

# State of South Dakota

## SEVENTY-SIXTH SESSION LEGISLATIVE ASSEMBLY, 2001

633E0291

### SENATE BILL NO. 93

Introduced by: Senators Ham, Albers, Brosz, Brown (Arnold), Daugaard, Dennert, Diedrich (Larry), Diedrich (Elmer), Everist, Hagen, Koetzle, McCracken, McIntyre, Moore, Olson (Ed), and Vitter and Representatives Brown (Richard), Adelstein, Begalka, Broderick, Brown (Jarvis), Clark, Duenwald, Frost, Fryslie, Garnos, Gillespie, Hansen (Tom), Heineman, Hennies (Thomas), Holbeck, Hunhoff, Jaspers, Jensen, Juhnke, Konold, Lintz, Madsen, McCaulley, McCoy, Michels, Murschel, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Pummel, Rhoden, Richter, Sebert, Slaughter, Smidt, Solum, Teupel, Van Etten, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the investment of  
2 permanent school funds and to declare an emergency.

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

4 Section 1. That chapter 5-10 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 In adjusting the principal of the common school permanent fund and other educational and  
7 charitable funds by the rate of inflation pursuant to Article VIII, Section 3 of the South Dakota  
8 Constitution, the state investment council shall proceed as follows:

9 (1) The inflation adjustment period is the fiscal year, beginning July first and ending June  
10 thirtieth. The first inflation adjustment period begins on November 15, 2000, and ends  
11 on June 30, 2001. The principal shall be credited each year for the inflation adjustment

1 at the time of the common school apportionment beginning in 2002;

2 (2) The rate of inflation is based on the consumer price index prepared by the Bureau of  
3 Labor Statistics of the United States Department of Labor;

4 (3) The principal balance in each permanent school and other educational and charitable  
5 fund as of November 15, 2000, adjusted by amounts as provided by law, is the  
6 principal balance to be increased by the rate of inflation; and

7 (4) The inflation adjustment requirement shall be met using realized net capital gains. If  
8 these are not sufficient, the interest, dividends, and other income shall be used. Any  
9 excess net capital gains shall be carried forward for the following year's inflation  
10 adjustment.

11 Section 2. That § 4-5-26 be amended to read as follows:

12 4-5-26. Money made available for investment may be invested in the following classes of  
13 securities and investments and, except as provided by § 3-12-117, chapter 3-13, ~~and~~ the South  
14 Dakota Cement Plant retirement fund, and the permanent school and other educational and  
15 charitable funds, not otherwise:

16 (1) Direct and indirect obligations of the United States government;

17 (2) Agencies and instrumentalities of the United States government;

18 (3) Direct obligations of the State of South Dakota and any of its political subdivisions;

19 (4) Obligations consisting of notes, bonds, debentures, and certificates which are direct  
20 obligations of a solvent corporation or trust existing under the laws of the United  
21 States or any state thereof, provided that such investments shall be rated in the four  
22 highest classifications established by at least two standard rating services;

23 (5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan  
24 associations, building and loan associations and bankers' acceptances.

Section 3. That § 4-8-10 be amended to read as follows:

4-8-10. The commissioner of school and public lands, after any adjustments that have been made pursuant to section 1 of this Act, shall apportion the funds arising from ~~accrued~~ interest, dividends, and other income on invested funds derived from the sale of public lands apportioned to the educational, penal, and charitable institutions of the state, or from leases on such lands.

Section 4. That § 5-10-1.1 be amended to read as follows:

5-10-1.1. There is hereby created in the state treasury a fund called the Board of Regents endowed institution interest and income fund to be administered by the commissioner of school and public lands. Any investments of money in the fund shall be made by the State Investment Council. No allocations or expenditures may be made from the fund except as provided in § 5-10-1.2. The fund shall be declared a participating fund and it shall be credited for all interest, dividends, and other income earned on fund balances, in accordance with the provisions of section 1 of this Act.

Section 5. That § 5-10-6 be amended to read as follows:

5-10-6. The commissioner of school and public lands, after any adjustments that have been made pursuant to section 1 of this Act, shall make a division and apportionment of all funds derived from the leasing of school and public lands, from ~~accrued~~ interest, dividends, and other income on all invested funds derived from the sale of school and public lands, and from ~~accrued~~ interest, dividends, and other income on invested funds derived from the five percent paid to the state by the United States on sales of public lands within the state, such apportionment to be made among the counties, and the educational, penal, and charitable institutions, as provided by law.

Section 6. That § 5-10-18 be amended to read as follows:

5-10-18. The moneys of the common school permanent fund and other educational funds

shall be invested by the State Investment Council, in accordance with the provisions of § 4-5-27.

Section 7. That § 5-10-18.1 be repealed.

~~5-10-18.1. Whenever in the carefully considered judgment of the state investment officer, securities of the United States held in trust by the state as a part of the permanent school fund portfolio, can be sold below their cost, or exchanged at less than their purchase price, in order to secure the highest income compatible with safe investment, the investment officer, with the approval of the Governor as provided in S.D. Const., Art. VIII, § 12, may do so.~~

Section 8. That § 5-10-18.2 be repealed.

~~5-10-18.2. If exchange or sale and repurchase as provided in § 5-10-18.1 is made, all losses to the corpus of the fund shall be restored out of the first additional proceeds of the new investment, or if gains are realized on the exchange or sale of securities, such gains may be used to restore losses, until the entire corpus of the fund has been fully restored.~~

~~If the amount so to be restored exceeds one hundred thousand dollars, such restoration may be amortized over the period between the sale of the securities at a discount and the date of their maturity.~~

Section 9. That § 13-13-1 be amended to read as follows:

13-13-1. ~~Upon receipt of the certificate of the state treasurer as provided in § 5-10-2 the~~  
The commissioner of school and public lands, after any adjustments that have been made  
pursuant to section 1 of this Act, shall apportion the school funds as follows: ~~he the~~  
commissioner shall ascertain from the division of education the total number of resident pupils  
in average daily membership in all schools in each school district and the total number of pupils  
in average daily membership in all schools in the state, and on that basis of the school population,  
~~he the commissioner~~ shall apportion to each school district, pro rata, such share, as its population  
of resident pupils in average daily membership in schools within the school district's boundaries

1 and resident pupils attending private schools, bears to the number of pupils in average daily  
2 membership in all schools in the state. The funds to be apportioned include funds derived from  
3 the lease of school lands, the lease of public lands not apportioned to any educational, penal, or  
4 charitable institution, the ~~accrued~~ interest, dividends, and other income on invested funds derived  
5 from the sale of school lands and public lands not apportioned to any such institution, and the  
6 ~~accrued~~ interest, dividends, and other income on invested funds derived from the five percent  
7 paid by the United States on sale of public lands within the state.

8 Section 10. Whereas, this Act is necessary for the support of the state government and its  
9 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
10 force and effect from and after its passage and approval.