

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

839W0045

HOUSE BILL NO. 1005

Introduced by: Representatives Munsterman, Conzet, and Sly and Senators Brown, Rampelberg, Sutton, and Vehle at the request of the Legislative Planning Committee

1 FOR AN ACT ENTITLED, An Act to repeal the foundation program fund and references
2 thereto.

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

4 Section 1. That § 13-13-12 be repealed.

5 ~~—13-13-12. There is hereby established the foundation program fund which shall consist of~~
6 ~~money appropriated by the State Legislature for distribution according to the provisions of~~
7 ~~§§ 13-13-10.1 to 13-13-41, inclusive, and any other source receipts which may become available~~
8 ~~to be included in this fund. All appropriations to the fund and resources of the fund shall be~~
9 ~~maintained in the custody of the state treasurer and shall be distributed to school districts as~~
10 ~~provided by §§ 13-13-10.1 to 13-13-41, inclusive.~~

11 Section 2. That § 13-1-12.1 be amended to read as follows:

12 13-1-12.1. The South Dakota Board of Education shall promulgate rules pursuant to chapter
13 1-26 to establish standards for the classification and accreditation of schools within this state,
14 to establish standards for preparation of certified personnel, to set forth procedures for



1 determining the eligibility of school districts to receive state ~~foundation aid effective January~~
2 ~~1, 1997~~ aid to education funding, to adopt policies and rules necessary to establish standards and
3 procedures for career and technical education, and to establish curriculum requirements for a
4 recommended high school program for all public and nonpublic schools within the state. The
5 recommended high school program shall include a rigorous high school curriculum in both
6 academic and career and technical courses. The requirements of the recommended program shall
7 be aligned to the academic content standards developed pursuant to § 13-3-48 and shall, at a
8 minimum, include the content standards tested pursuant to § 13-3-55.

9 Section 3. That § 13-6-97 be amended to read as follows:

10 13-6-97. Any school district that has a fall enrollment, as defined in § 13-13-10.1, of less
11 than one hundred and is not a sparse school district, as defined in § 13-13-78, shall reorganize
12 with another school district or school districts to create a newly reorganized school district with
13 a fall enrollment of one hundred or greater. After July 1, 2007, if the fall enrollment of any
14 school district that is not sparse falls to one hundred or below, that school district shall prepare
15 a plan for reorganization within two years. If any such district fails to prepare a plan for
16 reorganization by the deadline, the Board of Education shall prepare a reorganization plan for
17 the district. However, the provisions of this section do not apply to any school district that
18 receives no ~~foundation program~~ state aid distributed pursuant to chapter 13-13, and that is
19 located at least twenty-five miles from the nearest high school in an adjoining school district in
20 the state. The provisions of this section also do not apply to any school district that is a part of
21 a consortium of school districts exercising joint powers pursuant to chapter 1-24 or
22 intergovernmental cooperation in education pursuant to chapter 13-15 for the purposes stated
23 in § 13-8-1, ~~provided that~~ if any such joint powers agreement or intergovernmental cooperation
24 agreement is approved each year before the first day of July by the secretary of education. The

1 Board of Education may promulgate rules pursuant to chapter 1-26 to establish the procedures
2 and criteria for the secretary's approval of agreements pursuant to this section. The criteria shall
3 take into account any significant cost savings that may be achieved through such an agreement
4 and the educational needs of the students in the districts.

5 Section 4. That § 13-13-10.1 be amended to read as follows:

6 13-13-10.1. Terms used in this chapter mean:

7 (1) "Average daily membership," the average number of resident and nonresident
8 kindergarten through twelfth grade pupils enrolled in all schools operated by the
9 school district during the previous regular school year, minus average number of
10 pupils for whom the district receives tuition, except pupils described in subdivision
11 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the
12 average number of pupils for whom the district pays tuition;

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

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

23 (a) For districts with an average daily membership of two hundred or less,
24 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;

6 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled
7 in all schools operated by the school district on the last Friday of September of the
8 current 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 agency
10 and are attending a public school and students for whom tuition is being paid
11 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
12 tuition. When computing state aid to education for a school district ~~under the~~
13 ~~foundation program~~ pursuant to § 13-13-73, the secretary of the Department of
14 Education shall use either the school district's fall enrollment or the average of the
15 school district's fall enrollment from the previous two years, whichever is higher;

16 (2B) Repealed by SL 2010, ch 84, § 1.

