

House Daily Reader

Tuesday, January 22, 2002

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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

555H0018

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1001 - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act
2 and to implement the uniform and simplified features proposed by the Streamlined Sales Tax
3 Project.

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

5 Section 1. As used in this Act:

6 (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;

7 (b) "Certified automated system," means software certified jointly by the states that are
8 signatories to the agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and
10 maintain a record of the transaction;

11 (c) "Certified service provider," means an agent certified jointly by the states that are
12 signatories to the agreement to perform all of the seller's sales tax functions;

13 (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability
14 company, limited liability partnership, corporation, or any other legal entity;



1 (e) "Sales tax," means the tax levied under chapter 10-45;

2 (f) "Seller," means any person making sales, leases, or rentals of personal property or
3 services;

4 (g) "State," means any state of the United States and the District of Columbia;

5 (h) "Use tax," means the tax levied under chapter 10-46.

6 Section 2. The Legislature finds that this state should enter into an agreement with one or
7 more states to simplify and modernize sales and use tax administration in order to substantially
8 reduce the burden of tax compliance for all sellers and for all types of commerce.

9 Section 3. The Department of Revenue is authorized and directed to enter into the
10 Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize
11 sales and use tax administration in order to substantially reduce the burden of tax compliance for
12 all sellers and for all types of commerce. In furtherance of the agreement, the Department of
13 Revenue is authorized to act jointly with other states that are members of the agreement to
14 establish standards for certification of a certified service provider and certified automated system
15 and establish performance standards for multistate sellers.

16 The Department of Revenue is further authorized to take other actions reasonably required
17 to implement the provisions set forth in this Act. Other actions authorized by this Act include,
18 but are not limited to, the adoption of rules and regulations and the joint procurement, with other
19 member states, of goods and services in furtherance of the cooperative agreement.

20 The secretary of revenue or the secretary's designee is authorized to represent this state
21 before the other states that are signatories to the agreement.

22 Section 4. No provision of the agreement authorized by this Act in whole or part invalidates
23 or amends any provision of the law of this state. Adoption of the agreement by this state does
24 not amend or modify any law of this state. Implementation of any condition of the agreement in

1 this state, whether adopted before, at, or after membership of this state in the agreement, must
2 be by the action of this state.

3 Section 5. The Department of Revenue shall not enter into the Streamlined Sales and Use
4 Tax Agreement unless the agreement requires each state to abide by the following requirements:

5 (a) The agreement must set restrictions to achieve over time more uniform state rates
6 through the following:

7 (1) Limiting the number of state rates.

8 (2) Limiting the application of maximums on the amount of state tax that is due on
9 a transaction.

10 (3) Limiting the application of thresholds on the application of state tax.

11 (b) The agreement must establish uniform standards for the following:

12 (1) The sourcing of transactions to taxing jurisdictions.

13 (2) The administration of exempt sales.

14 (3) The allowances a seller may take for bad debts.

15 (4) Sales and use tax returns and remittances.

16 (c) The agreement must require states to develop and adopt uniform definitions of sales
17 and use tax terms. The definitions must enable a state to preserve its ability to make
18 policy choices not inconsistent with the uniform definitions.

19 (d) The agreement must provide a central, electronic registration system that allows a
20 seller to register to collect and remit sales and use taxes for all signatory states.

21 (e) The agreement must provide that registration with the central registration system and
22 the collection of sales and use taxes in the signatory states will not be used as a factor
23 in determining whether the seller has nexus with a state for any tax.

24 (f) The agreement must provide for reduction of the burdens of complying with local

1 sales and use taxes through the following:

2 (1) Restricting variances between the state and local tax bases.

3 (2) Requiring states to administer any sales and use taxes levied by local
4 jurisdictions within the state so that sellers collecting and remitting these taxes
5 will not have to register or file returns with, remit funds to, or be subject to
6 independent audits from local taxing jurisdictions.

7 (3) Restricting the frequency of changes in the local sales and use tax rates and
8 setting effective dates for the application of local jurisdictional boundary
9 changes to local sales and use taxes.

10 (4) Providing notice of changes in local sales and use tax rates and of changes in
11 the boundaries of local taxing jurisdictions.

12 (i) The agreement must outline any monetary allowances that are to be provided by the
13 states to sellers or certified service providers.

14 (j) The agreement must require each state to certify compliance with the terms of the
15 agreement prior to joining and to maintain compliance, under the laws of the member
16 state, with all provision of the agreement while a member.

17 (k) The agreement must require each state to adopt a uniform policy for certified service
18 providers that protects the privacy of consumers and maintains the confidentiality of
19 tax information.

20 (l) The agreement must provide for the appointment of an advisory council of private
21 sector representatives and an advisory council of nonmember state representatives to
22 consult with in the administration of the agreement.

23 Section 6. The agreement authorized by this Act is an accord among individual cooperating
24 sovereigns in furtherance of their governmental functions. The agreement provides a mechanism

1 among the member states to establish and maintain a cooperative, simplified system for the
2 application and administration of sales and use taxes under the duly adopted law of each member
3 state.

4 Section 7. A certified service provider is the agent of a seller, with whom the certified service
5 provider has contracted, for the collection and remittance of sales and use taxes. As the seller's
6 agent, the certified service provider is liable for sales and use tax due each member state on all
7 sales transactions it processes for the seller except as set out in this section.

8 A seller that contracts with a certified service provider is not liable to the state for sales or
9 use tax due on transactions processed by the certified service provider unless the seller
10 misrepresented the type of items it sells or committed fraud. In the absence of probable cause to
11 believe that the seller has committed fraud or made a material misrepresentation, the seller is not
12 subject to audit on the transactions processed by the certified service provider. A seller is subject
13 to audit for transactions not processed by the certified service provider. The member states
14 acting jointly may perform a system check of the seller and review the seller's procedures to
15 determine if the certified service provider's system is functioning properly and the extent to which
16 the seller's transactions are being processed by the certified service provider.

17 A person that provides a certified automated system is responsible for the proper functioning
18 of that system and is liable to the state for underpayments of tax attributable to errors in the
19 functioning of the certified automated system. A seller that uses a certified automated system
20 remains responsible and is liable to the state for reporting and remitting tax.

21 A seller that has a proprietary system for determining the amount of tax due on transactions
22 and has signed an agreement establishing a performance standard for that system is liable for the
23 failure of the system to meet the performance standard.

24 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the

1 Uniform Sales and Use Tax Administration Act.

2 Section 9. That § 10-1-44.1 be repealed.

3 ~~—10-1-44.1. The Governor may, for the purpose of entering into a compact, negotiate and~~
4 ~~enter into a compact with officials of other states for the development, implementation, and~~
5 ~~administration of a simplified sales and use tax collection system. The compact shall conform~~
6 ~~generally to the provisions of chapter 1-24 relating to the joint exercise of governmental powers~~
7 ~~with other public agencies. The compact shall provide for the collection, reporting, auditing, and~~
8 ~~distribution of taxes imposed under chapters 10-45 and 10-46. The compact shall provide for the~~
9 ~~joint selection of persons to act as agents of the compact states for the collection and remittance~~
10 ~~of taxes imposed under chapters 10-45 and 10-46.~~

11 Section 10. That § 10-1-44.2 be repealed.

12 ~~—10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~
13 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~
14 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~
15 ~~10-46.~~

16 Section 11. That § 10-1-44.3 be amended to read as follows:

17 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~
18 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered
19 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons
20 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters
21 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

22 Section 12. That § 10-1-44.4 be repealed.

23 ~~—10-1-44.4. Any compact entered into by the Governor pursuant to § 10-1-44.1 is effective~~
24 ~~upon the Governor's signature and ratification by the Legislature.~~

1 Section 13. That § 10-45-1 be amended to read as follows:

2 10-45-1. Terms used in this chapter mean:

3 (1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or
4 fiber upon agricultural land, including dairy products, livestock, and crops. The
5 services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders,
6 and cultivators are considered agricultural purposes;

7 (2) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
8 such person with the object of gain, benefit, or advantage, either direct or indirect;

9 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
10 designated by the purchaser of tangible personal property or services including
11 transportation, shipping, postage, handling, crating, and packing;

12 (4) ~~"Gross receipts," the amount received in money, credits, property, or other money's~~
13 ~~worth in consideration of sales at retail within this state. No deduction may be taken~~
14 ~~for the cost of the property sold, the cost of materials used, the cost of labor or~~
15 ~~services purchased, amounts paid for interest or discounts, or any other expenses~~
16 ~~whatsoever, nor may any deduction be allowed for losses. Gross receipts do not~~
17 ~~include any fees or other interest imposed by a retailer for late charges on overdue~~
18 ~~accounts, no account, and nonsufficient funds checks. Discounts for any purpose~~
19 ~~allowed and taken on sales may not be included as gross receipts, nor may the sale~~
20 ~~price of property returned by customers when the full sale price thereof is refunded~~
21 ~~either in cash or by credit. If any tangible personal property is taken in trade or in a~~
22 ~~series of trades as a credit or part payment of a retail sale taxable under this chapter,~~
23 ~~and the tangible personal property taken in trade will be subject to the sales tax~~
24 ~~imposed by this chapter when sold, the credit or trade-in value allowed by the retailer~~

1 ~~may not be included as gross receipts. On all sales made under conditional sales~~
2 ~~contract, or under other forms of sale wherein the payment of the principal sum is~~
3 ~~extended over a period longer than sixty days from the date of sale, only the portion~~
4 ~~of the sale amount that has actually been received in cash by the retailer during each~~
5 ~~reporting period is subject to the tax imposed by this chapter total amount or~~
6 ~~consideration, including cash, credit, property, and services, for which tangible~~
7 ~~personal property or services are sold, leased, or rented, valued in money, whether~~
8 ~~received in money or otherwise, without any deduction for the following:~~

