

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

948Q0442

SENATE APPROPRIATIONS ENGROSSED NO. **HB 1183** - 3/9/2009

Introduced by: Representatives Lust, Boomgarden, Cronin, Curd, Dreyer, Feinstein, Gosch, Jensen, Kopp, McLaughlin, Olson (Ryan), Romkema, Rounds, Sly, Thompson, Turbiville, Verchio, and Wink and Senators Haverly, Abdallah, Adelstein, Dempster, Knudson, Nelson, Rhoden, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to leverage public investments in higher education facilities
2 and grant programs with private moneys, to authorize the Board of Regents and the South
3 Dakota Building Authority to contract for construction of the Higher Education Center-West
4 River, to fund certain postsecondary education grant programs, to authorize the use of higher
5 education facilities funds to construct the new dairy manufacturing plant at South Dakota
6 State University in Brookings, and to make an appropriation therefor.

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

8 Section 1. The Board of Regents may enter into an agreement to acquire a site for the Higher
9 Education Center-West River in Rapid City, Pennington County, South Dakota, through a
10 partial donation and partial sale on the terms herein provided. The real property being described
11 as follows: that part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that
12 part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North,
13 Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South



1 Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway
2 Company in Deed Book 145, Page 192 and as shown on the plat filed in Highway Plat Book 4,
3 Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10,
4 Page 4; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in Block 1 of Heartland Retail
5 Center located in the SW1/4SW1/4 of Section 27, as shown on the plat filed in Plat Book 31,
6 Page 111; -AND- the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of Section
7 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the city of Rapid City,
8 Pennington County, South Dakota; EXCEPTING therefrom that portion of Lots 1, 2 and 3 in
9 Block 1 located in the NW1/4NW1/4 of said Section 34, and all of Lots 1 and 2 in Block 2 of
10 Heartland Retail Center and Cheyenne Boulevard, all as shown on the plat filed in Plat Book
11 31, Page 111; and EXCEPTING therefrom the East 200 feet of the NW1/4NW1/4 of said
12 Section 34 and EXCEPTING therefrom Lot H3 of the N1/2 of said Section 34, as shown on the
13 plat filed in Highway Plat Book 11, Page 162.

14 The real property has an appraised value of three million six hundred forty-five thousand
15 dollars, and it encompasses the twelve-acre tract whose donation was the subject of chapter 94
16 of the 2008 Session Laws. The Board of Regents may purchase the entire tract for two million
17 two hundred thirty-three thousand seven hundred fifty-five dollars, which sum represents the
18 value of buildable property adjoining the twelve-acre tract that will be donated. The difference
19 between the appraised value and the sale price, one million four hundred eleven thousand two
20 hundred forty-five dollars, may be recognized as a donation by the seller.

21 Section 2. There is hereby appropriated the sum of two million two hundred thirty-three
22 thousand seven hundred fifty-five dollars (\$2,233,755), or so much thereof as may be necessary,
23 of other fund expenditure authority, payable from funds donated for the purposes of sections 1
24 to 12, inclusive, of this Act, to the Board of Regents for the purchase of the land described in

1 section 1 of this Act.

2 Section 3. The South Dakota Building Authority may contract for the construction,
3 completion, furnishing, equipping, and maintaining of, including heating, air conditioning,
4 plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and
5 engineering services, and such other services or actions as may be required to construct, the
6 Higher Education Center-West River in Rapid City, Pennington County, at the estimated cost
7 of thirteen million, four hundred twenty-five thousand dollars and not to exceed fifty-four
8 thousand two hundred forty-one square feet.

9 Section 4. The South Dakota Building Authority may finance up to thirteen million, four
10 hundred twenty-five thousand dollars of the construction costs through the issuance of revenue
11 bonds, in accordance with this Act and chapter 5-12.

12 Section 5. There is hereby appropriated the sum of two million five hundred seventy-five
13 thousand dollars (\$2,575,000), or so much thereof as may be necessary, of other fund
14 expenditure authority, payable from funds donated for the purposes of sections 1 to 12,
15 inclusive, of this Act, to the Board of Regents for the construction authorized by sections 1 to
16 12, inclusive, of this Act.

17 Section 6. No indebtedness, bond, or obligation incurred or created under the authority
18 of this Act may be or may become a lien, charge, or liability against the State of South Dakota,
19 nor against the property or funds of the State of South Dakota within the meaning of the
20 Constitution or statutes of the state.

21 Section 7. The Board of Regents may make and enter into a lease agreement with the South
22 Dakota Building Authority and make rental payments under the terms thereof, pursuant to
23 chapter 5-12, from the higher education facilities fund for the purposes of sections 1 to 12,
24 inclusive, of this Act.

1 Section 8. The design and construction of the Higher Education Center-West River shall be
2 under the general supervision of the Bureau of Administration as provided in chapter 5-14. The
3 executive director of the Board of Regents and the executive secretary of the South Dakota
4 Building Authority, shall approve vouchers and the state auditor shall draw warrants to pay
5 expenditures authorized by sections 1 to 12, inclusive, of this Act.

6 Section 9. All courses offered at the Higher Education Center-West River shall be at self-
7 support tuition rates established by the Board of Regents, with the exception of nursing courses
8 through the University of South Dakota and South Dakota State University, which can be
9 offered at state-support rates if authorized by the board.

