

2020 South Dakota Legislature

House Bill 1004**AMENDMENT 1004A FOR THE INTRODUCED BILL**

1 **An Act to provide for the defense of laws by the Legislature.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **2-18-1. Defense of law by the Legislature.**

5 The Legislature may defend ~~any law~~, or intervene in the defense of ~~any law, in any~~
6 ~~civil action or proceeding in which the state is an interested party, the establishment of~~
7 ~~any legislative district under S.D. Const. Art. III, § 5.~~

8 **Section 2.** That a NEW SECTION be added:

9 **2-18-2. Employment of legal counsel by Legislature--Purposes--Process.**

10 (1) ~~The Legislature may employ legal counsel other than the attorney general if the~~
11 ~~attorney general declines to:~~

12 (a) ~~Represent the Legislature in any civil action~~~~or proceeding under § 2-18-1;~~
13 ~~or~~

14 (b) ~~File or intervene in any civil action or proceeding on behalf of the~~
15 ~~Legislature; or~~

16 (c) ~~Otherwise represent the Legislature, either house of the Legislature, any~~
17 ~~member of the Legislature who is sued in that member's official capacity,~~
18 ~~or any individual who is sued in that individual's capacity as an agent of the~~
19 ~~Legislature in any court of this state or of the United States.~~

20 (2) ~~Employment of legal counsel under this section must be authorized by:~~

21 (a) ~~A vote of a majority of the members of the Executive Board of the~~
22 ~~Legislative Research Council; or~~

23 (b) ~~Concurrent resolution adopted by both houses of the Legislature.~~

1 **Section 3. That a NEW SECTION be added:**

2 ~~Employment of legal counsel by each house of the Legislature--Purposes--Process.~~

3 ~~(1) In any civil action or proceeding under § 2-18-2, each house of the Legislature may assert~~
4 ~~an independent legal position and employ legal counsel other than the attorney general to~~
5 ~~represent the respective house in the action or proceeding.~~

6 ~~(2) The speaker of the House of Representatives, in consultation with the majority leader of~~
7 ~~the House of Representatives and the minority leader of the House of Representatives, shall~~
8 ~~determine the legal position of the House of Representatives.~~

9 ~~(3) The president pro tempore of the Senate, in consultation with the majority leader of the~~
10 ~~Senate and the minority leader of the Senate, shall determine the legal position of the Senate.~~

11 ~~(4) Each house of the Legislature shall approve the employment of legal counsel under this~~
12 ~~section by resolution adopted by a majority of the members elect of the respective house.~~

13 **Section 4. That a NEW SECTION be added:**

14 ~~Employment of legal counsel by each house of the Legislature--Defense of member, agent,~~
15 ~~house.~~

16 ~~(1) The speaker of the House of Representatives may employ legal counsel other than the~~
17 ~~attorney general to defend:~~

18 ~~(a) A member of the House of Representatives who is sued in that member's capacity as a~~
19 ~~representative;~~

20 ~~(b) An individual who is sued in that individual's capacity as an agent of the House of~~
21 ~~Representatives; or~~

22 ~~(c) The House of Representatives if the House of Representatives is sued as a body.~~

23 ~~(2) The president pro tempore of the Senate may employ legal counsel other than the attorney~~
24 ~~general to defend:~~

25 ~~(a) A member of the Senate who is sued in that member's capacity as a senator;~~

26 ~~(b) An individual who is sued in that individual's capacity as an agent of the Senate; or~~

1 ~~(c) The Senate if the Senate is sued as a body.~~

2 **Section 3.** That § 4-8A-17 be AMENDED:

3 **4-8A-17. Legislative priority pilot program contingency fund created.**

4 On June 29, 2015, the state treasurer shall transfer to the legislative priority pilot
5 program contingency fund, which is hereby created, the sum of one million dollars
6 (\$1,000,000) from the South Dakota risk pool fund created by § 58-17-120. The
7 contingency funds are to be made available in accordance with the provisions of §§ 4-8A-
8 9, 4-8A-10, 4-8A-11, and 4-8A-12. The contingency funds shall be used to fund legislative
9 priority pilot programs and the cost of employment of legal counsel under § 2-18-2, ~~2-18-~~
10 ~~3, or 2-18-4.~~ Interest earned on money in the fund shall be deposited into the general
11 fund.