

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

555H0018 **SENATE STATE AFFAIRS COMMITTEE ENGROSSED**
NO. HB 1001 - 02/08/2002

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 and two legislators are authorized to
21 represent this state before the other states that are signatories to the agreement. The Executive
22 Board of the Legislative Research Council shall appoint one senator and one representative to
23 represent this state.

24 Section 4. No provision of the agreement authorized by this Act in whole or part invalidates

1 or amends any provision of the law of this state. Adoption of the agreement by this state does
2 not amend or modify any law of this state. Implementation of any condition of the agreement in
3 this state, whether adopted before, at, or after membership of this state in the agreement, must
4 be by the action of this state.

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

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

9 (1) Limiting the number of state rates.

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

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

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

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

15 (2) The administration of exempt sales.

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

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

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

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

23 (e) The agreement must provide that registration with the central registration system and
24 the collection of sales and use taxes in the signatory states will not be used as a factor

1 in determining whether the seller has nexus with a state for any tax.

2 (f) The agreement must provide for reduction of the burdens of complying with local
3 sales and use taxes through the following:

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

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

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

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

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

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

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

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

1 Section 6. The agreement authorized by this Act is an accord among individual cooperating
2 sovereigns in furtherance of their governmental functions. The agreement provides a mechanism
3 among the member states to establish and maintain a cooperative, simplified system for the
4 application and administration of sales and use taxes under the duly adopted law of each member
5 state.

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

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

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

23 A seller that has a proprietary system for determining the amount of tax due on transactions
24 and has signed an agreement establishing a performance standard for that system is liable for the

1 failure of the system to meet the performance standard.

2 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the
3 Uniform Sales and Use Tax Administration Act.

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

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

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

14 ~~10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~
15 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~
16 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~
17 ~~10-46.~~

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

19 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~
20 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered
21 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons
22 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters
23 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

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

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

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

4 10-45-1. Terms used in this chapter mean:

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

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

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

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

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

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

22 Gross receipts do not include:

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

1 not constitute such person a retailer;

2 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or
3 by any means whatsoever, for a consideration.

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

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

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

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

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

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

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

23 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales
24 contract, or under other forms of sale wherein the payment of the principal sum is extended over

1 a period longer than sixty days from the date of sale, only the portion of the sale amount that has
2 actually been received in cash by the retailer during each reporting period is subject to the tax
3 imposed by this chapter.

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

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

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

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

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

19 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of
20 any person from engaging in the business of leasing farm machinery or irrigation equipment used
21 for agricultural purposes and four percent upon the gross receipts of any person from engaging
22 or continuing in any of the following businesses or services in this state: abstracters; accountants;
23 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry
24 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and

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

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

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

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

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

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

20 10-45-24. Each retailer or person engaging in a business in this state whose receipts are
21 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each
22 application shall be made on a form prescribed by the secretary of revenue and shall require the
23 name under which the applicant transacts or intends to transact business, the location of each
24 business, and other information as the secretary of revenue may require. The application shall be

1 signed by the owner, if a natural person; by a member or partner, if an association or partnership;
2 or by an executive officer or a person specifically authorized by the corporation to sign the
3 application, if a corporation, to which shall be attached the written evidence of the person's
4 authority. The applicant shall have a permit for each place of business, unless the secretary of
5 revenue grants a request for a statewide permit. A statewide permit may be granted if the
6 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping
7 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified
8 in the application.

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

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

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

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

22 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~
23 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~
24 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~

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

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

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

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

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

2 10-45-61. Notwithstanding § 10-54-1, a seller, who possesses a ~~resale~~ an exemption
3 certificate from a purchaser of tangible personal property or services which indicates the items
4 or services being purchased are ~~for resale in the regular course of business~~ exempt, may rely on
5 the ~~resale~~ exemption certificate and not charge sales tax to the provider of the ~~resale~~ exemption
6 certificate until the provider of the ~~resale~~ exemption certificate gives notice that the items or
7 services being purchased are no longer ~~for resale~~ exempt by filing a new ~~resale~~ exemption
8 certificate with the seller.

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

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

1 ~~nature of the purchaser's business.~~

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

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

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

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

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

20 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible
21 personal property and services to the location where the tangible personal property or service
22 is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the
23 location of receipt. The rules promulgated pursuant to this section may provide an alternative
24 method of sourcing telecommunication services.

