

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

624E0549 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. SB 210 - 02/08/2001

Introduced by: Senators Diedrich (Larry), Daugaard, Hutmacher, Olson (Ed), Reedy, Sutton (Dan), and Symens and Representatives Jaspers, Duenwald, Hanson (Gary), Jensen, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff program for swine.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Assessment," a per head fee collected on the sale of all varieties of swine in South
5 Dakota;

6 (2) "Commission," the South Dakota Pork Commission;

7 (3) "Participating seller," any person who owns or operates an agricultural producing or
8 growing facility for swine and shares in the profits and risks of loss from such
9 operation, and who produces swine in South Dakota during the current or preceding
10 marketing year, and has not requested a refund from the payment of assessments on
11 swine production under this Act for the past three years;

12 (4) "Purchaser," any person who buys, accepts for shipment, accepts for consignment,
13 brokers, order buys, or otherwise acquires swine from a producer;

14 (5) "Secretary," the secretary of the Department of Agriculture.

1 Section 2. There is hereby established the South Dakota Pork Commission. The commission
2 shall be composed of five members who:

- 3 (1) Are landowning residents of South Dakota;
- 4 (2) Are at least twenty-five years of age and residents of South Dakota;
- 5 (3) Have been actually engaged in raising swine in this state for a period of at least five
6 years;
- 7 (4) Derive a substantial portion of their income from raising swine; and
- 8 (5) Are participating sellers.

9 Section 3. The initial members shall be appointed by the secretary from a list of
10 recommendations submitted to the secretary by the pork producers of the state. The terms of
11 members are three years; the initial appointments shall be for staggered terms. The secretary is
12 an ex officio, nonvoting member of the commission.

13 Section 4. Each successor to the initial members shall be elected by the participating sellers
14 under rules promulgated by the secretary pursuant to chapter 1-26. No member may serve for
15 more than two consecutive elected terms.

16 Section 5. If a member of the commission ceases to be a participating seller or resigns from
17 office before the expiration of the member's term, the secretary shall appoint a successor for the
18 balance of the term of office vacated.

19 Section 6. The commission shall annually elect a chair and a vice chair. A majority of voting
20 members constitutes a quorum. All meetings of the commission shall be called by the chair
21 except that special meetings may be called by three members of the commission. The commission
22 shall adopt procedures for the calling of special meetings.

23 Section 7. The commission may:

- 24 (1) For purposes related to the swine industry, enter into contracts, including loans and

1 grants, and cooperate with any person, any local, state, or national organization,
2 whether public or private, or with any governmental department or agency for the
3 discovery, promotion, development, and expansion of domestic and export markets
4 and industries and for research, protection, education, transportation, and health
5 issues;

6 (2) Expend the funds collected pursuant to this Act and appropriated for its
7 administration;

8 (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such
9 personnel as it deems necessary;

10 (4) Accept donations of funds, property, services, or other assistance from public or
11 private sources for the purpose of furthering the objectives of the commission;

12 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies
13 necessary to carry out the provisions of this Act.

14 Section 8. The commission shall promulgate rules pursuant to chapter 1-26 concerning:

15 (1) The procedures for obtaining a declaratory ruling;

16 (2) The procedures for collecting assessments for swine sold to a purchaser and the
17 amount of the assessment in accordance with section 9 of this Act;

18 (3) The procedures for obtaining a refund of the assessment;

19 (4) The procedures for collecting delinquent assessments and assessing penalties;

20 (5) The record-keeping and reporting requirements of purchasers.

21 Section 9. An assessment not to exceed 0.45 percent of the market value of each swine when
22 sold is imposed by the commission upon all swine sold in the state by a South Dakota resident.

23 However the commission may enter into reciprocal agreements with other states that also have
24 a swine checkoff fee to remit the assessment to the state where the swine were grown.

1 Section 10. Any purchaser of swine shall collect the assessment imposed by this Act by
2 deducting the assessment from the purchase prices of all swine subject to the assessment.

3 Section 11. Moneys collected from checkoff fees shall be deposited in a special revolving
4 fund created in the state treasury and are continuously appropriated to the commission.

5 Section 12. Each purchaser shall keep a permanent record for three years of all purchases of
6 swine, which may be examined by the commission at any reasonable time. Each purchaser shall
7 report to the commission stating the seller and quantity of swine. The report and remittance of
8 the assessment shall be made at the times and in the manner prescribed by the commission
9 pursuant to rules promulgated by the commission pursuant to chapter 1-26.

10 Section 13. If a purchaser disputes an assessment made under this Act, the purchaser may
11 appeal to the commission, which shall conduct a hearing and resolve the matter pursuant to the
12 contested case provisions of chapter 1-26. If a purchaser fails to remit the assessment provided
13 in this Act, the commission may enforce collection in any appropriate court within this state.

14 Section 14. Within ninety days following the assessment, any seller subject to the assessment
15 provided in this Act may apply to the commission for a refund of the assessment. The refund
16 application shall be accompanied by a copy of the record of the assessment on the sale. The
17 commission shall refund the amount of the assessment collected within sixty days of receiving
18 a valid refund application.

19 Section 15. The commission, to inform the seller, shall develop and disseminate information
20 and instructions relating to the purpose of the swine assessment and manner in which refunds
21 may be claimed, and to this extent shall cooperate with government agencies, state and federal,
22 and private businesses engaged in the purchase of swine.

23 Section 16. If any national promotion, research, or consumer information program that uses
24 an assessment mechanism on the sale of swine and is under the supervision of an agency of the

1 federal government is resumed or established, the collection of assessments under this Act is
2 suspended beginning sixty days after the collection of assessments under the national program
3 begins. If the collection of assessments under this Act remains suspended for more than two
4 years, the commission is dissolved and the assets and liabilities of the commission shall be
5 managed as the Legislature shall determine. If, after the commission has been dissolved, the
6 collection of assessments by the national program ceases for a period of sixty days, new members
7 of the commission shall be appointed and subsequent commission members elected as provided
8 in this Act, and the activities of the commission shall resume.