

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

813C0601

HOUSE BILL NO. 1215

Introduced by: Representatives Crisp and Kazmerzak and Senators Symens, Flowers, and Lange

1 FOR AN ACT ENTITLED, An Act to provide for the continuation at the state level of certain
2 federal commodity checkoff programs and to allow certain state checkoff programs to
3 temporarily suspend the collection of checkoff assessments.

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

5 Section 1. If the operations of the federal beef research and promotion program, established
6 pursuant to 7 CFR, Part 1260; the federal pork promotion, research, and consumer information
7 program established pursuant to 7 CFR, Part 1230; the federal dairy promotion program,
8 established pursuant to 7 CFR, Part 1150; or the federal soybean promotion and research
9 program established pursuant to 7CFR, Part 1220, are terminated or suspended as a result of a
10 referendum of producers of such commodities or products, a corresponding state promotion and
11 development council for the affected or product commodity is hereby established. The secretary
12 of the Department of Agriculture shall designate the name of the council and shall initiate
13 procedures for the selection of the council's initial directors as provided in this Act.

14 Section 2. Terms used in sections 1 to 26, inclusive, of this Act mean:

15 (1) "Council," the promotion and development council established pursuant to section
16 1 of this Act;

- 1 (2) "Designated commodity," the commodity to be subject to the promotion and
2 development program pursuant to section 1 of this Act;
- 3 (3) "First purchaser," any person who buys, accepts for shipment, or otherwise acquires
4 a designated commodity from a grower or producer, except any mortgagee, pledgee,
5 lienor or other person having a claim against a grower or producer if actual or
6 constructive possession of such commodity is taken as partial payment or in
7 satisfaction of such mortgage, pledge, lien or claim. However, first purchaser does not
8 include sales between growers or producers not for resale;
- 9 (4) "Grower or producer," any person who plants, raises, harvests, or produces a
10 designated commodity;
- 11 (5) "Participating grower or producer," a grower or producer who has not requested a
12 refund from the payment of assessments on designated commodity production under
13 this Act for a particular year, and any person who owns or operates an agricultural
14 producing or growing facility for a designated commodity and shares in the profits
15 and risks of loss from such operation, and who produces a designated commodity in
16 South Dakota during the current or preceding marketing year;
- 17 (6) "Secretary," the secretary of the South Dakota Department of Agriculture.

18 Section 3. Any council established pursuant to this Act shall be composed of fifteen directors
19 who shall be participating growers or producers. The directors shall be elected by participating
20 growers or producers. The secretary is an ex officio, nonvoting director of any such council.

21 Section 4. The initial directors shall be elected by the participating growers or producers
22 from each district pursuant to procedures established by this Act.

23 Section 5. An election shall be held in each district in which a director's term is to expire. The
24 election date and time shall be determined by the council but shall be between January first to
25 February fifteenth, inclusive, closest to the pending vacancy's expiration date. The election shall

1 be by official ballot, which shall be made available at the polling location. The council shall
2 designate at least one polling location in each county within the district. The principal polling
3 location in the county shall be at the county office of the Cooperative Extension Service of South
4 Dakota State University, if available, or at a place specified by the council. If only one candidate
5 is nominated in a district, no election is required in the district, and the council shall declare the
6 nominee as elected and shall provide the nominee with a certificate of election.

7 Section 6. If voting at the designated time and place would cause a hardship on any eligible
8 voter, the council shall allow for absentee voting on forms, and in a manner, prescribed in rule
9 by the council. Absentee ballots shall be returned either to the council office no later than five
10 calendar days before the day of the election or to the polling location before the close of the
11 polls. The council shall ensure that any absentee ballot it has received within the deadline
12 specified in this section is delivered to the appropriate polling place before the close of the polls.
13 No absentee ballot that is received at the polling place after the close of the polls may be counted
14 in the election results.

15 Section 7. To be eligible to vote in a district election, a participating grower or producer shall
16 sign a participating grower or producer affidavit at the time of voting. A husband and wife, a
17 landlord and tenant, and a landowner and purchaser under a contract for deed which is of record
18 in the office of the register of deeds in the county where the real property is situated are each
19 entitled to vote for director, if they meet the requirements of section 2 of this Act. No individual,
20 landlord, tenant, partnership, limited liability company, corporation, cooperative, association or
21 fiduciary may cast more than one vote per election even if operations are carried on in more than
22 one council district. A participating grower or producer may vote only in the council district in
23 which the participating grower or producer resides. A partnership, limited liability company,
24 corporation, cooperative or association resides in the council district where its principal place
25 of business is located. A partnership, limited liability company, corporation, cooperative or

1 association shall attach a written authorization to the participating grower or producer affidavit
2 which indicates that the person casting the vote has been authorized to do so.