17 (2C) "Small school adjustment," calculated as follows:

18 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times
19 \$4,237.72;

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

23 The determination of the small school adjustment for a school district may not
24 include any students residing in a residential treatment facility when the education

1 program is operated by the school district;

2 (2D) "Limited English proficiency (LEP) adjustment," is calculated as follows:

3 (a) Multiply 0.25 times the per student allocation; and

4 (b) Multiply the product obtained in subsection (a) times the number of
5 kindergarten through twelfth grade students who, in the prior school year,
6 scored below level four on the state-administered language proficiency
7 assessment as required in the state's consolidated state application pursuant to
8 20 USC 6311(b)(7) as of January 1, 2013;

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;

13 (4) "Per student allocation," for school fiscal year 2015 is \$4,781.14. Each school fiscal
14 year thereafter, the per student allocation is the previous fiscal year's per student
15 allocation increased by the index factor;

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

17 (a) The per student allocation multiplied by the fall enrollment;

18 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;
19 and

20 (c) The limited English proficiency (LEP) adjustment, calculated pursuant to
21 subdivision (2D), if applicable;

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 percentage," is a school district's general fund equity divided

1 by the school district's total general fund expenditures for the previous school fiscal
2 year, the quotient expressed as a percent;

3 (8) "General fund reserves," the sum of a school district's nonspendable and restricted
4 fund balances of the general fund;

5 (9) "Nonspendable fund balance," that amount of the fund balance that is not in
6 spendable form;

7 (10) "Restricted fund balance," that amount of the fund balance that has constraints on
8 how it may be used that are externally imposed or are imposed by law.

9 Section 5. That § 13-13-11 be amended to read as follows:

10 13-13-11. It is the purpose of §§ 13-13-10.1 to 13-13-41, inclusive, to establish a procedure
11 for the distribution of state funds to local school districts. The following subdivisions are hereby
12 declared to be the policy of this state:

13 (1) Education is a state and local function.

14 (2) No one source of taxation should bear an excessive burden of the costs of education.

15 (3) In order to provide reasonable equality in school tax rates among the various school
16 districts in the state and to provide reasonable equality of educational opportunity for
17 all the children in the state, the state shall assist in giving a basic educational
18 opportunity to each student by contributing ~~foundation program~~ state aid to education
19 funds toward the support of his educational program.

20 (4) ~~Foundation program state aid~~ State aid to education funds should be distributed to
21 school districts in accordance with the formula as provided in §§ 13-13-10.1 to 13-
22 13-46, inclusive.

23 (5) A minimum of twenty-five percent of the total general fund expenditures of the
24 school districts of the state for the preceding school fiscal year should be distributed

1 annually to school districts as ~~a foundation program~~ state aid to education funding.

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

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

6 13-13-13. The eligibility of a school district to share in ~~the distribution of foundation~~
7 ~~program~~ state aid to education funds shall be determined as provided by §§ 13-13-14 to 13-13-
8 19, inclusive.

9 Section 7. That § 13-13-14 be amended to read as follows:

10 13-13-14. In order to be eligible to receive ~~general support foundation program~~ state aid to
11 education funds as ~~herein~~ provided by this chapter, a school district must have operated one or
12 more attendance centers during the previous school fiscal year for the entire school term as
13 provided by law.

14 Section 8. That § 13-13-17 be amended to read as follows:

15 13-13-17. In order to be eligible to receive ~~general support foundation program~~ state aid to
16 education funds as ~~herein~~ provided by this chapter, a school district must have employed only
17 properly qualified teachers holding valid South Dakota teaching certificates qualifying such
18 teachers to teach the subjects and grades to which they were assigned during the previous school
19 fiscal year.

20 Section 9. That § 13-13-18 be amended to read as follows:

21 13-13-18. In order to be eligible to receive ~~general support foundation program~~ state aid to
22 education funds as ~~herein~~ provided by this chapter, a school district must have operated only
23 accredited public schools, as defined by the South Dakota Board of Education, during the
24 previous school fiscal year.

1 Section 10. That § 13-13-19 be amended to read as follows:

2 13-13-19. A newly reorganized school district which has become a new entity as of July first
3 of the school fiscal year in which ~~foundation-program~~ state aid to education payments are
4 distributed will be considered eligible for general support payments regardless of the
5 requirements for eligibility as set forth in §§ 13-13-14 to 13-13-18, inclusive, ~~provided~~ if it is
6 in compliance with such requirements for the school fiscal year in which it becomes a new
7 school district entity.

8 Section 11. That § 13-13-36 be amended to read as follows:

9 13-13-36. Payment of ~~foundation-program~~ state aid to education funds shall be made to
10 eligible school districts as provided by §§ 13-13-37 to 13-13-41, inclusive.

11 Section 12. That § 13-13-37.4 be amended to read as follows:

12 13-13-37.4. The secretary of the Department of Education and the South Dakota Board of
13 Education shall promulgate rules pursuant to chapter 1-26 to implement ~~the foundation-program~~
14 state aid to education funding as provided in this chapter.