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

3 Registration under the agreement and collection of tax imposed under this chapter or chapter
4 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

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

6 10-46-1. Terms, as used in this chapter mean:

7 (1) "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 (2) "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 (3) "Fair market value," the price at which a willing seller and willing buyer will trade.
13 Fair market value shall be determined at the time of purchase. If a public corporation
14 is supplying tangible personal property that will be used in the performance of a
15 contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition
16 also applies to chapter 10-45;

17 ~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was
18 purchased from a retailer licensed under chapter 10-45 and that retailer has included
19 the tax in the amount received from the sale;

20 ~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota
21 and includes all territory within such limits owned by or ceded to the United States
22 of America;

23 ~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner
24 or by any means whatsoever, for a consideration. A transaction, whereby the

1 possession of property is transferred but the seller retains the title as security for the
2 payment of the price, is a purchase;

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

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

22 ~~(8)(9)~~ "Retailer maintaining a place of business in the state," any retailer having or
23 maintaining within this state, directly or by a subsidiary, an office, distribution house,
24 sales house, warehouse, or other place of business, or any agents operating within the

1 state under the authority of the retailer or its subsidiary, irrespective of whether such
 2 place of business or agent is located here permanently or temporarily or whether such
 3 retailer or subsidiary is admitted to do business within this state pursuant to the laws
 4 of the State of South Dakota granting the rights of foreign corporations to do
 5 business in this state;

6 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly
 7 authorized and appointed assistant, deputies, or agents of the secretary charged
 8 with the administration or enforcement of this chapter;

9 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption
 10 in the State of South Dakota for any purpose except sale in the regular course
 11 of business;

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

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

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

24 There are exempted from the provisions of this chapter and the tax imposed by it, the use of

1 parts or repairs on machinery or equipment which are clearly identifiable as used primarily for
2 agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or
3 irrigation equipment part assigned a specific or generic part number by the manufacturer of the
4 farm machinery or irrigation equipment.

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

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

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

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

23 ~~— If a municipality increases its tax rate above one percent, the revenue generated from the tax~~
24 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~

1 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~
2 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~
3 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~
4 ~~transfer to the special 911 fund authorized by § 34-45-12, the purchasing of fire fighting vehicles~~
5 ~~and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or~~
6 ~~reconstruction of streets as defined in the June, 1994, South Dakota Department of~~
7 ~~Transportation Pavement Condition Survey Guide for City Streets.~~

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

9 ~~—10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~
10 ~~ratified and may continue in force, provided, that no rate, which as of July 1, 1977, is in excess~~
11 ~~of the rate specified in § 10-52-2, shall be increased.~~

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

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

1 from the tax.

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

3 ~~10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~
4 ~~primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific~~
5 ~~or generic part number by the manufacturer of the farm machinery, farm machinery and~~
6 ~~equipment, and agricultural animal health products and medicines are exempt from the tax~~
7 ~~imposed by this chapter.~~

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

9 ~~10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~
10 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

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

12 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the
13 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval
14 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
15 ordinance which was in effect on December 31, 2005, is continued under the provisions of this
16 chapter if:

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

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

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

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

1 10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance
2 with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may
3 issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in
4 anticipation of the collection of the taxes. The bonds shall be payable solely from the collections
5 of the taxes imposed by the municipality under § 10-52-2 ~~or 10-52-8, or both,~~ as determined by
6 the governing body. The governing body shall, in the resolution or ordinance authorizing the
7 bonds, agree that it will continue to impose and collect the taxes so long as the bonds are
8 outstanding. The governing body shall also pledge so much of the collections of the taxes as may
9 be necessary to pay the principal premium and interest on the bonds and to maintain any debt
10 service reserve established for the bonds. The For bonds issued prior to January 1, 2006, the
11 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and
12 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer
13 licensed beds and other public health care facilities or nonprofit health care facilities with fifty
14 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt
15 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the
16 bonds. If the proceeds of the tax imposed by § 10-52-8 are pledged to payment of the bonds, the
17 land acquisition and capital improvements financed with the proceeds of the bonds shall relate
18 to the purposes enumerated in § 10-52-8.

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

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

22 ~~— 10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~
23 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
24 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~

1 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
2 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
3 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~
4 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
5 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
6 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
7 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
8 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
9 ~~use tax on such items with the exception of the rate.~~

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

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

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

24 ~~10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~

1 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~
2 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~
3 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~
4 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~
5 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

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

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

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

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

24 Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 For the purposes of the tax imposed by this chapter, the transportation of tangible personal
3 property and passengers shall be taxed only if the origins and destination of the property or
4 passenger are within the same municipality.

5 Section 45. The Legislature hereby finds that the amendments to chapter 10-52 contained
6 in this Act shall result in a broader and more uniform tax base for the sales tax levied by
7 municipalities under this chapter, and that, absent a reduction in the current tax levy of a
8 municipality, it is anticipated that total sales tax revenues of a municipality may increase as a
9 result of these amendments. However, so long as a municipality has any bonds or other
10 obligations outstanding which are secured directly or indirectly by the pledge or collection and
11 application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to
12 January 1, 2006, no municipality may reduce its tax levy under chapter 10-52 to a rate which,
13 in the exercise of the sound discretion of the governing body, would be expected to produce less
14 total revenue than was collected in the immediately preceding year.