10 Section 10. Notwithstanding any other restriction in this Act to the contrary, the total project
11 cost authorized for the project identified in sections 4 and 5 of this Act may be increased by
12 donations and grants received by the Board of Regents for the purposes of sections 1 to 12,
13 inclusive, of this Act, and the Building Authority and the Board of Regents are hereby
14 authorized to expend such grants and donations for the construction, completion, furnishing,
15 equipping, and maintaining of, including heating, air conditioning, plumbing, water, sewer,
16 electric facilities, architectural and engineering services, asbestos abatement, removal of existing
17 roofing and structures, and such other services and improvements as may be required to erect.
18 However, no adjustments to any cost estimate may exceed one hundred twenty-five percent of
19 the authorized expenditure authority stated in sections 4 and 5 of this Act or one hundred ten
20 percent of the gross square footage authorized by sections 4 and 5 of this Act; provided that
21 increases in gross square footage estimates may be made only to accommodate design changes
22 needed to comply with building code requirements, to address unforeseeable structural, subsoil,
23 or environmental conditions, or to accommodate building program changes in the facility design
24 plan.

1 Section 11. For the purposes of this Act, the term, gross square footage, means the sum of
2 all areas on all floors of a building included within the outside faces of the building's exterior
3 walls, including floor penetration areas, however insignificant, for circulation and shaft areas
4 that connect one floor to another as computed by physically measuring or scaling measurements
5 from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, etc., which
6 extend beyond the wall faces. The term includes excavated basement area; mezzanines,
7 penthouses, and attics; garages; multiple floor parking structures; enclosed porches, inner or
8 outer balconies whether walled or not, if the balconies are utilized for operational functions; and
9 corridors whether walled or not, if the corridors are within the outside face lines of the building,
10 to the extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on
11 each floor through which the corridors pass. The term does not include open areas such as
12 unenclosed parking lots, playing fields, courts, and light wells, clear span areas not exceeding
13 three feet in height, or portions of upper floors eliminated by rooms or lobbies that rise above
14 single-floor height.

15 Section 12. The expenditures authorized by sections 1 to 12, inclusive, of this Act shall be
16 solely for the purposes of providing a site for the operation of instructional, research and service
17 programs delivered through institutions established by the Legislature and governed by the
18 Board of Regents. The Board of Regents may only use the property for the primary purpose of
19 education or research. It is the intent of the Board of Regents and the Eighty-fourth Legislature
20 that the Board of Regents may not without express legislative authorization:

- 21 (1) Organize the programs delivered at this site into a separate degree-granting
22 institution;
- 23 (2) Erect student residence facilities on the site;
- 24 (3) Construct facilities on the site for use as intercollegiate athletic practice or

1 competition;

2 (4) Establish intercollegiate athletic teams at the site;

3 (5) Sell any portion of the property acquired pursuant to sections 1 to 12, inclusive, of
4 this Act unless the property is appraised and advertised and offered for sale at public
5 auction. No portion of the property may be sold except at public sale and for an
6 amount less than the appraised value;

7 (6) Offer courses taught on the property at any rate other than the self-support tuition
8 rate;

9 (7) Lease for nonagricultural purposes more than ten percent of the surface area of the
10 property to third parties;

11 (8) Lease to third parties more than ten percent of the useable space within any building
12 constructed with state funds appropriated by the Legislature;

13 (9) Permit any free-standing commercial facility to be constructed on the property or any
14 commercial facility to be located within any building constructed with state funds
15 unless the commercial facility is reasonably needed to meet the convenience and
16 needs of the students and instructors using the building; or

17 (10) Establish a research park on the site.

18 Section 13. There is hereby appropriated the sum of one hundred thousand dollars
19 (\$100,000), or so much thereof as may be necessary, in other fund expenditure authority to the
20 Board of Regents to provide state student incentive grants pursuant to chapter 13-55A and
21 tuition equalization grants pursuant to chapter 13-55B. The grant program authorized by this Act
22 shall operate as a pilot program during fiscal year 2010. Notwithstanding any provision of
23 chapter 13-55A or 13-55B to the contrary, the Board of Regents shall administer the program
24 during its initial year. Grants shall be provided to qualified students in regionally-accredited

1 postsecondary schools and institutions. Funding under this section shall be provided on a
2 matching basis with federal funding under the Leveraging Educational Assistance Partnership
3 Program pursuant to the Higher Education Act of 1965, as amended to January 1, 2009, and 34
4 C.F.R. 692, Subpart A, as amended to January 1, 2009.

5 Section 14. The executive director of the Board of Regents shall approve vouchers and the
6 state auditor shall draw warrants to pay expenditures authorized by section 13 of this Act.

7 Section 15. Any amounts appropriated in section 13 of this Act not lawfully expended or
8 obligated by June 30, 2010, shall revert in accordance with the procedures prescribed in chapter
9 4-8.

10 Section 16. That section 2 of chapter 93 of the 2006 Session Laws be amended to read as
11 follows:

12 Section 2. There is hereby appropriated to the Board of Regents ~~four million dollars~~
13 ~~(\$4,000,000), or so much thereof as may be necessary;~~ four million eight hundred fifty-two
14 thousand dollars (\$4,852,000) from private donations and grants received by South Dakota State
15 University and one million dollars (\$1,000,000) from the higher education facilities fund, or so
16 much thereof as may be necessary, to construct the facility described in section 1 of this Act.