15 Section 13. That § 13-13-38 be amended to read as follows:

16 13-13-38. The Department of Education shall determine on December first, or as soon
17 thereafter as practicable, of each school fiscal year the amount of ~~foundation-program~~ state aid
18 to education funds to which each school district within the state is eligible. The department shall
19 require from any county or school district officer any information which is necessary in order
20 to apportion ~~foundation-program~~ state aid to education funds. If complete and accurate
21 information is past due according to the reporting dates specified in § 13-8-47, the secretary of
22 the Department of Education on August thirtieth shall declare the school district to be fiscally
23 delinquent. The school district, unless granted an extension, shall forfeit from its entitlement one
24 hundred dollars for each day that the data is past due for seven days and two hundred dollars for

1 each day past due thereafter starting with the eighth day. Forfeited funds shall be deposited in
2 the ~~foundation program fund established by § 13-13-12~~ state general fund.

3 Section 14. That § 13-13-39 be amended to read as follows:

4 13-13-39. The Department of Education shall apportion the ~~foundation program~~ state aid
5 to education funds to each eligible school district and shall prepare such a list of apportionments
6 to be posted publicly in electronic format.

7 The state auditor shall issue the warrant to each school district when the apportionment
8 voucher is presented for the total amount of the ~~foundation program~~ state aid to education funds
9 each school district is to receive, subject to any reduction necessitated by the issuance of a
10 warrant to the health and educational facilities authority as provided ~~below~~ by this section.

11 If the Department of Education receives written notice from the Health and Educational
12 Facilities Authority of a pledge of ~~foundation program~~ state aid to education funds or other
13 amounts under Title 13 by a school district pursuant to a lease, resolution, certificate, or other
14 arrangement with the authority or any bond, certificate, note, or other obligation issued to or in
15 connection with a program sponsored by the Health and Educational Facilities Authority for
16 school districts in anticipation of funds under Title 13, the Department of Education shall deduct
17 from amounts otherwise due to a school district for the current month and the next two
18 succeeding months under the apportionment of ~~foundation program~~ state aid to education funds
19 or other amounts under Title 13 an amount sufficient to pay rentals, bonds, notes, certificates,
20 or other amounts then due but unpaid and the amount so deducted shall be paid to the authority
21 or any financial institution designated by the authority acting as a fiduciary in connection
22 therewith, all as specified by the authority. A record of the amount so pledged as security or
23 otherwise payable to the authority shall be filed with the state auditor.

24 The state auditor shall issue a warrant to the authority for the deducted amount specified by

1 the Health and Educational Facilities Authority as provided by this section. No pledge by a
2 school district of ~~foundation program~~ state aid to education funds or other amounts under Title
3 13 for any other purpose may be permitted and if made is voidable at the election of the Health
4 and Educational Facilities Authority.

5 Section 15. That § 13-13-72 be amended to read as follows:

6 13-13-72. It is the policy of the Legislature that the appropriation for ~~the~~ state aid to
7 education ~~foundation program~~ increase on an annual basis by the percentage increase in local
8 need on an aggregate statewide basis so that the relative proportion of local need paid by local
9 effort and state aid shall remain constant. For school fiscal year 2013, it is the policy of the
10 Legislature that the relative proportion of the total local need paid by state aid shall be amended
11 by adjusting the proportion of state aid to fifty-three and eight-tenths percent of the total local
12 need. However, the increase in the per student allocation on an annual basis that exceeds three
13 percent shall be paid solely by the state and is not a factor in this policy.

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

15 13-13-73. The secretary of the Department of Education shall compute state aid to education
16 for each school district ~~under the foundation program~~ according to the following calculations:

- 17 (1) Determine each school district's fall enrollment;
- 18 (2) To arrive at the local need per district:
 - 19 (a) Multiply the per student allocation by the fall enrollment;
 - 20 (b) Multiply the small school adjustment, if applicable, by the fall enrollment;
 - 21 (c) Calculate the limited English proficiency (LEP) adjustment pursuant to
22 subdivision (2D), if applicable; and
 - 23 (d) Add the product of subsection (a) to the product of subsection (b) and to the
24 calculation in subsection (c);

- 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 and the entitlement provided for in § 13-13-
5 85, the excess shall be used to fund any shortfall of the appropriation as provided for
6 in § 13-37-36.3. The secretary shall report to the Governor by January seventh of
7 each year, the amount of state aid necessary to fully fund the general aid formula in
8 the current year. If a shortfall in the state aid appropriation for general education
9 exists that cannot be covered by § 13-37-45, the Governor shall inform the
10 Legislature and provide a proposal to eliminate the shortfall.

