

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

400Y0132

HOUSE BILL NO. 1011

Introduced by: The Committee on Commerce and Energy at the request of the Public
Utilities Commission

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions related to certification of
2 financial good standing of utilities.

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

4 Section 1. That § 62-5-11 be amended to read:

5 62-5-11. As used in §§ 62-5-10 to ~~62-5-17~~ 62-5-16, inclusive, an irrevocable letter of credit
6 shall be accepted only if it is clean, irrevocable, and contains an evergreen clause.

7 Terms used in §§ 62-5-10 to 62-5-16, inclusive, mean:

- 8 (1) "Clean," ~~means~~ a letter of credit that is not conditioned on the delivery of any other
9 documents or materials;
- 10 (2) "Irrevocable," ~~means~~ a letter of credit that cannot be modified or revoked without the
11 consent of the beneficiary, once the beneficiary is established;
- 12 (3) "Evergreen clause," ~~means one which~~ a clause specifically states stating that the
13 expiration of a letter of credit will not take place without a sixty-day notice by the
14 issuer. If prior notice of expiration is not given by the issuer, the letter of credit is
15 automatically extended for one year.



1 A clean irrevocable letter of credit shall be accepted only if it is in the form prescribed by
2 §§ 62-5-10 to ~~62-5-17~~ 62-5-16, inclusive, and is issued by a financial institution that is
3 authorized to engage in banking in any of the fifty states or under the laws of the United States
4 and whose business is substantially confined to banking, and ~~which~~ that has a long-term debt
5 rating by a recognized national rating agency of investment grade or better. If no long-term debt
6 rating is available, the financial institution shall have the equivalent investment grade financial
7 characteristics.

8 Section 2. That § 62-5-15 be amended to read:

9 62-5-15. Upon the secretary sending a request to renew, request to post, or request to
10 increase a security deposit to the maximum amount permitted by §§ 62-5-10 to ~~62-5-17~~ 62-5-16,
11 inclusive, a perfected security interest is created in the private self-insured's assets in favor of
12 the secretary to the extent of any then unsecured portion of the self-insured's incurred liabilities
13 for workers' compensation claims. That perfected security interest is transferred to any cash or
14 securities thereafter posted by the private self-insured with the state treasurer or other financial
15 institution and is released only upon ~~either of the following~~:

16 (1) The acceptance by the secretary of a surety bond, certificate of deposit, or irrevocable
17 letter of credit for the full amount of the incurred liabilities for the payment of
18 compensation; or

19 (2) The return of cash or securities by the secretary.

20 The private self-insured employer loses all right and title in and any right to control all assets
21 or obligations posted or placed on deposit as security. In the event of a declaration of bankruptcy
22 or insolvency by a court of competent jurisdiction the secretary may liquidate the deposit for
23 application to the self-insured employer's incurred liability.

24 Section 3. That § 62-5-17 be repealed.

1 ~~62-5-17. That any employer seeking permission to be a self-insurer, or seeking renewal of~~
2 ~~its permission to be a self-insurer who is a public utility as defined in chapter 49-34A or as a~~
3 ~~telecommunications company as defined in § 49-31-1, who is subject to rate base or price~~
4 ~~regulation by the South Dakota Public Utilities Commission may furnish to the department, on~~
5 ~~a form required by the department, a certificate of financial good standing issued by the South~~
6 ~~Dakota Public Utilities Commission. The certificate when approved by the secretary shall be~~
7 ~~deemed to constitute compliance by the employer with the requirements of the department~~
8 ~~relating to self-insurers.~~