

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

400W0691

## SENATE BILL NO. 191

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding capital outlay  
2 certificates and lease purchase agreements of school districts and the pledge of foundation  
3 program aid to secure such obligations.

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

5 Section 1. That § 13-19-27 be amended to read as follows:

6 13-19-27. Any school district may enter into lease-purchase agreements or other financing  
7 arrangement with or issue capital outlay certificates to that are secured by a pledge of foundation  
8 program aid in connection with a program sponsored by the Health and Educational Facilities  
9 Authority for capital improvements, the acquisition of equipment, or improvement of school  
10 facilities or other lawful purpose that the school board considers necessary or appropriate or as  
11 a result of a consolidation or proposed consolidation of one school district with another school  
12 district. ~~All such leases, capital outlay certificates, or other arrangements shall be in accordance~~  
13 ~~with the provisions of §§ 13-8-39, 13-20-1, and 13-24-10.~~

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

15 13-19-29. If capital outlay certificates are issued ~~to~~ pursuant to the program authorized by



1 § 13-19-27 or section 4 of this Act, or a lease-purchase agreement, or other financing  
2 arrangement is entered into with the Health and Educational Facilities Authority as authorized  
3 by §§ 13-13-39, 13-16-6.4, 13-16-7, 13-16-29, 13-19-27, ~~and or~~ 13-19-28, and a school district  
4 has pledged foundation program funds or other state aid provided under Title 13 to secure its  
5 obligations under or pursuant to a lease, resolution, certificate, or other arrangement ~~with the~~  
6 ~~Health and Educational Facilities Authority and there are amounts due but not yet paid by a~~  
7 ~~school district,~~ and the authority determines that a school district is delinquent in making any  
8 payments pursuant to a lease, resolution, certificate or other arrangement, then no cash receipts  
9 from the collection of any taxes, from foundation program aid or state aid under chapter 13-13  
10 or from the collection of tuition charges may be expended for any purpose except paying the  
11 amounts due ~~under~~ pursuant to the lease, resolution, certificate, or other arrangement as  
12 specified by written notice by or on behalf of the ~~Health and Educational Facilities Authority~~  
13 authority pursuant to § 13-13-39. In the such event of a failure to pay amounts due the ~~Health~~  
14 ~~and Educational Facilities Authority~~, moneys from foundation program aid or state aid under  
15 Title 13 shall ~~first~~ be applied to pay the amounts ~~which are due but not yet paid to the authority,~~  
16 any as shall be specified by the authority to the authority or any financial institution acting as  
17 any paying agent or trustee acting as a fiduciary on behalf of any holders of bonds, notes, lease  
18 purchase, capital outlay certificates, or other ~~certificates~~ obligations in connection with any such  
19 arrangement and any such holders. ~~If this application is insufficient, cash receipts from the~~  
20 ~~collection of any pledged taxes and tuition charges shall be applied to pay the amounts which~~  
21 ~~are due but not yet paid to the authority, any such trustee, and any such holders.~~

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

23 13-13-39. The Department of Education shall apportion the foundation program funds to  
24 each eligible school district and shall prepare ~~such~~ a list of apportionments to be posted publicly

1 in electronic format.

2 The state auditor shall issue the warrant to each school district when the apportionment  
3 voucher is presented for the total amount of the foundation program funds each school district  
4 is to receive, subject to any reduction necessitated by the issuance of a ~~warrant to~~ notice from  
5 ~~the health and educational facilities authority~~ Health and Educational Facilities Authority as  
6 provided ~~below~~ in this section.

7 ~~If~~ Notwithstanding the provisions of § 13-13-74 or any other law, if the ~~Department of~~  
8 ~~Education~~ department receives written notice from the ~~Health and Educational Facilities~~  
9 ~~Authority of a pledge of authority that a school district is delinquent in making any payment for~~  
10 any certificate, lease, or other obligation required by agreement with the authority in which the  
11 school district has pledged foundation program funds or other amounts under Title 13 ~~by a~~  
12 ~~school district pursuant to a lease, resolution, certificate, or other arrangement with the authority~~  
13 ~~or any bond, certificate, note, or other obligation issued to or in connection with a program~~  
14 ~~sponsored by the Health and Educational Facilities Authority for school districts in anticipation~~  
15 ~~of funds under Title 13, the Department of Education, the department~~ shall deduct from amounts  
16 otherwise due to a school district for ~~the current month and the next two succeeding months~~  
17 ~~under~~ the apportionment of foundation program funds or other amounts under Title 13 ~~an~~  
18 ~~amount sufficient~~ the amount required to pay rentals, bonds, notes, certificates, or other amounts  
19 then due but unpaid ~~and the~~. The state auditor shall issue a warrant for the full amount of the  
20 delinquency specified in the notice of the authority or a lesser amount as has been appropriated  
21 for the current fiscal year and not yet distributed pursuant to § 13-13-74. The amount so  
22 deducted shall be paid to the authority or any financial institution designated by the authority  
23 acting as a ~~fiduciary~~ paying agent or trustee on behalf of any holders of bonds, notes, lease,  
24 certificates, or other obligations in connection therewith, all as specified by the authority. A

1 record of the amount so ~~pledged as security or otherwise payable to the authority~~ deducted and  
2 a copy of the notice from the authority shall be filed with the state auditor and department.