- 9 (a) The retailer's cost of the property or service sold;
10 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
11 transportation to the retailer, all taxes imposed on the retailer, and any other
12 expense of the retailer;
13 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for
14 any services necessary to complete the sale whether or not separately stated,
15 including delivery charges; and
16 (d) The value of exempt tangible personal property whether or not separately
17 stated on the invoice, billing, or similar document given to the purchaser where
18 taxable and exempt tangible personal property have been bundled together and
19 sold by the retailer as a single product or piece of merchandise;

20 Gross receipts do not include:

- 21 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
22 party that are allowed by a retailer and taken by a purchaser on a sale;
23 (b) Interest, financing, and carrying charges from credit extended on the sale of
24 tangible personal property or services, if the amount is separately stated on the

1 invoice, bill of sale or similar document given to the purchaser; and

2 (c) Any taxes legally imposed directly on the consumer that are separately stated

3 on the invoice, bill of sale, or similar document given to the purchaser;

4 ~~(4)~~(5) "Person," any individual, firm, copartnership, joint adventure, association, limited
5 liability company, corporation, municipal corporation, estate, trust, business trust,
6 receiver, the State of South Dakota and its political subdivisions, or any group or
7 combination acting as a unit;

8 ~~(5)~~(6) "Relief agency," the state, and county, municipality or district thereof, or any agency
9 engaged in actual relief work;

10 ~~(6)~~(7) "Retail sale" or "sale at retail," ~~the sale of either tangible personal property or~~
11 ~~services, or both, to the consumer or user thereof, or to any person for any purpose~~
12 ~~other than for resale; the sale of natural or artificial gas, electric energy, water, and~~
13 ~~communication service to consumers or users; and the sale of tickets or admissions~~
14 ~~to places of amusement or athletic contests~~ any sale, lease, or rental for any purpose
15 other than for resale, sublease, or subrent;

16 ~~(7)~~(8) "Retailer," ~~every~~ any person engaged in the business of selling tangible goods, wares,
17 or merchandise at retail, or the furnishing of gas, electricity, water, and
18 communication service, and tickets or admissions to places of amusement and athletic
19 events as provided in this chapter. ~~"Retailer"~~ The term also includes ~~every~~ any person
20 subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale
21 of tangible personal property at retail by a person who does not hold himself or herself
22 out as engaging in the business of selling such tangible personal property at retail does
23 not constitute such person a retailer;

24 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or

1 by any means whatsoever, for a consideration.

2 Section 14. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 For purposes of the tax imposed by this chapter, gross receipts do not include any fees or
5 other interest imposed by a retailer for late charges on overdue accounts, no account, or
6 nonsufficient funds checks.

7 Section 15. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 For purposes of the tax imposed by this chapter, the sale price of property returned by
10 customers are not gross receipts if the full sale price thereof is refunded either in cash or by
11 credit.

12 Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 For purposes of the tax imposed by this chapter, if any tangible personal property is taken
15 in trade or in a series of trades as a credit or part payment of a retail sale taxable under this
16 chapter, and the tangible personal property taken in trade is subject to the sales tax imposed by
17 this chapter when sold, the credit or trade-in value allowed by the retailer may not be included
18 as gross receipts.

19 Section 17. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales
22 contract, or under other forms of sale wherein the payment of the principal sum is extended over
23 a period longer than sixty days from the date of sale, only the portion of the sale amount that has
24 actually been received in cash by the retailer during each reporting period is subject to the tax

1 imposed by this chapter.

2 Section 18. That § 10-45-3 be amended to read as follows:

3 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the
4 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation
5 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;
6 ~~provided, however, that whenever.~~ However, any trade-in or exchange of used farm machinery
7 is involved in the transaction, the tax ~~shall is~~ only be due and shall be collected only on the cash
8 difference.

9 Section 19. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 There are exempted from the provisions of this chapter and the tax imposed by it, gross
12 receipts from the sale of parts or repairs on machinery or equipment which are clearly identifiable
13 as used primarily for agricultural purposes, including irrigation equipment, if the part replaces
14 a farm machinery or irrigation equipment part assigned a specific or generic part number by the
15 manufacturer of the farm machinery or irrigation equipment.

16 Section 20. That § 10-45-5 be amended to read as follows:

17 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of
18 any person from engaging in the business of leasing farm machinery or irrigation equipment used
19 for agricultural purposes and four percent upon the gross receipts of any person from engaging
20 or continuing in any of the following businesses or services in this state: abstracters; accountants;
21 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry
22 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and
23 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;
24 membership or entrance fees for the use of a facility or for the right to purchase tangible personal

1 property or services; photography; photo developing and enlarging; tire recapping; welding and
2 all repair services; cable television; and rentals of tangible personal property except leases of
3 tangible personal property between one telephone company and another telephone company,
4 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight
5 days and mobile homes ~~provided, however, that.~~ However, the specific enumeration of
6 businesses and professions made in this section does not, in any way, limit the scope and effect
7 of § 10-45-4.

8 Section 21. That § 10-45-5.3 be amended to read as follows:

9 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross
10 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in
11 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division
12 of the Office of Management and Budget, Office of the President.

13 Section 22. That § 10-45-8 be amended to read as follows:

14 10-45-8. There is imposed a tax of four percent upon the gross receipts from all sales of
15 tickets or admissions to places of amusement and athletic contests or events, except as otherwise
16 provided in this chapter.

17 Section 23. That § 10-45-24 be amended to read as follows:

18 10-45-24. Each retailer or person engaging in a business in this state whose receipts are
19 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each
20 application shall be made on a form prescribed by the secretary of revenue and shall require the
21 name under which the applicant transacts or intends to transact business, the location of each
22 business, and other information as the secretary of revenue may require. The application shall be
23 signed by the owner, if a natural person; by a member or partner, if an association or partnership;
24 or by an executive officer or a person specifically authorized by the corporation to sign the

1 application, if a corporation, to which shall be attached the written evidence of the person's
2 authority. The applicant shall have a permit for each place of business, unless the secretary of
3 revenue grants a request for a statewide permit. A statewide permit may be granted if the
4 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping
5 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified
6 in the application.

7 Any seller registering under the agreement as defined in section 1 of this Act shall be
8 registered in this state, provided this state has entered into the agreement as provided in section
9 3 of this Act. Any seller who is registered under such agreement is not required to sign the
10 registration application and may register through an agent. Any seller who is registered under
11 such agreement may cancel its registration at any time, but is liable for remitting any sales tax
12 previously collected.

13 Section 24. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 In computing the tax to be remitted under this chapter as the result of any transaction, the
16 tax amount shall be carried to the third decimal place. Amounts of tax less than one-half of one
17 cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an
18 additional cent.

19 Section 25. That § 10-45-30 be amended to read as follows:

20 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~
21 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~
22 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~
23 ~~upon the amount so collected. For purposes of this chapter, a bad debt is any portion of the~~
24 ~~purchase price of a transaction that a seller has reported as taxable and for which the seller~~

1 legally claims as a bad debt deduction for federal income tax purposes. In computing the amount
2 of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated
3 for any return. Any deduction taken or refund paid which is attributed to bad debts may not
4 include interest. Bad debts include worthless checks, worthless credit card payments, and
5 uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use
6 taxes charged on the purchase price, uncollectible amounts on property that remain in the
7 possession of the seller until the full purchase price is paid, expenses incurred in attempting to
8 collect any debt, debts sold, or assigned to third parties for collection, and repossessed property.
9 No bad debt deduction may be claimed by any person that has purchased accounts receivable for
10 collection unless the person is a successor that has acquired the entire business of the seller that
11 incurred the bad debt.

12 Bad debts shall be deducted within twelve months following the month in which the bad debt
13 has been charged off for federal income tax purposes. If a deduction is taken for a bad debt and
14 the seller subsequently collects the debt in whole or in part, the tax on the amount so collected
15 shall be paid and reported on the next return due after the collection.

16 Notwithstanding the provisions of § 10-59-22, a seller may obtain a refund of tax on any
17 amount of bad debt that exceeds the amount of taxable sales within the twelve-month period
18 defined by that bad debt. A refund under this section may not include interest.

19 If a seller's filing responsibilities have been assumed by a certified service provider as defined
20 in section 1 of this Act, the service provider may claim, on behalf of the seller, any bad debt
21 allowance provided by this section. The service provider shall credit or refund the full amount
22 of any bad debt allowance or refund received to the seller.

23 Section 26. That § 10-45-61 be amended to read as follows:

24 10-45-61. Notwithstanding § 10-54-1, a seller, who possesses a ~~resale~~ an exemption

1 certificate from a purchaser of tangible personal property or services which indicates the items
2 or services being purchased are ~~for resale in the regular course of business exempt~~, may rely on
3 the ~~resale exemption~~ certificate and not charge sales tax to the provider of the ~~resale exemption~~
4 certificate until the provider of the ~~resale exemption~~ certificate gives notice that the items or
5 services being purchased are no longer ~~for resale exempt~~ by filing a new ~~resale exemption~~
6 certificate with the seller.

7 The ~~resale exemption~~ certificate shall be signed by the purchaser, provide the purchaser's
8 name, address, and valid state sales tax license number, if applicable, and shall describe the types
9 of tangible personal property and services being purchased ~~for resale exempt~~ by the purchaser
10 ~~in the regular course of business~~. However, any person filing an electronic exemption certificate
11 is not required to sign the exemption certificate.

