

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

708H0708

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1294** - 02/05/2002

Introduced by: Representative Konold

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority and to declare an emergency.

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

4 Section 1. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to all other powers established pursuant to chapter 5-12, the building authority
7 may invest its funds or the funds under its control or direction in permitted investments as
8 defined in subdivision 5-12-48(10).

9 Section 2. That § 5-12-50 be amended to read as follows:

10 5-12-50. The authority may establish by resolution a special purpose corporation which shall
11 be body corporate and politic and instrumentality of, but having a legal existence independent
12 and separate from, the State of South Dakota and the authority. The corporation shall be
13 established for the express limited public purposes set forth in §§ 5-12-48 to 5-12-60, inclusive,
14 and no part of the net earnings of the corporation shall inure to any private individual.

15 The corporation shall be governed by a board consisting of the members of the authority and



1 two additional persons appointed by the Governor, which two additional members shall be
2 independent from the state. The resolution establishing the corporation shall serve as the charter
3 of the corporation and may be amended from time to time by the authority, but the resolution
4 shall at all times provide that the power and the authority of the corporation shall be subject to
5 the terms, conditions, and limitations of §§ 5-12-48 to 5-12-60, inclusive, and any applicable
6 covenants or agreements of the corporation in any indenture or other agreement relating to any
7 then outstanding bonds. The corporation may enter into contracts regarding any matter
8 connected with any corporate purpose within the objects and purposes of §§ 5-12-48 to 5-12-60,
9 inclusive.

10 The authority and corporation may delegate by resolution to one or more officers or
11 employees of the authority or corporation such powers and duties as it may deem proper.

12 The corporation may issue bonds and secure repayment of the bonds with amounts payable
13 out of tobacco settlement revenues or any other property or funds of the corporation. Bonds
14 issued by the corporation shall be accompanied by an opinion of nationally recognized bond
15 counsel substantially to the effect that ~~interest on the bonds is excludable from the gross income~~
16 ~~of the bondholder for federal income tax purposes~~ the bonds are valid and legal obligations of
17 the corporation.

18 The corporation may pledge as security for any bonds any rights under the master settlement
19 agreement held by the corporation, including the right to receive or collect tobacco settlement
20 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
21 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
22 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
23 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
24 or agreement described in § 5-12-49 and signed on behalf of the state by the Governor. Any such

1 pledge made by the corporation shall be valid and binding from the time the pledge is made. The
2 property, revenues, moneys, and other funds so pledged and thereafter held or received by or on
3 behalf of the corporation shall immediately be subject to the lien of the pledge without any
4 physical delivery thereof or further act; and, subject only to the provisions of prior pledges or
5 agreements of the corporation, the lien of the pledge shall be valid and binding as against the
6 state and all parties having claims of any kind in tort, contract, or otherwise against the
7 corporation irrespective of whether such parties have notice thereof. No ordinance, resolution,
8 trust agreement, or other instrument by which such pledge is created need be filed or recorded
9 except in the records of the corporation.

10 In connection with the issuance of bonds or, at any time with respect to bonds, the
11 corporation may enter into arrangements to provide additional security and liquidity for bonds.
12 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
13 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
14 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
15 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
16 persons providing the arrangements, including from bond proceeds.

17 The resolution authorizing the issuance of bonds or the indenture or other agreement
18 approved by the resolution may provide that interest rates may vary from time to time depending
19 upon criteria established by the corporation, which may include, without limitation, a variation
20 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
21 price equal to their principal amount, and may provide for appointment of a national banking
22 association, bank, trust company, investment banking firm, or other financial institution to serve
23 as a remarketing agent in that connection. The indenture or other agreement with respect to
24 bonds may provide that alternative interest rates or provisions will apply during such times as

1 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
2 for bonds.

3 In connection with bonds under §§ 5-12-48 to 5-12-60, inclusive, or the investment of
4 proceeds, bonds, or other funds of the corporation, the corporation may enter into contracts that
5 it determines necessary or appropriate to permit it to manage payment or interest rate risk. These
6 contracts may include, but are not limited to, interest rate exchange agreements; contracts
7 providing for payment or receipt of funds based on levels of or changes in interest rates;
8 contracts to exchange cash flows or series of payments; and contracts incorporating interest rate
9 caps, collars, floors, or locks.

10 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
11 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
12 moratorium law or statute as may, from time to time, be in effect and neither any public officer
13 nor any organization, entity, or other person shall authorize the corporation to be or become a
14 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
15 insolvency, or moratorium law or statute, as may, from time to time be in effect.

16 The corporation may not guarantee the debts of another.

17 The corporation may not be required to file any reports with the state other than those
18 required to be filed with the Legislature by authorities which issue bonds.

19 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
20 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
21 may be or become a lien, charge, or liability against the corporation or the property or funds of
22 the corporation.

23 Section 3. Whereas, this Act is necessary for the support of the state government and its
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.