3 Section 8. For the initial council, the secretary shall nominate two candidates for each
4 position as director. Additional candidates may be nominated by written petition of fifty growers.
5 Procedures governing the time and place of filing petitions shall be established and publicized by
6 the secretary. Any candidate shall be a resident grower or producer of the district from which
7 the candidate is nominated. Upon the termination or suspension of a federal program as provided
8 in section 1 of this Act, the secretary shall publish at least once, in at least one newspaper of
9 general circulation in each council district, a notice stating that the council has been established,
10 that nomination petitions for director candidates may be filed and the filing deadline for
11 nominating petitions, and that an election to select directors for the council will be held on s
12 specified date. The notice shall be published at least twenty-one days, but no more than forty
13 days, before the deadline for filing nominating petitions. The notice shall specify how nominating
14 petition forms may be obtained, the time and place for filing nominating petitions and the time
15 and place of the election. The secretary shall receive the nominations and shall call an election
16 for initial directors of the council within ninety days of the formation of a council pursuant to this
17 Act.

18 Section 9. Notice of the election for the initial directors of the council shall be given by the
19 secretary by publication in a newspaper of general circulation in each district at least five days
20 before the date of the election and in any other reasonable manner as may be determined by the
21 secretary. The notice shall set forth the period of time for voting, voting places, and such other
22 information as the secretary may deem necessary.

23 Section 10. Notice of subsequent elections for directors of the council in a district shall be
24 given by the council by publication in a newspaper of general circulation in the district and in any
25 other reasonable manner as may be determined by the council. More than one notice may be

1 published, but at least one notice shall be published at least seven days, but no more than
2 twenty-one days before the election. Any notice shall set forth the period of time for voting,
3 voting places, provision for absentee balloting and such other information as the council deems
4 necessary.

5 Section 11. The council shall publish at least once, in at least one newspaper of general
6 circulation in each council district in which a director is to be elected, a notice of the pending
7 expiration of the director's term. The notice shall be published at least twenty-one days, but no
8 more than forty days, before the deadline for filing nominating petitions. The notice shall specify
9 how nominating petition forms may be obtained, the time and place for filing nominating
10 petitions and the time and place of the election.

11 Section 12. In any election held pursuant to this Act, the candidate receiving the highest
12 number of votes in the district is elected. Director terms are for three years and no director of
13 the council may serve for more than two complete consecutive terms. The terms of office for the
14 initial directors are determined by lot. One-third of the initial directors shall serve for one year,
15 one-third of the initial directors shall serve for two years, and one-third of the initial directors
16 shall serve for three years. Directors shall take office on March first of the year of the election.

17 Section 13. After election of the initial directors, the council shall administer subsequent
18 elections for directors of the council with the assistance of the secretary. The council shall
19 appoint in each county of the district a committee of three persons to serve as election judges.
20 If the council is unable to appoint a full committee of election judges, the secretary shall appoint
21 the judges. One of the election judges shall be the South Dakota State University Cooperative
22 Extension Service agent, or acting agent, for the county, if available. The election judges are
23 responsible for ballot security and count and shall deliver the ballots, the election results, and a
24 completed certification of election form to the council office or a designated representative. The
25 election judges are also responsible for certifying that all who vote are eligible voters. The

council shall canvass the results of the election within fifteen days after certification and shall declare elected the person receiving the highest number of votes for each office. The council shall provide a certificate of election to each person declared elected.

Section 14. One director shall be elected from each of the following districts:

District Number	Counties Comprising District
I	Clay, Union, Yankton
II	Lincoln, Turner
III	McCook, Minnehaha
IV	Lake, Moody
V	Brookings, Kingsbury
VI	Codington, Deuel, Grant, Hamlin
VII	Day, Marshall, Roberts
VIII	Beadle, Clark, Spink
IX	Davison, Hanson, Miner, Sanborn
X	Bon Homme, Charles Mix, Douglas, Hutchinson
XI	Aurora, Brule, Buffalo, Jerauld, Lyman
XII	Faulk, Hand, Hyde
XIII	Campbell, Corson, Dewey, Hughes, Potter, Stanley, Sully, Walworth
XIV	Brown, Edmunds, McPherson
XV	Bennett, Butte, Custer, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Ziebach

Section 15. If a director of the council ceases to be a participating grower or producer, dies,

1 or resigns from office before the expiration of the term, the council shall appoint, subject to
2 approval by the secretary, a participating grower or producer from the district for the balance
3 of the unexpired term.

4 Section 16. The council shall annually elect a president and such other officers as are
5 necessary to administer the council. A majority of voting directors constitutes a quorum. All
6 meetings of the council shall be called by the president. However, special meetings may be called
7 by five directors of the council. The council shall adopt procedures for the calling of special
8 meetings.

9 Section 17. Moneys collected from checkoff fees shall be deposited in a special revolving
10 fund created in the state treasury and are continuously appropriated to the council. Expenditures
11 of these funds shall be made in accordance with the provisions of Title 4.