12 The purchaser claiming the protection of a ~~resale exemption~~ certificate is responsible for
13 assuring that the goods and services delivered thereafter are of a type covered by the ~~resale~~
14 ~~exemption~~ certificate. If there are items covered under the ~~resale exemption~~ certificate which are
15 not being purchased ~~for resale exempt~~, it is the responsibility of the purchaser when ordering
16 goods from a seller to indicate if any of the items purchased are not ~~for resale exempt~~, and the
17 appropriate sales tax shall be charged on the portion of the sale that is not ~~for resale exempt~~. A
18 seller of property or services which are generally described under the ~~resale exemption~~ certificate
19 is not responsible for the collection of the tax unless otherwise directed by the purchaser ~~or~~
20 ~~unless the state establishes that the seller did not accept the resale certificate in good faith.~~
21 ~~Absent knowledge of circumstances by the seller which would put the holder of the resale~~
22 ~~certificate upon inquiry as to its validity, good faith does not require the seller to investigate the~~
23 ~~nature of the purchaser's business.~~

24 If the purchaser later determines there is any tax due and owing, the purchaser shall remit the

1 tax owed by the purchaser to the state. If the purchaser ~~purchases for resale but later elects not~~
2 ~~to resell the goods and consumes or uses them~~ makes an exempt purchase and later determines
3 that the goods or services purchased are not exempt, the purchaser shall report the transaction
4 and pay the use tax on the next filing of ~~his~~ the purchaser's return.

5 Any purchaser who knowingly and intentionally lists on a ~~resale~~ an exemption certificate
6 personal property or services which the purchaser knows, at the time the ~~resale~~ exemption
7 certificate is filed with the seller, ~~will not be resold~~ are not exempt, or provides an invalid ~~resale~~
8 exemption certificate with the intent to evade payment of the tax, and fails to timely report the
9 same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may
10 assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest
11 may be charged on the penalty.

12 The seller shall retain the exemption certificate for a period of three years from the date it is
13 filed by the purchaser and provide the exemption certificate to the department upon request.

14 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for ~~resale~~
15 exemption certificates.

16 Section 27. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible
19 personal property and services to the location where the tangible personal property or service
20 is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the
21 location of receipt.

22 Section 28. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Registration under the agreement and collection of tax imposed under this chapter or chapter

1 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

2 Section 29. That § 10-46-1 be amended to read as follows:

3 10-46-1. Terms, as used in this chapter mean:

4 (1) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
5 such person with the object of gain, benefit or advantage either direct or indirect;

6 (2) "Delivery charges," charges by the retailer for preparation and delivery to a location
7 designated by the purchaser of tangible personal property or services including
8 transportation, shipping, postage, handling, crating, and packing;

9 (3) "Fair market value," the price at which a willing seller and willing buyer will trade.
10 Fair market value shall be determined at the time of purchase. If a public corporation
11 is supplying tangible personal property that will be used in the performance of a
12 contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition
13 also applies to chapter 10-45;

14 ~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was
15 purchased from a retailer licensed under chapter 10-45 and that retailer has included
16 the tax in the amount received from the sale;

17 ~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota
18 and includes all territory within such limits owned by or ceded to the United States
19 of America;

20 ~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner
21 or by any means whatsoever, for a consideration. A transaction, whereby the
22 possession of property is transferred but the seller retains the title as security for the
23 payment of the price, is a purchase;

24 ~~(6)~~(7) "Purchase price" or "sales price," ~~the total amount for which tangible personal~~

1 ~~property is sold, including any services that are part of the sale, valued in money,~~
2 ~~whether paid in money or otherwise, and includes any amount for which credit is~~
3 ~~given to the purchaser by the seller without any deduction therefrom on account of~~
4 ~~the cost of the property sold, the cost of materials used, labor or service cost, interest~~
5 ~~charged, losses or any other expense whatsoever. However, cash discounts allowed~~
6 ~~and taken on sales may not be included~~ shall have the same meaning as gross receipts
7 defined in subdivision 10-45-1(4);

8 ~~(7)~~(8) "Retailer," any person performing services in this state or engaged in the business of
9 selling tangible personal property for use, storage or other consumption within the
10 meaning of this chapter. However, if in the opinion of the secretary of revenue, it is
11 necessary for the efficient administration of this chapter to regard any salesmen,
12 representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors,
13 supervisors, employers, or persons under whom they operate or from whom they
14 obtain the tangible personal property sold by them irrespective of whether they are
15 making sales on their own behalf or on behalf of such dealers, distributors,
16 supervisors, employers, or persons, the secretary of revenue may so regard them and
17 may regard the dealers, distributors, supervisors, employers, or persons as retailers
18 for purposes of this chapter;

19 ~~(8)~~(9) "Retailer maintaining a place of business in the state," any retailer having or
20 maintaining within this state, directly or by a subsidiary, an office, distribution house,
21 sales house, warehouse, or other place of business, or any agents operating within the
22 state under the authority of the retailer or its subsidiary, irrespective of whether such
23 place of business or agent is located here permanently or temporarily or whether such
24 retailer or subsidiary is admitted to do business within this state pursuant to the laws

1 of the State of South Dakota granting the rights of foreign corporations to do
2 business in this state;

3 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly
4 authorized and appointed assistant, deputies, or agents of the secretary charged
5 with the administration or enforcement of this chapter;

6 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption
7 in the State of South Dakota for any purpose except sale in the regular course
8 of business;

9 ~~(11)~~(12) "Tangible personal property," tangible goods, wares, merchandise, gas, and
10 electricity if furnished or delivered to consumers or users within this state;

11 ~~(12)~~(13) "Use," the exercise of right or power over tangible personal property incidental
12 to the ownership of that property, except that it does not include the sale of
13 that property in the regular course of business. Use also includes the use of the
14 types of services, the gross receipts from the sale of which are to be included
15 in the measure of the tax imposed by chapter 10-45, and any amendments
16 thereto and the delivery or causing delivery into this state of tangible personal
17 property intended to advertise products or services or promote or facilitate
18 sales to South Dakota residents.

19 Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 There are exempted from the provisions of this chapter and the tax imposed by it, the use of
22 parts or repairs on machinery or equipment which are clearly identifiable as used primarily for
23 agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or
24 irrigation equipment part assigned a specific or generic part number by the manufacturer of the

1 farm machinery or irrigation equipment.

2 Section 31. That § 10-59-27 be amended to read as follows:

3 10-59-27. Any taxpayer who has received written advice from the Department of Revenue
4 concerning the taxability of transactions shall be allowed to rely on such advice when filing tax
5 returns. However, the taxpayer shall maintain a copy of the advice in ~~their~~ the taxpayer's business
6 records. The department may not maintain a position against a taxpayer which is inconsistent
7 with a prior written opinion issued to the same taxpayer unless rescinded by the department, by
8 a change in statutory law or reported case law, by a change in federal interpretation in cases if
9 the department's written advice was predicated upon a federal interpretation or by a change in
10 material facts or circumstances relating to the taxpayer. For the purposes of this section, written
11 advice includes municipal boundary information, and zip codes and addresses located within
12 municipalities provided by the department.

13 Section 32. That § 10-52-2 be amended to read as follows:

14 10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax
15 in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by
16 ordinance enacted by its local governing board. However, no tax may be levied on the sale, use,
17 storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax
18 conforms in all respects to the state tax on such items with the exception of the rate, and the rate
19 levied does not exceed two percent.

20 ~~—If a municipality increases its tax rate above one percent, the revenue generated from the tax~~
21 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~
22 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~
23 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~
24 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~

1 transfer to the special 911 fund authorized by ~~§ 34-45-12~~, the purchasing of fire fighting vehicles
2 and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or
3 reconstruction of streets as defined in the June, 1994, South Dakota Department of
4 Transportation Pavement Condition Survey Guide for City Streets.

5 Section 33. That § 10-52-2.1 be repealed.

6 ~~—10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~
7 ~~ratified and may continue in force; provided, that no rate, which as of July 1, 1977, is in excess~~
8 ~~of the rate specified in § 10-52-2, shall be increased.~~

9 Section 34. That § 10-52-2.5 be repealed.

10 ~~—10-52-2.5. The gross receipts from selling food, as defined by the Food Stamp Act of 1977~~
11 ~~(P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules~~
12 ~~promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax~~
13 ~~imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in~~
14 ~~excess of one percent. The provisions of this section do not apply to municipalities qualifying~~
15 ~~under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the~~
16 ~~new rate is in excess of one percent. A municipality may, by local option, exempt food, as~~
17 ~~defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as~~
18 ~~amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one~~
19 ~~percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983,~~
20 ~~pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act~~
21 ~~of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983,~~
22 ~~from the tax.~~

23 Section 35. That § 10-52-2.6 be repealed.

24 ~~—10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~

1 primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific
2 or generic part number by the manufacturer of the farm machinery, farm machinery and
3 equipment, and agricultural animal health products and medicines are exempt from the tax
4 imposed by this chapter.

5 Section 36. That § 10-52-2.9 be repealed.

6 ~~10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~
7 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

8 Section 37. That § 10-52-3 be amended to read as follows:

9 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the
10 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval
11 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
12 ordinance which was in effect on July 1, 2002, is continued under the provisions of this chapter
13 if:

- 14 (1) The governing board of the municipality has reviewed the existing tax ordinance to
15 determine compliance with the provisions of this chapter; and
16 (2) The governing board of the municipality documents the review, any amendment, and
17 the intent to continue the tax in the official minutes of the governing board.

18 Any amendment made by the municipality to comply with the provisions of this Act or the
19 determination to continue the tax under the provisions of this chapter is deemed to be an
20 administrative decision pursuant to § 9-20-19 and is not subject to referendum.

