party except as provided in § 3-23-8.

Section 24. That § 3-23-7 be AMENDED.

3-23-7. Officials with contract authority--Description of direct benefit from contract.

A person described in § 3-23-6 derives a direct benefit from a contract if the person, the person's spouse, or any other person with whom the person lives and commingles assets:

- (1) Is a party to or intended beneficiary of any contract held by the school district or cooperative education service unit;
- (2) Has more than a five percent ownership interest in an entity that is a party to any contract held by the school district or cooperative education service unit;
- (3) Acquires property under the contract; or
- (4) Will receive compensation, commission, promotion, or other monetary benefit directly attributable to any contract with the school district or cooperative education service unit.

Section 25. That § 3-23-7.1 be AMENDED.

3-23-7.1. Officials with contract authority--Description of interest in contract.

A person described in § 3-23-6 has an interest in a contract if the person, the person's spouse, or any other person with whom the person lives and commingles assets:

- (1) Is employed by a party to any contract with the school district or cooperative education service unit; or
- (2) Receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

Section 26. That § 3-23-7.2 be AMENDED.

3-23-7.2. Officials with contract authority--Exclusions from interest in or direct benefit from contract.

A person described in § 3-23-6 does not derive a direct benefit from or have an interest in a contract:

- (1) Based solely on the value associated with the person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the board member, business manager, chief financial officer, superintendent, or chief executive officer lives or commingles assets;
- (2) By participating in a vote or a decision in which the person's only interest arises from an act of general application;
- (3) Based on the person receiving income as an employee or independent contractor of a party with whom the school district or cooperative education service unit has a contract, unless the person receives compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;
- (4) If the contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
- (5) If the contract is subject to a public bidding process;
- (6) If the contract is with the official depository as set forth in § 6-1-3;
- (7) Based solely on the person receiving nominal income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred; or
- (8) If the contract or multiple contracts with the same party within a twelve-month period with whom the school district or cooperative education service unit contracts is in an amount less than five thousand dollars.

Section 27. That § 3-23-8 be AMENDED.

3-23-8. Officials with contract authority--Authorizing interest in or direct benefit from contract.

A school district or cooperative education service unit may authorize a person described in § 3-23-6 to derive a direct benefit from a contract if:

- (1) The person has provided full written disclosure to the agency, district, or unit governing board of all parties to the contract, the person's role in the contract, the

purpose or objective of the contract, the consideration or benefit conferred or agreed to be conferred upon each party, and the duration of the contract;

- (2) The governing board finds that the terms of the contract are fair, reasonable, and not contrary to the public interest; and
- (3) Any request for authorization or governing board action are public records. The official minutes of the governing board shall include any governing board action on each request for authorization and shall be filed with the auditor-general and attorney general.

A person described in § 3-23-6 who has an interest in a contract pursuant to § 3-23-7.1 shall disclose the existence of a contract in which the person has an interest and the person's role in the contract but no governing board authorization is required for the person to have an interest in the contract. Disclosure shall also be made at the annual reorganization meeting if the contract extends into consecutive fiscal years. The interest disclosure shall be included in the official minutes of the governing board.

Any person receiving a direct benefit from a contract and requesting an authorization pursuant to § 3-23-8 shall make the request prior to entering into any contract that requires disclosure or within forty-five days after entering into the contract that requires disclosure. Any authorization by the governing board requires no further disclosure or authorization unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure shall be made annually at the annual reorganization meeting but no new authorization is required. If the entity rejects any request for authorization, the contract is voidable and subject to disgorgement pursuant to § 3-23-9 or the person may resign from the school district or cooperative education service unit.

No board member of a school district or cooperative education service unit may participate in or vote upon a decision of a school district or cooperative education service unit relating to a matter in which the member derives a direct benefit.

Section 28. That § 3-23-8.1 be AMENDED.

3-23-8.1. Written conflict of interest policy.

Each school district or cooperative education service unit shall develop a written conflict of interest policy, including any disclosure and authorization form that includes the list of any disclosable interest in contracts or direct benefits covered by this chapter.

An Act to delete or revise certain outdated language relating to education.

I certify that the attached Act originated in the:
House as Bill No. 1025

Received at this Executive Office this ____ day of _____, 2021 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2021

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2021 at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1025
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State