3 ~~The state auditor shall issue a warrant to the authority for the deducted amount specified by~~  
4 ~~the Health and Educational Facilities Authority as provided by this section.~~ Any amount paid  
5 to the authority or a financial institution designated pursuant to the procedures described in this  
6 section shall be deducted from the remaining amount of foundation program aid otherwise  
7 payable to the school district under Title 13, thereby reducing the amount payable pursuant to  
8 § 13-13-74. The amount payable to the authority and any financial institution pursuant to this  
9 section in any fiscal year may not exceed the amount of foundation program aid appropriated  
10 and not yet paid to or for the benefit of a school district for the current fiscal year. No pledge  
11 by a school district of foundation program funds or other amounts under Title 13 for any other  
12 purpose may be permitted and if made is voidable at the election of the ~~Health and Educational~~  
13 ~~Facilities Authority~~ authority.

14 Section 4. That § 13-13-74 be amended to read as follows:

15 13-13-74. Except as provided in §§ 13-19-29 and 13-13-39, payment from funds provided  
16 in aid of the public schools in any school fiscal year shall be made in twelve monthly  
17 installments on or about the thirtieth of each month. For the period July first to December  
18 thirty-first, inclusive, the total of the six payments shall be one-half of local need of current  
19 school fiscal year less local effort for the period July first to December thirty-first, inclusive. For  
20 the period January first to June thirtieth, inclusive, the total of the six payments shall be one-half  
21 of local need of current school fiscal year less local effort for the period January first to June  
22 thirtieth, inclusive. Any amounts paid to the Health and Educational Facilities Authority or a  
23 financial institution designated pursuant to § 13-13-39 shall be deducted from the amounts  
24 otherwise payable in a fiscal year to a school district under this section and the department shall

1 adjust the monthly installments to be paid to the school district for the remainder of the fiscal  
2 year.

3 Section 5. That chapter 1-16A be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The authority is authorized to establish policies and procedures, in coordination with the  
6 Bureau of Finance and Management, which shall facilitate the issuance by school districts of  
7 capital outlay certificates, and the establishment of terms for lease purchase agreements that are  
8 secured by a pledge of foundation program aid as provided in §§ 13-19-27 and 13-19-29. The  
9 authority may enter into agreements with school districts, paying agents, trustees, and the state  
10 to implement the provisions of the program. The authority may provide other arrangements and  
11 procedures for determining the minimum requirements and related terms and conditions  
12 applicable to the pledge of program foundation aid and the applicable contractual provisions for  
13 providing notice and implementing the pledge and payments consistent with §§ 13-19-27, 13-  
14 19-29, and 13-13-39.

15 Section 6. That § 1-16A-76 be amended to read as follows:

16 1-16A-76. The authority, all school districts and other public bodies, and all officers or  
17 departments of the state dealing with the state or the authority pursuant to §§ 1-16A-19, 1-16A-  
18 74 to 1-16A-76, inclusive, and 13-19-1.2 are not subject to the jurisdiction of the federal  
19 bankruptcy courts or any successor thereof under the United States Constitution. Any contract,  
20 agreement, or other arrangement entered into by any or all of the school districts or other public  
21 bodies, the authority and any officers or departments of the state or the authority pursuant to this  
22 Act or §§ 1-16A-74.1, 1-16A-19, 1-16A-74 to 1-16A-76, inclusive, or 13-19-1.2, or in  
23 anticipation of or for the securing of the issuance of tax anticipation notes by any or all of the  
24 school districts, the issuance or agreement to issue warrants or general obligation refunding

1 bonds by any or all of the school districts, the agreement by the authority and the school district  
2 or any officers or department of the state to purchase any or all of such notes, warrants, or  
3 general obligation refunding bonds or any related or similar agreement for the benefit of  
4 investors or any other third party or parties shall be valid, binding and enforceable when made  
5 in writing duly signed by the appropriate officers. All such agreements and other arrangements  
6 are not subject to disavowal, disaffirmance, cancellation, or avoidance by reason of insolvency  
7 of any party, lack of consideration or any other fact, occurrence or rule of law.

8 Section 7. That chapter 1-16A be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 No capital outlay certificate issued or lease purchase agreement entered into as part of a  
11 program sponsored by the authority or secured by a pledge of program foundation aid may be  
12 or become a lien, charge, or liability against the state or the authority, nor against the property  
13 or funds of the state or the authority within the meaning of the Constitution or laws of South  
14 Dakota.

15 Section 8. That chapter 1-16A be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The state pledges to and agrees with the holders of capital outlay certificates issued or any  
18 lease purchase agreement as part of a program sponsored by the Health and Educational  
19 Facilities Authority or secured by a pledge of program foundation aid that the state will not limit  
20 or alter the pledge of program foundation aid or the provision of this section governing the  
21 pledge or the terms provided in §§ 13-19-27, 13-19-29, and 13-13-39, inclusive, so as to impair  
22 the terms of any contract made by the school district, the state, or the authority. The school  
23 district, state, or authority may not impair the rights and remedies of the holders until the capital  
24 outlay certificates or lease purchase obligation, together with interest on the certificates and

1 obligations and all costs and expenses in connection with any action or proceedings by or on  
2 behalf of the holders are fully met or discharged. In addition, the state pledges to and agrees with  
3 the holders that the state may not limit or alter the basis on which program foundation aid  
4 pledged under the authority of any provision of this Act are to be paid to the authority or any  
5 financial institution designated by the authority so as to impair the terms of the contract. The  
6 school district and authority may include the pledges and agreements of the state in any contract  
7 with the holders of capital outlay certificates issued or any lease purchase obligation secured  
8 pursuant to §§ 13-19-27, 13-19-29, and 13-13-39, inclusive, or otherwise secured by a pledge  
9 of program foundation aid.