21 Section 38. That § 10-52-2.10 be amended to read as follows:

22 10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance
23 with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may
24 issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in

1 anticipation of the collection of the taxes. The bonds shall be payable solely from the collections
2 of the taxes imposed by the municipality under § 10-52-2 or ~~10-52-8, or both~~, as determined by
3 the governing body. The governing body shall, in the resolution or ordinance authorizing the
4 bonds, agree that it will continue to impose and collect the taxes so long as the bonds are
5 outstanding. The governing body shall also pledge so much of the collections of the taxes as may
6 be necessary to pay the principal premium and interest on the bonds and to maintain any debt
7 service reserve established for the bonds. The proceeds of the bonds may be used for land
8 acquisition, the funding of public ambulances and medical emergency response vehicles, public
9 hospitals or nonprofit hospitals with fifty or fewer licensed beds and other public health care
10 facilities or nonprofit health care facilities with fifty or fewer licensed beds, capital asset
11 acquisition and capital improvements, to establish a debt service reserve fund for the bonds and
12 to pay not more than one year's capitalized interest on the bonds. ~~If the proceeds of the tax~~
13 ~~imposed by § 10-52-8 are pledged to payment of the bonds, the land acquisition and capital~~
14 ~~improvements financed with the proceeds of the bonds shall relate to the purposes enumerated~~
15 ~~in § 10-52-8.~~

16 No election is required to authorize the issuance of municipal non-ad valorem tax revenue
17 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

18 Section 39. That § 10-52-8 be repealed.

19 ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~
20 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
21 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~
22 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
23 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
24 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~

1 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
2 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
3 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
4 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
5 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
6 ~~use tax on such items with the exception of the rate.~~

7 Section 40. That § 10-52-9 be amended to read as follows:

8 10-52-9. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance
9 enacted under the authority of this chapter, and any tax rate affected thereby, can be effective
10 only on January first or July first of a calendar year. The ordinance or amendment shall be
11 effective on the earlier of January first or July first following at least ~~sixty~~ ninety days notification
12 by the municipality to the secretary of revenue that the ordinance or amendment has been
13 enacted unless the ordinance or amendment is suspended by operation of a referendum. If an
14 ordinance or amendment enacted under this chapter is referred and the referred ordinance or
15 amendment is approved the effective date is the earlier of January first or July first following at
16 least ~~sixty~~ ninety days notification by the municipality to the secretary of revenue that the
17 ordinance or amendment has been approved notwithstanding § 9-20-15. Notification of the
18 enactment or approval of the ordinance shall be in writing and mailed, along with a copy of the
19 ordinance or amendment, by registered or certified mail to the secretary of revenue.

20 Section 41. That § 10-52-11 be repealed.

21 ~~—10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~
22 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~
23 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~
24 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~

1 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~
2 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

3 Section 42. That § 10-52-12 be repealed.

4 ~~10-52-12. The following services enumerated in the Standard Industrial Classification~~
5 ~~Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and~~
6 ~~Budget, Office of the President are exempt from the provisions of this chapter: establishments~~
7 ~~primarily engaged in air transportation, noncertified carriers (group no. 452).~~

8 Section 43. That § 10-52-13 be amended to read as follows:

9 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a
10 municipality which changes the boundaries of the municipality is effective on the first day of the
11 first month following at least ~~sixty~~ ninety days notification by the municipality to the secretary
12 of revenue that the resolution or amendment has been enacted unless the ordinance or
13 amendment is suspended by operation of a referendum. If a resolution or amendment enacted
14 pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the
15 effective date is the first day of the first month following at least ~~sixty~~ ninety days notification
16 by a municipality to the secretary of revenue that the resolution or amendment has been
17 approved. The municipality shall provide written notification of the enactment or approval of the
18 resolution or amendment, along with a copy of the resolution or amendment by registered or
19 certified mail or by any electronic means to the secretary of revenue. The municipality shall also
20 provide any changes or additions to streets and addresses.

21 Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 For the purposes of the tax imposed by this chapter, the transportation of tangible personal
24 property and passengers shall be taxed only if the origins and destination of the property or

1 passenger are within the same municipality.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

654H0032

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1002 - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to impose a gross receipts tax on certain visitor-related
2 businesses.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Lodging establishment," any building, structure, property, or premise kept, used,
6 maintained, advertised, or held out to the public to be a place where sleeping
7 accommodations are furnished to transient guests. The following constitute lodging
8 establishments: bed and breakfast inns, boarding houses, bungalows cabins,
9 condominiums, cottages, dude ranches, guest houses, guest ranches, hostels, hotels,
10 inns, lodges, motels, resorts, tourist homes, timeshare rentals, vacation home rentals,
11 and villas;

12 (2) "Campground," any property or premise kept, used, maintained, advertised, or held
13 out to the public to be a place where sites are available for placing of tents, campers,
14 trailers, mobile homes, or other mobile accommodations to transient guests.



1 Campgrounds include city, county, and state-owned campgrounds, as well as
2 concessionaires or contractors who manage or operate publicly owned campgrounds.

3 The following constitute campgrounds: campgrounds, camping cabins, camping
4 resorts, commercial picnic grounds, organizational camps, park units, recreational
5 vehicle parks, trailer parks, and youth camps;

6 (3) "Visitor attraction," any business establishment that offers recreation, entertainment,
7 or interpretation of natural or cultural history. The following constitute visitor
8 attractions: aerial tramways, amusement parks, animal exhibits, animal shows, antique
9 car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical gardens,
10 bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,
11 commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic
12 sites, human mazes, hunting preserves, miniature golf courses, museums, music
13 shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses,
14 racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads,
15 shooting preserves, show caves, ski areas, spectator events, water slides, wave pools,
16 wax figure exhibits, and zoological gardens. A visitor attraction includes any business
17 which is being conducted on the site of another visitor attraction;

18 (4) "Recreational service," any business establishment that provides leisure or recreational
19 experiences. The following constitute recreational services: aerial sightseeing tours,
20 amusement rides, bath houses, carriage rides, climbing guides, day camps, fishing
21 guides, fishing ponds, golf driving ranges, hunting guides, outfitters, pack trains,
22 private beaches, river rafting, saddle horse rides, sightseeing guides, sightseeing tours,
23 shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets, ski
24 trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps;

- 1 (5) "Recreational equipment rental," include all items rented for twenty-eight days or less
2 whose primary purpose is recreational use. Rental, under such circumstances, of the
3 following constitute recreational equipment rentals: all-terrain vehicles, beach chairs,
4 bicycles, bumper boats, bumper cars, campers, camping trailers, firearms, fishing
5 equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,
6 mopeds, motor coaches, motorcycles, pack animals, recreational courts and
7 equipment, recreational gold mining equipment, recreational vehicles, recreational
8 water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards,
9 snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers;
- 10 (6) "Spectator event," any organized activity meant for entertainment or education and
11 open to the public. The following constitute spectator events: air shows, auto races,
12 auto shows, balloon shows, boat races, car rallies, carnivals, circuses, concerts, dance
13 festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs,
14 greyhound races, horse races, horse shows, monster truck shows, motorcycle
15 expositions, motorcycle races, music festivals, rodeos, sporting events, stage
16 performances, threshing bees, tractor pull contests, and water-skiing shows. A
17 spectator event includes any business which is conducted on the site of another
18 spectator event;
- 19 (7) "Visitor intensive business," any antique shop, book store, candy store, flea market,
20 gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop,
21 marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if
22 fifty percent or more of annual total receipts are derived from the sale of tangible
23 personal property, during the months of June, July, August, and September. No
24 postsecondary, college, and university book store is, however, included.

1 Section 2. There is hereby imposed a tax of one percent on the gross receipts from any
2 lodging establishment, campground, motor vehicle rental, visitor attraction, recreational
3 equipment rental, recreational service, spectator event, and visitor-intensive business. The tax
4 imposed by this section on the gross receipts of any visitor-intensive business shall apply to the
5 gross receipts received by such business during the months of June, July, August, and September.
6 The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and
7 10-46. Tangible personal property, services, and admissions are subject to the tax imposed by
8 this section only if subject to tax by chapters 10-45 and 10-46.

9 Section 3. The revenue from the tax imposed by section 2 of this Act shall be deposited in
10 the tourism promotion fund created in § 1-42-31.

11 Section 4. The tax imposed by section 2 of this Act on any lodging establishment applies only
12 to the gross receipts from the rental of rooms by a lodging establishment.

13 Section 5. The tax imposed by section 2 of this Act on any campground applies to the gross
14 receipts from the rental of campground space.

15 Section 6. The tax imposed by section 2 of this Act applies to the gross receipts from
16 admission to a visitor attraction and from the sale of tangible personal property, services,
17 parking, or transportation at a visitor attraction.

18 Section 7. The tax imposed by section 2 of this Act applies to the gross receipts from
19 admission to a spectator event and from the sale of tangible personal property, services, parking,
20 or transportation at a spectator event.

21 Section 8. Gross receipts from the rental of rooms or sites at a lodging establishment or
22 campground owned by nonprofit religious, educational, or youth organization are exempt from
23 the tax imposed by section 2 of this Act if rented to a member of such organization.

24 Section 9. The tax imposed by section 2 of this Act shall be collected and administered by

1 the Department of Revenue.

2 Section 10. Any person who is subject to the tax imposed by this Act shall make a return and
3 remittance to the Department of Revenue on forms prescribed and furnished by the department
4 in the following manner:

5 (1) Any person, whose tax liability is one thousand dollars or more annually, shall file the
6 return and remit the tax on or before the twentieth day of the month following each
7 monthly period;

8 (2) Any person, whose tax liability is less than one thousand dollars annually, shall file the
9 return and remit the tax on or before the last day of the month following each two-
10 month period; and

11 (3) Any person, whose tax liability is one thousand dollars or more annually and who
12 remits the tax by electronic transfer to the state, shall file the return by electronic
13 means on or before the twenty-third day of the month following each monthly period
14 and remit the tax on or before the second to the last day of the month following each
15 monthly period.

16 The secretary of revenue may grant an extension of not more than five days for filing a return
17 and remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid
18 if a return or remittance is not made on time.

19 Section 11. The secretary of revenue may require or allow some returns and remittances to
20 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due
21 the last day of the month following the reporting period. For persons issued a temporary or
22 seasonal sales tax permit pursuant to chapter 10-45, the returns and remittances may be required
23 at a time determined by the secretary. Section 10-59-6 applies to returns and payments under this
24 section.