12 Section 18. The council may:

- 13 (1) Contract and cooperate with any person, organization or with any governmental
14 department or agency for market maintenance and expansion, research, education,
15 transportation and for the prevention, modification or elimination of trade barriers
16 which obstruct the free flow of the commodity and products made from the
17 commodity to market;
- 18 (2) Expend the funds collected pursuant to this chapter and appropriated for its
19 administration;
- 20 (3) Appoint, discharge, fix compensation for and prescribe the duties of such personnel
21 as it deems necessary;
- 22 (4) Accept donations of funds, property, services or other assistance from public or
23 private sources for the purpose of furthering the objectives of the council.

24 Section 19. The secretary shall promulgate rules pursuant to chapter 1-26 concerning:

- 25 (1) The procedures for obtaining a declaratory ruling;

- 1 (2) The procedures for assessments collected for the designated commodity sold to a first
- 2 purchaser;
- 3 (3) The procedures for obtaining a refund of the assessment;
- 4 (4) The procedures for collecting delinquent assessments and assessing penalties;
- 5 (5) The record keeping and reporting requirements of first purchasers; and
- 6 (6) Procedures, forms, public notices and other requirements for nominating director
- 7 candidates and for conducting and certifying elections.

8 Section 20. A refundable assessment at one-half the assessment rate that was in effect for the

9 corresponding national promotion and development council at the time of its termination or

10 suspension is imposed by the council upon the designated commodity marketed to a first

11 purchaser within the state. The assessment is due upon any identifiable lot or quantity of the

12 designated commodity. No assessment may be made until rules promulgated pursuant to sections

13 19 and 23 of this Act are in effect.

14 Section 21. Every first purchaser of the designated commodity shall collect the assessment

15 imposed by this Act by deducting the assessment from the purchase price of the designated

16 commodity subject to the assessment and purchased by the first purchaser.

17 Section 22. Any first purchaser of the designated commodity shall file an application with the

18 council on forms prescribed and furnished by the council which shall contain the name under

19 which the first purchaser is transacting business within the state, place of business, and the

20 location of loading places of the first purchaser.

21 Section 23. Any first purchaser shall keep as a part of its permanent records a record of all

22 purchases of the designated commodity, which may be examined by the council at any reasonable

23 time. Every first purchaser shall report to the council stating the quantity of the designated

24 commodity received by the first purchaser. The report and remittance of the assessment shall be

25 made at the times and in the manner prescribed by the council pursuant to administrative rules

1 promulgated pursuant to chapter 1-26.

2 Section 24. If a first purchaser fails to remit the assessment provided under this Act, the
3 council may enforce collection in any appropriate court within this state.

4 Section 25. Any grower subject to the assessment provided in this Act may, within sixty days
5 following such assessment, make application to the council for a refund of the assessment. Upon
6 the return of the refund application, accompanied by a record of the assessment by the first
7 purchaser, the grower or producer shall, within sixty days, be refunded the net amount of the
8 assessment collected. However, a grower or producer who has paid the assessment more than
9 once on the same designated commodity is entitled to a refund of the overpayment.

10 Section 26. The council shall develop and disseminate information and instructions relating
11 to the purpose of the assessment and the manner in which refunds may be claimed, and to this
12 extent shall cooperate with governmental agencies, state and federal, and private businesses
13 engaged in the purchase of the designated commodity.

14 Section 27. That chapter 38-10 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The commission may temporarily suspend the levy and collection of the promotional fee
17 established pursuant to § 38-10-22 for a period specified by the commission, not to exceed one
18 year for any such suspension period. At the end of the suspension period, the levy and collection
19 of the fee shall resume. The number of times that the commission may suspend the levy and
20 collection of the fee is not limited.

21 Section 28. That chapter 38-27 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The council may temporarily suspend the levy and collection of the assessment established
24 pursuant to § 38-27-11 for a period specified by the council, not to exceed one year for any such
25 suspension period. At the end of the suspension period, the levy and collection of the assessment

1 shall resume. The number of times that the council may suspend the levy and collection of the
2 assessment is not limited.

3 Section 29. That chapter 38-29 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The council may temporarily suspend the levy and collection of the assessment established
6 pursuant to § 38-29-8 for a period specified by the council, not to exceed one year for any such
7 suspension period. At the end of the suspension period, the levy and collection of the assessment
8 shall resume. The number of times that the council may suspend the levy and collection of the
9 assessment is not limited.

10 Section 30. That chapter 38-32 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The council may temporarily suspend the levy and collection of the assessment established
13 pursuant to § 38-32-15 for a period specified by the council, not to exceed one year for any such
14 suspension period. At the end of the suspension period, the levy and collection of the assessment
15 shall resume. The number of times that the council may suspend the levy and collection of the
16 assessment is not limited.

17 Section 31. That chapter 40-31 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The association may temporarily suspend the levy and collection of the assessment
20 established pursuant to § 40-31-9 for a period specified by the association, not to exceed one
21 year for any such suspension period. At the end of the suspension period, the levy and collection
22 of the assessment shall resume. The number of times that the association may suspend the levy
23 and collection of the assessment is not limited.