11 Section 17. That § 13-13-79 be amended to read as follows:

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

18 Section 18. That § 13-13-85 be amended to read as follows:

19 13-13-85. The secretary of the Department of Education shall transfer on a noncash basis
20 to the executive director of the Board of Regents the amount of ~~foundation program~~ state aid
21 to education funds necessary to award jump start scholarships pursuant to §§ 13-55-47 to 13-55-
22 51, inclusive, to all students admitted into the scholarship program for that fiscal year. One-half
23 of the necessary amount shall be transferred by October fifteenth for distribution for the first
24 semester, and one-half of the necessary amount shall be transferred by March fifteenth for

1 distribution for the second semester.

2 Section 19. That § 13-19-29 be amended to read as follows:

3 13-19-29. If capital outlay certificates are issued to, or a lease-purchase agreement, or other
4 financing arrangement is entered into with the Health and Educational Facilities Authority as
5 authorized by §§ 13-13-39, 13-16-6.4, 13-16-7, 13-16-29, 13-19-27, and 13-19-28, and a school
6 district has pledged ~~foundation program funds or other~~ state aid to education funds provided
7 under Title 13 to secure its obligations under or pursuant to a lease, resolution, certificate, or
8 other arrangement with the Health and Educational Facilities Authority and there are amounts
9 due but not yet paid by a school district, no cash receipts from the collection of any taxes, from
10 ~~foundation program aid or~~ state aid under chapter 13-13 or from the collection of tuition charges
11 may be expended for any purpose except paying the amounts due under the lease, resolution,
12 certificate, or other arrangement as specified by written notice by or on behalf of the Health and
13 Educational Facilities Authority. In the event of a failure to pay amounts due the Health and
14 Educational Facilities Authority, moneys from ~~foundation program aid or~~ state aid under Title
15 13 shall first be applied to pay the amounts which are due but not yet paid to the authority, any
16 trustee acting as a fiduciary on behalf of any holders of bonds, notes, or other certificates in
17 connection with any such arrangement and any such holders. If this application is insufficient,
18 cash receipts from the collection of any pledged taxes and tuition charges shall be applied to pay
19 the amounts which are due but not yet paid to the authority, any such trustee, and any such
20 holders.

21 Section 20. That § 13-19-30 be amended to read as follows:

22 13-19-30. Any school district may enter into an agreement with the Health and Educational
23 Facilities Authority and any financial institution acting as trustee or paying agent for bonds,
24 leases, certificates, or other obligations, issued for the purpose of implementing § 13-19-29. The

1 agreement may contain such provisions as the authority deems necessary and may provide that
2 the financial institution may act as trustee for the benefit of and on behalf of the authority and
3 be held accountable as the trustee of an express trust for the application and disposition of the
4 ~~foundation program aid and~~ state aid under Title 13 and other funds or amounts pledged by any
5 school district, including the income and proceeds therefrom, solely for the uses and purposes
6 as provided in the agreement. A copy of the agreement and any revisions or supplements to it,
7 shall be filed with the secretary of the Department of Education to perfect the lien and security
8 interest of the authority in the ~~foundation program aid and~~ state aid under Title 13 and other
9 funds or amounts pledged by any school district. No filing, recording, possession, or other action
10 under the uniform commercial code or any other law of this state may be required to perfect the
11 lien and security interest of the authority. The lien and security interest of the authority is
12 deemed perfected, and the trust for the benefit of the authority so created is binding as of the
13 date when the school district makes such pledge, notwithstanding the time of the filing with the
14 secretary of the Department of Education, against all parties having prior or subsequent liens,
15 security interests, or claims of any kind in tort, in contract or otherwise.

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

17 13-28-40. An enrollment options program is established to enable any South Dakota
18 kindergarten through twelfth grade student to attend any public school that serves the student's
19 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-
20 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions
21 of §§ 13-28-40 to 13-28-47, inclusive, fall enrollment as defined in § 13-13-10.1 is used to
22 compute ~~foundation aid~~ state aid to general education and special education average daily
23 membership as defined in § 13-37-35.1 is used to determine funding for special education.

24 Section 22. That § 13-37-8.10 be amended to read as follows:

1 13-37-8.10. Payments from state and local sources received by a school district for special
2 education, including ~~minimum foundation~~ any state aid to education funds based upon tuition
3 paid for children in need as provided in chapter 13-37, shall be credited to the special education
4 fund of the school district. Any payment from federal sources received by a school district for
5 special education may be credited to either the special education fund or the capital outlay fund
6 for any equipment purchase for special education approved by the state Department of
7 Education.

8 Section 23. That § 32-3A-62 be amended to read as follows:

9 32-3A-62. Of the total revenue collected as a result of the tax imposed by this chapter, 56.25
10 percent of the total revenue shall be allocated for ~~educational purposes as prescribed in the~~
11 ~~foundation program~~ state aid to education pursuant to chapter 13-13.