1 Section 12. The definitions, administrative, collection, and enforcement provisions of
2 chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

3 Section 13. The secretary of revenue may promulgate rules pursuant to chapter 1-26
4 concerning:

- 5 (1) Licensing, including bonding and filing license applications;
- 6 (2) The filing of returns and payment of the tax;
- 7 (3) Determining the application of the tax and exemptions;
- 8 (4) Taxpayer record-keeping requirements; and
- 9 (5) Determining auditing methods.

10 Section 14. Any person who:

- 11 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
12 by this Act is guilty of a Class 6 felony;
- 13 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
14 due is guilty of a Class 1 misdemeanor;
- 15 (3) Fails to keep the records and books required by section 13 of this Act or refuses to
16 exhibit these records to the secretary of revenue or the secretary's agents for the
17 purpose of examination is guilty of a Class 1 misdemeanor;
- 18 (4) Fails to file a return required by this Act within thirty days from the date the return is
19 due is guilty of a Class 1 misdemeanor;
- 20 (5) Willfully violates any rule of the secretary of revenue for the administration and
21 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 22 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
23 month period is guilty of a Class 6 felony.

24 Section 15. That § 10-59-1 be amended to read as follows:

1 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
2 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,
3 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
4 49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

5 Section 16. That § 10-45-69.1 be repealed.

6 ~~10-45-69.1. There is hereby imposed a tax of one percent on the gross receipts from hotels
7 and lodging places; campgrounds; motor vehicle rentals; visitor attractions; recreational
8 equipment rentals; recreational services; spectator events; and visitor-intensive businesses. The
9 tax imposed by this section to the gross receipts of visitor-intensive businesses shall apply to the
10 gross receipts received by such businesses during the months of June, July, August, and
11 September. The tax imposed by this section is in addition to any other tax imposed by chapters
12 10-45 and 10-46. Tangible personal property, services, and admissions are subject to the tax
13 imposed by this section only if subject to tax by chapters 10-45 and 10-46.~~

14 Section 17. That § 10-45-69.2 be repealed.

15 ~~10-45-69.2. The revenue from the tax imposed by § 10-45-69.1 shall be deposited in the
16 tourism promotion fund created in § 1-42-31.~~

17 Section 18. That § 10-45-69.3 be repealed.

18 ~~10-45-69.3. The tax imposed by § 10-45-69.1 on hotels and lodging establishments shall only
19 apply to the gross receipts from the rental of rooms by hotels and lodging establishments. A
20 lodging establishment is any building, structure, property, or premise kept, used, maintained,
21 advertised, or held out to the public to be a place where sleeping accommodations are furnished
22 in two or more rental units to transient guest. The following constitute hotels and lodging
23 establishments: bed and breakfast inns, boarding houses, bungalows cabins, condominiums,
24 cottages, dude ranches, guest houses, guest ranches, hostels, hotels, inns, lodges, motels, resorts,~~

1 ~~tourist homes, timeshare rentals, vacation home rentals, and villas.~~

2 Section 19. That § 10-45-69.4 be repealed.

3 ~~—10-45-69.4. The tax imposed by § 10-45-69.1 on campgrounds shall apply to the gross~~
4 ~~receipts from the rental of campground space. A campground is any property or premise kept,~~
5 ~~used, maintained, advertised, or held out to the public to be a place where sites are available for~~
6 ~~placing of tents, campers, trailers, mobile homes, or other mobile accommodations in two or~~
7 ~~more rental units to transient guests. Campgrounds include city, county, and state-owned~~
8 ~~campgrounds, as well as concessionaires or contractors who manage or operate publicly-owned~~
9 ~~campgrounds. The following constitute campgrounds: campgrounds, camping cabins, camping~~
10 ~~resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks,~~
11 ~~trailer parks, and youth camps.~~

12 Section 20. That § 10-45-69.5 be repealed.

13 ~~—10-45-69.5. For the purposes of § 10-45-69.1, a visitor attraction is any business~~
14 ~~establishment that offers recreation, entertainment, or interpretation of natural or cultural history.~~
15 ~~The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits,~~
16 ~~animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical~~
17 ~~gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,~~
18 ~~commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human~~
19 ~~mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers,~~
20 ~~outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining,~~
21 ~~reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas,~~
22 ~~spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens.~~

23 ~~—The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a visitor~~
24 ~~attraction and from the sale of tangible personal property, services, parking, or transportation.~~

1 ~~A visitor attraction includes any business which is being conducted on the site of another visitor~~
2 ~~attraction.~~

3 Section 21. That § 10-45-69.6 be repealed.

4 ~~— 10-45-69.6. For the purposes of § 10-45-69.1, a recreational service is any business~~
5 ~~establishment that provides leisure or recreational experiences. The following constitute~~
6 ~~recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides,~~
7 ~~climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides,~~
8 ~~outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides,~~
9 ~~sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets,~~
10 ~~ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps.~~

11 Section 22. That § 10-45-69.7 be repealed.

12 ~~— 10-45-69.7. For the purposes of § 10-45-69.1, recreational equipment rentals include all~~
13 ~~items rented for twenty-eight days or less whose primary purpose is recreational use. Rental,~~
14 ~~under such circumstances, of the following constitute recreational equipment rentals: all-terrain~~
15 ~~vehicles, beach chairs, bicycles, bumper boats, bumper cars, campers, camping trailers, firearms,~~
16 ~~fishing equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,~~
17 ~~mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment,~~
18 ~~recreational gold mining equipment, recreational vehicles, recreational water equipment, rock~~
19 ~~climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers,~~
20 ~~snowshoes, watercraft, and watercraft trailers.~~

21 Section 23. That § 10-45-69.8 be repealed.

22 ~~— 10-45-69.8. For the purposes of § 10-45-69.1, a spectator event is any organized activity~~
23 ~~meant for entertainment or education and open to the public. The following constitute spectator~~
24 ~~events: air shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals,~~

1 ~~circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions,~~
2 ~~fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions,~~
3 ~~motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees,~~
4 ~~tractor pull contests, and water-skiing shows.~~

5 ~~— The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a spectator~~
6 ~~event and from the sale of tangible personal property, services, parking, or transportation at a~~
7 ~~spectator event. A spectator event includes any business which is conducted on the site of~~
8 ~~another spectator event.~~

9 Section 24. That § 10-45-69.9 be repealed.

10 ~~— 10-45-69.9. For the purposes of § 10-45-69.1, a visitor-intensive business is any: antique~~
11 ~~shop, book store, candy store, flea market, gift shop, indigenous arts and craft shop, jewelry,~~
12 ~~lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop,~~
13 ~~and tee shirt shop if fifty percent or more of annual total receipts are derived from the sale of~~
14 ~~tangible personal property, during the months of June, July, August, and September. No~~
15 ~~postsecondary, college, and university book store is, however, included.~~

16 Section 25. That § 10-45-69.10 be repealed.

17 ~~— 10-45-69.10. There is exempted from the tax imposed by § 10-45-69.1, gross receipts from~~
18 ~~the rental of rooms or sites at a lodging establishment or campground owned by nonprofit~~
19 ~~religious, educational, or youth organization if rented to members of such organizations.~~

20 Section 26. That § 10-45-91 be amended to read as follows:

21 10-45-91. Notwithstanding the provisions of § 10-45-13, admissions to rodeos and rodeo
22 related activities and events are subject to the tax imposed by §§ 10-45-8 and ~~10-45-69.1~~ section
23 2 of this Act.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

438H0043

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1003 - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to authorize a municipal gross receipts tax on certain
2 lodging, alcoholic beverages, prepared food, and admissions.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the Department of Revenue;

6 (2) "Gross receipts," the total amount or consideration, including cash, credit, property,
7 and services, for which tangible personal property or services are sold, leased, or
8 rented, valued in money, whether received in money or otherwise, without any
9 deduction for the following:

10 (a) The retailer's cost of the property or service sold;

11 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
12 transportation to the retailer, all taxes imposed on the retailer, and any other
13 expense of the retailer;

14 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for



1 any services necessary to complete the sale whether or not separately stated,
2 including delivery charges; and

3 (d) The value of exempt tangible personal property whether or not separately
4 stated on the invoice, billing, or similar document given to the purchaser where
5 taxable and exempt tangible personal property have been bundled together and
6 sold by the retailer as a single product or piece of merchandise;

7 Gross receipts do not include:

8 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
9 party that are allowed by a retailer and taken by a purchaser on a sale;

10 (b) Interest, financing, and carrying charges from credit extended on the sale of
11 tangible personal property or services, if the amount is separately stated on the
12 invoice, bill of sale or similar document given to the purchaser; and

13 (c) Any taxes legally imposed directly on the consumer that are separately stated
14 on the invoice, bill of sale, or similar document given to the purchaser.

15 Section 2. Any municipality may impose an additional municipal non-ad valorem tax at the
16 rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites, or
17 other lodging accommodations within the municipality for periods of less than twenty-eight
18 consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where
19 the public is invited to eat, dine, or purchase and carry out prepared food for immediate
20 consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events,
21 or any combination thereof. The tax shall be levied for the purpose of land acquisition,
22 architectural fees, construction costs, payments for civic center, auditorium, or athletic facility
23 buildings, including the maintenance, staffing, and operations of such facilities and the promotion
24 and advertising of the city, its facilities, attractions, and activities.

1 Section 3. That § 10-52-8 be repealed.

2 ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~
3 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
4 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~
5 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
6 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
7 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~
8 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
9 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
10 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
11 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
12 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
13 ~~use tax on such items with the exception of the rate.~~

14 Section 4. The tax imposed by section 2 of this Act shall be collected and administered by
15 the department.

16 Section 5. Any person who is subject to the tax imposed by this Act shall make a return and
17 remittance to the department on forms prescribed and furnished by the department in the
18 following manner:

19 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the
20 return and remit the tax on or before the twentieth day of the month following each
21 monthly period;

22 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the
23 return and remit the tax on or before the last day of the month following each two-
24 month period; and

1 (3) Any person whose tax liability is one thousand dollars or more annually and who
2 remits the tax by electronic transfer to the state, shall file the return by electronic
3 means on or before the twenty-third day of the month following each monthly period
4 and remit the tax on or before the second to the last day of the month following each
5 monthly period.

6 The secretary of revenue may grant an extension of not more than five days for filing a return
7 and remittance. Unless an extension is granted, penalty or interest pursuant to § 10-59-6 shall
8 be paid if a return or remittance is not made on time.

9 Section 6. The secretary of revenue may require or allow some returns and remittances to
10 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due
11 the last day of the month following the reporting period. For any person issued a temporary or
12 seasonal tax permit pursuant to chapter 10-45, the returns and remittances may be required at
13 a time determined by the secretary. Section 10-59-6 applies to any return and payment made
14 pursuant to this section.

15 Section 7. The definitions, administrative, collection, and enforcement provisions of chapters
16 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

17 Section 8. The secretary of revenue may promulgate rules pursuant to chapter 1-26
18 concerning:

- 19 (1) Licensing, including bonding and filing license applications;
- 20 (2) The filing of returns and payment of the tax;
- 21 (3) Determining the application of the tax and exemptions;
- 22 (4) Taxpayer record-keeping requirements; and
- 23 (5) Determining auditing methods.

24 Section 9. Any person who:

- 1 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
2 by this Act is guilty of a Class 6 felony;
- 3 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
4 due is guilty of a Class 1 misdemeanor;
- 5 (3) Fails to keep the records and books required by section 10 of this Act or refuses to
6 exhibit these records to the secretary of revenue or the secretary's agents for the
7 purpose of examination is guilty of a Class 1 misdemeanor;
- 8 (4) Fails to file a return required by this Act within thirty days from the date the return is
9 due is guilty of a Class 1 misdemeanor;
- 10 (5) Willfully violates any rule of the secretary of revenue for the administration and
11 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 12 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
13 month period is guilty of a Class 6 felony.

14 Section 10. Each person subject to tax under this Act shall keep records and books of all
15 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
16 pertinent papers and documents. The books and records and other papers and documents are,
17 at all times during business hours of the day, subject to inspection by the secretary of revenue
18 or the secretary's agents and employees to determine the amount of tax due. The books and
19 records shall be preserved for a period of three years unless the secretary of revenue, in writing,
20 authorized their destruction or disposal at an earlier date.

21 Section 11. Any tax imposed by the governing board of any municipality pursuant to the
22 provisions of this Act, may be referred to a vote of the people for its approval or disapproval in
23 the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
24 ordinance which was in effect on July 1, 2002, is continued under the provisions of this Act if:

1 (1) The governing board of the municipality has reviewed the existing tax ordinance to
2 determine compliance with the provisions of this Act; and

3 (2) The governing board of the municipality documents the review, any amendment, and
4 the intent to continue the tax in the official minutes of the governing board.

5 Any amendment made by the municipality to comply with the provisions of this Act or the
6 determination to continue the tax under the provisions of this Act is deemed to be an
7 administrative decision pursuant to § 9-20-19 and not subject to referendum.

8 Section 12. The administration of the taxes adopted under this Act shall be by the
9 department. The department may prescribe forms and promulgate rules pursuant to chapter 1-26
10 for the making of returns and for the ascertainment, assessment, and collection of the tax
11 imposed pursuant to this Act. The department shall keep full and accurate records of all moneys
12 received and distributed under this Act.

13 Section 13. All moneys received and collected on behalf of a municipality by the department,
14 pursuant to this Act, shall be credited to a special municipal tax fund and after deducting the
15 amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the
16 administrative expenses incident thereto, shall be paid within thirty days after collection to the
17 municipality entitled thereto.

18 Section 14. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance
19 enacted under the authority of this Act, and any tax rate affected thereby, can be effective only
20 on January first or July first of a calendar year. The ordinance or amendment shall be effective
21 on the earlier of January first or July first following at least ninety days notification by the
22 municipality to the secretary of revenue that the ordinance or amendment has been enacted
23 unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance
24 or amendment enacted under this chapter is referred and the referred ordinance or amendment

1 is approved the effective date shall be the earlier of January first or July first following at least
2 ninety days notification by the municipality to the secretary of revenue that the ordinance or
3 amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or
4 approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or
5 amendment, by registered or certified mail to the secretary of revenue.

6 Section 15. That § 10-59-1 be amended to read as follows:

7 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
8 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,
9 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
10 49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

11 Section 16. Any municipality imposing a tax pursuant to this Act may issue municipal non-ad
12 valorem tax revenue bonds pursuant to this section and chapter 6-8B in anticipation of the
13 collection of the taxes. The bonds shall be payable solely from the collections of the taxes
14 imposed by the municipality under this Act, as determined by the governing body. The governing
15 body shall, in the resolution or ordinance authorizing the bonds, agree that it will continue to
16 impose and collect the taxes so long as the bonds are outstanding. The governing body shall also
17 pledge so much of the collections of the taxes as may be necessary to pay the principal premium
18 and interest on the bonds and to maintain any debt service reserve established for the bonds. The
19 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and
20 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer
21 licensed beds and other public health care facilities or nonprofit health care facilities with fifty
22 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt
23 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the
24 bonds. If the proceeds of the tax imposed by this Act are pledged to payment of the bonds, the

1 land acquisition and capital improvements financed with the proceeds of the bonds shall relate
2 to the purposes enumerated in section 2 of this Act.

3 No election is required to authorize the issuance of municipal non-ad valorem tax revenue
4 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

474H0081

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1009** - 01/17/2002

Introduced by: The Committee on Local Government at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise the election procedures of certain special purpose
2 districts.

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

4 Section 1. That § 31-12A-15 be amended to read as follows:

5 31-12A-15. In ~~every~~ each road district an annual election of officers shall be held on the first
6 Tuesday after the anniversary date of the first election at ~~such~~ a place in the district as the board
7 of trustees shall designate. ~~Such~~ The election shall be conducted according to chapter ~~9-13~~ 8-3,
8 at a meeting of the registered voters who reside in the road district.

9 Section 2. That chapter 31-12A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Notice of the meeting and election required by § 31-12A-15 shall be given by the secretary-
12 treasurer by one publication in a legal newspaper of general circulation in each county in which
13 the district is situated or notice may be given by posting in a public place within the district and
14 delivering the notice to each registered voter of the district. The notice shall include the time and
15 place of the election and each vacancy to be filled at the election. The meeting shall be held not



1 less than seven days nor more than fourteen days after the date of publication or delivery of the
2 notice.

3 Section 3. That § 34-11A-2 be amended to read as follows:

4 34-11A-2. Any municipality located within the area may be included in the ambulance district
5 if twenty percent of the landowners within the municipality who are also registered voters within
6 the municipality sign a separate petition from that municipality, or if the governing body of the
7 municipality establishes intent by passing a resolution so indicating.

8 Section 4. That § 34-11A-29 be amended to read as follows:

9 34-11A-29. A regular meeting of the registered voters who are residing within the boundaries
10 of a district shall be held in the first quarter of each calendar year and special meetings may be
11 called by the board of directors at any time. The annual election shall be conducted during the
12 regular meeting. Notice ~~thereof~~ of the annual election shall be given by the secretary-treasurer
13 by one publication in a legal newspaper of general circulation in each county in which ~~such~~ the
14 district is situated. The meeting shall be held not less than seven days nor more than fourteen
15 days after the date of publication of ~~such~~ the notice.

16 Section 5. That § 34-31A-3 be amended to read as follows:

17 34-31A-3. Any municipality located within the area, whether the municipality has a fire
18 department or not, may be included in the rural fire district if twenty percent of the landowners
19 within the municipality who are also registered voters within the municipality sign ~~the~~ a separate
20 petition from that municipality, or if the governing body of the municipality establishes intent by
21 passing a resolution so indicating.

22 Section 6. That § 34-31A-43 be amended to read as follows:

23 34-31A-43. A regular meeting of the electors who are owners of any interest in real property
24 assessed for taxation in the district and who are residing within the boundaries of a district shall

1 be held in the first quarter of each calendar year and special meetings may be called by the board
2 of directors at any time. The annual election shall be conducted during the regular meeting.
3 ~~Notice thereof~~ of the annual election shall be given by the secretary-treasurer by one publication
4 in a legal newspaper of general circulation in each county in which ~~such~~ the district is situated.
5 The meeting shall be held not less than seven days nor more than fourteen days after the date of
6 publication of ~~such~~ the notice.

7 Section 7. That § 46A-18-23 be amended to read as follows:

8 46A-18-23. Prior to May first of each year, on ~~dates~~ a date established by the directors, an
9 annual meeting of the district shall be held during which the registered voters shall elect, by
10 ballot, under the direction of the secretary of the district, directors to replace those whose terms
11 have expired. Newly elected directors shall assume office at the time of their election.

12 Section 8. That § 46A-18-47 be amended to read as follows:

13 46A-18-47. In the election provided in § 46A-18-45, ~~eligibility~~ registered voters are eligible
14 ~~to vote as prescribed by § 46A-18-5 shall govern.~~ If special assessments are proposed, only
15 those landowners subject to such assessments may vote. If the financing proposal provides for
16 both general tax levies and special assessments, the votes applicable to the general tax and the
17 votes applicable to the special assessments shall be counted separately and accepted separately
18 for purposes of determining the outcome of the election.

19 Section 9. That § 3-4-3 be amended by adding thereto a NEW SUBDIVISION to read as
20 follows:

21 In special purpose districts, unless otherwise provided, by the remaining board of trustees.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0229

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1017** -
01/16/2002

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the commitment
2 of persons with developmental disabilities.

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

4 Section 1. That § 27B-7-26 be amended to read as follows:

5 27B-7-26. The county review board has jurisdiction over all applications or petitions for
6 involuntary commitment or for the safekeeping of persons subject to involuntary commitment
7 within its county, except in cases otherwise specially provided for. The board chair may issue
8 subpoenas and compel obedience thereto, and do any act of a court necessary and proper for the
9 purpose of discharging the duties required of it the board.

10 Section 2. That § 27B-7-28 be amended to read as follows:

11 27B-7-28. If a petition filed pursuant to § 27B-7-27 appears on its face to be sufficient, the
12 chair of the county review board shall order that a psychiatric or psychological evaluation be
13 performed and a report of the findings and recommendations be completed. The board chair shall
14 appoint a licensed psychologist or psychiatrist to within three days after receipt of the petition.



1 The licensed psychologist or psychiatrist shall make the examination and ~~to~~ prepare a report
2 within five working days from ~~the date the petition is filed~~ receipt of the written notice from the
3 board ordering the examination and report, containing the information required in § 27B-7-31.
4 If it appears, based upon the foregoing evaluation, the criteria for commitment is met, a copy of
5 the report shall be provided to Department of Human Services. ~~If the person desires an~~
6 ~~independent psychiatric or psychological evaluation, the person may obtain one at that person's~~
7 ~~own expense.~~ The person has the right to obtain an additional examination paid for by the county
8 that may be placed in evidence before the board, the reasonable expense of which shall be
9 reimbursed to the county unless the person is indigent. A lien for the amount of these costs may
10 be filed upon the person's real and personal property to ensure payment.

11 Section 3. That § 27B-7-29 be amended to read as follows:

12 27B-7-29. The chair of the county review board shall give written notice of the petition to
13 the Department of Human Services which shall prepare a report containing a review of the
14 person's supports and service needs and a recommendation as to appropriate service locations.
15 The reports shall be filed with the county review board within ~~forty-five calendar~~ ten working
16 days from receipt of the written notice from the board ordering the examination and report.

17 Section 4. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Within ten days of the auditor's receipt of the board's findings regarding the residence and
20 summary of proofs thereon, the county in which the residence was found to be, other than the
21 referring county, may request the committing county review board to reopen the hearing upon
22 the question of the person's residence by mailing a request to the chair of the county review
23 board.

24 Section 5. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Upon receipt of the request to reopen the commitment hearing, the county review board
3 shall, as soon as practicable, afford the county determined to be the person's county of residence
4 an opportunity to appear before the board, at a time and place set by the board and not more
5 than thirty days from the date of the request to reopen the hearing. Notice of the reopened
6 hearing shall be given to the county where the person was found and to the county requesting
7 the reopening of the hearing at least ten days prior to the reopened hearing by mailing notice
8 thereof to the respective county auditors. Either county appearing at the reopened hearing may
9 present any evidence it may have to establish that it is not the county of residence of the person.
10 The board shall then determine, by a preponderance of evidence, the county of residence of the
11 person and either affirm or modify its prior finding. The ultimate finding of residence shall be
12 filed with the clerk of courts of the committing county and the county of residence with copies
13 mailed to the administrator of the center or other facility where the person is undergoing
14 treatment.

15 Section 6. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The referring county shall pay any expenses incurred by the committing board in conducting
18 any reopened hearing, subject to reimbursement by the county ultimately proven to be the county
19 of residence. No lien may be placed against the patient for the costs incurred in conducting any
20 reopened hearing requested by county regarding the question of residence.

21 Section 7. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 If a person is found at an initial or reopened hearing not to be a resident of the state, the
24 county review board shall forward to the attorney general a copy of its findings and a summary

1 of the proofs upon which the findings are based.

2 Section 8. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Within ten days of the attorney general's receipt of the committing board's findings regarding
5 residence and summary of proofs thereon, the attorney general may request the committing
6 county review board to reopen the hearing by mailing a request to the chair of the committing
7 county review board. Notice of the reopened hearing shall be given to any county adversely
8 interested and to the attorney general at least ten days prior to the reopened hearing by mailing
9 notice to the county auditor of any county adversely interested and to the attorney general.

10 Section 9. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any county adversely interested or the attorney general may present evidence to establish
13 the residence of the person at the reopened hearing. The board shall then determine, by a
14 preponderance of evidence, whether the person is a resident of a particular county or whether
15 the patient is not a resident of the state and shall affirm or modify its prior finding. The ultimate
16 finding of residence shall be filed with the clerk of courts of the committing county and copies
17 thereof mailed to the director of the facility or program where the person is undergoing treatment
18 and to the auditor of any county found to be the residence of the person or to the attorney
19 general if the person is found not to be a resident of the state.

20 Section 10. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The referring county shall pay any expenses incurred by the committing board in conducting
23 any reopened hearing, subject to reimbursement by the county ultimately proven to be the county
24 of residence or if a nonresident of the state, by the State of South Dakota.

1 Section 11. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The county of residence shall refund with lawful interest thereon any expenses incurred by
4 the attorney general on account of a person whose residence is in a county of this state.

5 Section 12. That § 27B-7-33 be amended to read as follows:

6 27B-7-33. Upon receipt of a petition and reports as provided for in §§ 27B-7-27, 27B-7-28,
7 and ~~27B-7-31~~ 27B-7-29, the chair of the county review board shall:

8 (1) Fix a date, time, and place for a hearing within ~~five~~ ten days, excluding Saturdays,
9 Sundays, and holidays, of the board's receipt of the reports;

10 (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the
11 time, date, and place of the hearing to the petitioner, to the person alleged to meet the
12 criteria for board-ordered commitment, to the psychologist or psychiatrist completing
13 the report, to the person's attorney, or other attorney as specified in § 27B-7-35, to
14 the director of any facility in which the person is being served, and to the secretary of
15 the Department of Human Services; and

16 (3) Following the hearing, provide copies of all orders to the persons identified in
17 subdivision (2).

18 Section 13. That § 27B-7-34 be amended to read as follows:

19 27B-7-34. Hearings convened ~~to determine whether a person meets the criteria for~~
20 ~~board-ordered commitment pursuant to this title~~ shall be governed by §§ ~~27B-7-27 to 27B-7-33,~~
21 ~~inclusive~~ the rules of evidence.

22 Section 14. That § 27B-7-37 be amended to read as follows:

23 27B-7-37. A county review board may order the involuntary commitment of a person if the
24 review board finds by clear and convincing evidence supported by written findings of fact and

1 ~~conclusions of law~~ that the person ~~cannot exercise informed consent to treatment by reason of~~
2 ~~that person's~~ has a developmental disability, and that due to the development disability the person
3 poses a an immediate danger of physical injury to self or others making it necessary or advisable
4 to receive appropriate supports and services. If the person is found to meet the criteria for
5 involuntary commitment, the county review board may order the person to be placed under the
6 control and care of the Department of Human Services for placement in appropriate programs.
7 If the person refuses to comply with this order, the board may direct a law enforcement officer
8 to take the person into protective custody.

9 Section 15. That § 27B-7-38 be amended to read as follows:

10 27B-7-38. The county review board may issue a detention order and direct a law
11 enforcement officer from the referring county or the county of residence to immediately take the
12 person to a community service provider or facility recommended by the Department of Human
13 Services, with the approval of the provider, to be detained for purposes of an examination if the
14 county review board finds from the petition, from other statements under oath, or from reports
15 of physicians, psychiatrists, psychologists, or other qualified mental retardation professionals that
16 there is reasonable basis to believe that the person to be committed poses an immediate danger
17 of physical injury to self or others.

18 If the county review board issues a detention order based on a petition that did not include
19 a recommendation for detention by a psychiatrist or psychologist, the person shall be examined
20 by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order,
21 excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county
22 review board. If the report is not received by the county review board within forty-eight hours,
23 excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement
24 with the community service provider. The report shall include:

- 1 (1) Whether the person may be diagnosed as having a developmental disability;
- 2 (2) ~~Whether the person is capable of giving informed consent and whether the person has~~
- 3 ~~agreed to voluntary admission;~~
- 4 ~~(3)~~ Whether supports and services are available and appropriate in lieu of county review
- 5 board proceedings; and
- 6 ~~(4)~~(3) Whether the person continues to pose an immediate danger of physical injury to self
- 7 or others due to the developmental disability.

8 Upon receipt of the report by the county review board, if it is determined that the person
9 continues to pose an immediate danger of physical injury to self or others due to the
10 developmental disability, placement with a community service provider shall continue while the
11 commitment process is pending. If the person does not continue to pose an immediate danger
12 of physical injury to self or others, the person shall be released from placement with the
13 community service provider pending further proceedings. No record of arrest may be charged
14 against the person.

15 Section 16. That § 27B-7-39 be amended to read as follows:

16 27B-7-39. The county review board shall review the commitment order and accompanying
17 information at least annually to make a determination of the continued need and supporting
18 justification for commitment. Prior to the annual review, but not less than thirty days prior to the
19 anniversary date of the commitment order, the developmental disability community service
20 provider shall provide ~~information~~ a report to the county review board that issued the original
21 commitment order regarding the person's supports, services, and progress. Following ten days
22 notice to the person, the person's attorney, and the Department of Human Services, the county
23 review board shall hold a review hearing. The review hearing shall include participation by the
24 state's attorney, Department of Human Services, the community service provider, and the

1 person's attorney. The rights and procedures applicable during an initial commitment hearing are
2 applicable to review hearings. A petition pursuant to § 27B-7-27 need not be filed. At the
3 conclusion of the review hearing, the county review board may issue an order of continued
4 commitment or immediately discharge the person from involuntary commitment if the conditions
5 in § 27B-7-37 justifying commitment no longer exist.

6 Section 17. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The person has the right to appear personally at any hearing and testify, but may not be
9 compelled to do so. The person has the right to subpoena and cross-examine witnesses and to
10 present evidence. If the person chooses not to appear, the person's attorney shall state on the
11 record that the person has been informed of the hearing and of the right to appear and chooses
12 not to exercise this right. Documentation of the reasons for the person's decision may not be
13 required. The county review board may exclude any person not necessary for the conduct of the
14 proceedings from the hearings, except any person requested to be present by the person who is
15 the subject of the hearing.

16 Section 18. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A court reporter shall attend all hearings of the county review board and keep a stenographic
19 record of all proceedings; or a record of all hearings shall be recorded by tape recorder or other
20 sound reproducing equipment. If a tape recorder or other sound reproducing equipment is used,
21 the equipment shall be of such quality that each word of the testimony and rulings made with
22 reference thereto can be clearly heard and understood. All recorded testimony shall be preserved
23 for at least five years.

24 Section 19. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A person who has been committed may request a certified transcript or, if a tape recorder
3 is utilized, a copy of the taped testimony of the hearing. To obtain a copy, the person shall pay
4 for a transcript or copy of the tape recorded testimony or shall file an affidavit that the person
5 is without means to pay for such transcript or tape recording. If the affidavit is found true by the
6 county review board, the expense of the transcript or copy of the tape recorded testimony is a
7 charge upon the county of residence of the person or, if a nonresident of the state, upon the State
8 of South Dakota.

9 Section 20. That § 27B-7-42 be amended to read as follows:

10 27B-7-42. Counsel appointed for a person pursuant to this title shall be reasonably
11 compensated for such services and for necessary expenses and costs incident to the proceedings
12 in an amount to be fixed by the circuit ~~judge court~~ and in an amount approved by the chair of the
13 county review board of the referring county. The costs described shall be allowed and paid out
14 of county funds and may not be assessed against the person with a developmental disability.

15 Section 21. That § 27B-7-43 be amended to read as follows:

16 27B-7-43. ~~Costs~~ The referring county shall pay the costs of proceedings pursuant to this title,
17 including costs for transportation and any incidental costs of the person with a developmental
18 disability, ~~shall be reasonably compensated in an amount to be determined by the county auditor~~
19 subject to reimbursement by the county ultimately proven to be the county of residence or, if a
20 nonresident of the state, by the State of South Dakota. The costs described shall be allowed and
21 paid for out of county funds and may not be assessed against the person with a developmental
22 disability.

23 Section 22. That § 27B-7-45 be amended to read as follows:

24 27B-7-45. A person may, within thirty days, appeal a final order of a county review board

1 pursuant to any hearing or review conducted under this title. In the case of a minor, or a person
2 for whom a guardian has been appointed, the right to appeal may be exercised on behalf of the
3 person. The person shall be advised both verbally and in writing of this right at the conclusion
4 of any proceedings. The appeal shall be conducted in accordance with the provisions of chapter
5 1-26.

6 None of the rights granted in this section may be denied due to a person's inability to pay for
7 costs and fees incurred in such proceedings. The county of residence, or the State of South
8 Dakota if a nonresident of the state, shall provide for the cost of representation of the person
9 through the conclusion of actions brought under this section.

10 Section 23. That § 27B-7-46 be repealed.

11 ~~27B-7-46. Upon exhaustion of all administrative remedies, a person has the right to file an~~
12 ~~appeal in the appropriate circuit court pursuant to chapter 1-26.~~

13 Section 24. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person involuntarily committed shall be discharged if, in the opinion of the director of
16 the community service provider or facility, the person no longer meets the commitment criteria.

17 Section 25. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 If a person is discharged in accordance with section 24 of this Act, the county review board,
20 which entered the order, shall be notified. The county review board shall provide the person
21 transportation to the person's place of residence if the person so chooses within forty-eight hours
22 of discharge notification.

23 Section 26. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
24 as follows:

1 If the county review board fails or neglects to provide transportation to the person so
2 discharged, as provided in section 25 of this Act, within forty-eight hours from the date of the
3 order discharging the person and of the notice of the order, the responsible county is liable for
4 and shall pay to the community service provider, or if a state provider then to the state, the full
5 service cost as defined in § 27B-3-28 for the care and keeping of such persons at the program
6 or facility, the time computed shall commence forty-eight hours after the date of such order and
7 notice.

8 If the community service provider is a state provider, the program director shall report any
9 delinquencies, and the time any person is kept beyond the forty-eight hours, giving the person's
10 name, the county of residence, and the amount due from the responsible county for such charge
11 to the state auditor. The state auditor shall notify the county auditor of the county to be charged.
12 The amount due shall be paid into the state treasury as other charges for the support of the
13 developmentally disabled.

14 Section 27. That § 27B-8-56 be amended to read as follows:

15 27B-8-56. Time-out rooms used for separating a person with a developmental disability from
16 other persons receiving services and group activities may be employed only under close and
17 direct staff supervision and only as a technique in behavior intervention programs. No time-out
18 room may be used in an emergency situation. Behavior intervention programs utilizing a time-out
19 procedure may be implemented only if it incorporates a positive approach designed to result in
20 the acquisition of appropriate behavior.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0205

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1024** - 01/15/2002

Introduced by: The Committee on Transportation at the request of the Department of
Commerce and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the penalties for overweight vehicle violations.

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

3 Section 1. That § 32-22-55 be amended to read as follows:

4 32-22-55. Any person who is convicted of the offense of operating a motor vehicle upon the
5 public highways of this state with weight upon any wheel, axle, or groups of axles or upon more
6 than one thereof greater than the maximum permitted by §§ 32-22-2 to 32-22-33, inclusive,
7 32-22-47 and 32-22-48 shall be fined in addition to, and not in substitution for, any other
8 penalties now provided by law for such offense in the following amounts:

9 In an amount equal to five cents per pound for each pound of such excess or combined
10 excess weight over one thousand pounds if such excess is three thousand pounds or less.

11 In an amount equal to fifteen cents per pound for each pound of such excess or combined
12 excess weight if such excess exceeds three thousand pounds and is four thousand pounds or less.

13 In an amount equal to twenty-two and one-half cents per pound for each pound of such
14 excess or combined excess weight if such excess exceeds four thousand pounds and is five



1 thousand pounds or less.

2 In an amount equal to thirty-seven and one-half cents per pound for each pound of such
3 excess or combined excess weight if such excess ~~is more than~~ exceeds five thousand pounds and
4 is ten thousand pounds or less.

5 In an amount equal to seventy-five cents per pound for each pound of such excess or
6 combined excess weight if such excess is more than ten thousand pounds.

7 The fine schedule in this section is assessed at a single rate according to the cents per pound
8 penalty for the highest weight violation.

9 Section 2. That § 32-22-56 be repealed.

10 ~~—32-22-56. In any case where the motor vehicle is absolutely overweight beyond ten thousand~~
11 ~~pounds, the pounds by which the vehicle is so overweight shall be assessed at double the~~
12 ~~penalties prescribed in § 32-22-55.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0237

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1039** - 01/16/2002

Introduced by: The Committee on State Affairs at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to allow an application for a concealed pistol permit to be
2 filed electronically.

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

4 Section 1. That § 23-7-8 be amended to read as follows:

5 23-7-8. The application for a permit to carry a concealed pistol shall be filed either
6 electronically or in triplicate on a form prescribed by the secretary of state. The application shall
7 require the applicant's complete name, address, occupation, place and date of birth, physical
8 description, a statement that the applicant has never pled guilty to, nolo contendere to, or been
9 convicted of a crime of violence, a statement that the information on the application is true and
10 correct, and the applicant's signature. ~~The~~ If filed in triplicate, the original shall be delivered to
11 the applicant as the temporary permit, the duplicate shall within seven days be sent by first class
12 mail to the secretary of state who shall issue the official permit, and the triplicate shall be
13 preserved for four years by the authority issuing the permit. If the application is filed
14 electronically, two copies shall be made and each shall be signed by the applicant. One copy shall
15 be delivered to the applicant as the temporary permit, and the other copy shall be preserved for



1 four years by the authority issuing the permit.

2 Section 2. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 No information from a concealed pistol permit issued pursuant to § 23-7-8 may be
5 transferred by the local issuing authority to any agency other than the secretary of state. The
6 secretary of state may not allow information from any concealed pistol permit to be electronically
7 accessible to any other agency or person or to be transferred to any other agency or person for
8 the purpose of establishing or maintaining a statewide electronic database.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

814H0180 **HOUSE COMMERCE COMMITTEE ENGROSSED NO.**
HB 1073 - 01/17/2002

Introduced by: Representatives Flowers, Abdallah, Brown (Jarvis), Burg, Hansen (Tom), Hargens, Holbeck, Hundstad, Jensen, Lange, Olson (Mel), and Sebert and Senators Volesky, Duxbury, Koetzle, McCracken, Moore, and Putnam

1 FOR AN ACT ENTITLED, An Act to require direct reimbursement to ambulance services
2 under certain circumstances.

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

4 Section 1. Notwithstanding any provision of any policy of insurance subject to the general
5 provisions of Title 58, if a policy or contract provides for reimbursement for ambulance service,
6 the reimbursement shall be made payable directly to the ambulance service or jointly to both the
7 insured and the ambulance service. The provisions of this section only apply to nonprofit
8 ambulance services.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

733H0446

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1075 - 01/17/2002

Introduced by: Representatives Hansen (Tom) and Brown (Richard) and Senators Munson and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for a bank's investment limitations.

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

3 Section 1. That chapter 51A-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A bank may make investments designed primarily to promote the public welfare, including
6 the welfare of low and moderate income communities or families. A bank may make such
7 investments directly or by purchasing interests in an entity primarily engaged in making such
8 investments. No bank may make any such investment if the investment would expose the bank
9 to unlimited liability. The commission shall limit a bank's investments in any one project and a
10 bank's aggregate investments under this section. A bank's aggregate investments under this
11 section may not exceed an amount equal to the sum of five percent of the bank's capital stock
12 actually paid in and unimpaired and five percent of the bank's unimpaired surplus fund, unless
13 the commission determines by order that the higher amount will not pose a significant risk to the
14 bank and the bank is adequately capitalized. In no case may a bank's aggregate investments under



- 1 this section exceed an amount equal to the sum of ten percent of the bank's capital stock actually
- 2 paid in and unimpaired and ten percent of the bank's unimpaired surplus fund.