15 Section 46. Sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, and 44 are effective on
16 January 1, 2006.

17 Section 47. Except as may be required by section 45 of this Act, it is the intent of the
18 Legislature that the provisions of this Act be revenue neutral to all levels of government. Any
19 municipality that has reviewed its sales tax ordinance as required by section 37 of this Act shall
20 determine and enact a rate of taxation that, in the exercise of the sound discretion of the
21 governing body, would be expected to produce no more total revenue than was collected in the
22 immediately preceding year. However, nothing herein shall prohibit any increase in revenues that
23 are projected to occur because of economic growth.

24 Section 48. Section 47 of this Act is repealed on January 1, 2007.

1 Section 49. Whereas, this Act is necessary for the support of the state government and its
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
3 force and effect from and after its passage and approval.

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

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1003** - 02/08/2002

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.

5 Section 17. The Legislature hereby finds that the amendments to chapter 10-52 contained
6 in this Act shall result in a broader and more uniform tax base for the tax levied by municipalities
7 under this chapter, and that, absent a reduction in the current tax levy of a municipality, it is
8 anticipated that total tax revenues of a municipality may increase as a result of these
9 amendments. However, so long as a municipality has any bonds or other obligations outstanding
10 which are secured directly or indirectly by the pledge or collection and application of taxes levied
11 pursuant to § 10-52-8 as in effect immediately prior to the effective date of this Act, no
12 municipality may reduce its tax levy under this Act to a rate which, in the exercise of the sound
13 discretion of the governing body, would be expected to produce less total revenue than was
14 collected in the immediately preceding year pursuant to the tax imposed under § 10-52-8.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0205

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1024** - 02/08/2002

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

400H0259

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1049** - 01/14/2002

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

1 FOR AN ACT ENTITLED, An Act to authorize the use of online reverse auctions for state
2 purchases.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Reverse auction," a purchasing process in which bidders submit bids in competing
6 to sell supplies or services in an open environment via the internet;

7 (2) "Internet," the international computer network of both federal and nonfederal
8 interoperable packet switched data networks, including the graphical subnetwork
9 called the world wide web.

10 Section 2. That chapter 5-23 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Notwithstanding the provisions of this chapter, the Bureau of Administration may purchase
13 supplies or services by online reverse auction. The Bureau of Administration shall promulgate
14 rules, pursuant to chapter 1-26, to establish procedures pursuant to this section.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

660H0535

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1109** - 01/31/2002

Introduced by: Representatives Van Etten, Adelstein, Brown (Richard), Duniphan, Glenski, Hansen (Tom), Hennies (Thomas), McCaulley, McCoy, Murschel, Peterson (Bill), and Pummel and Senators Vitter, Brosz, Daugaard, Ham, Kleven, McCracken, and Whiting

1 FOR AN ACT ENTITLED, An Act to exempt local governments from certain competitive bid
2 requirements.

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

4 Section 1. That § 5-18-2 be amended to read as follows:

5 5-18-2. ~~All~~ Except as provided in section 2 of this Act, all contracts of any public
6 corporation, whether for the construction of public improvements or contracts for the purchase,
7 lease or rental of materials, supplies or equipment, ~~when~~ if such contracts involve an expenditure
8 equal to or in excess of the amount provided for in § 5-18-3, ~~must~~ shall be let to the lowest
9 responsible bidder. The governing body ~~shall have the right to~~ may reject any and all bids and ~~to~~
10 readvertise for proposals if none of the bids are satisfactory, or if they believe any agreement has
11 been entered into by the bidders to prevent competition.

12 Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
13 follows:



1 A contract of a public corporation may be awarded without competitive sealed bids or
2 competitive sealed proposals regardless of the estimated cost if the governing body determines
3 that there is only one source for the required service or item of tangible personal property. The
4 governing body shall conduct negotiations, including price, delivery, and quantity to obtain the
5 price most advantageous to the governing body. The governing body shall include in the bid file
6 written verification that there was only one source for service or item. This section does not
7 apply to construction services or equipment.

8 Section 3. That § 9-12-1 be amended to read as follows:

9 9-12-1. Every municipality shall have power:

- 10 (1) To sue and be sued and to contract in its corporate name;
- 11 (2) To acquire by lease, purchase, gift, condemnation, or other lawful means and hold in
12 its corporate name or use and control as provided by law both real and personal
13 property and easements and rights of way within or without the corporate limits for
14 all purposes authorized by law or necessary to the exercise of any power granted;
- 15 (3) To provide that supplies needed for the use of the municipality shall be furnished by
16 contract let to the lowest responsible bidder, except as otherwise provided by law;
- 17 (4) To construct, operate, and maintain an auditorium and all public buildings necessary
18 for the use of the municipality;
- 19 (5) To insure the public property of the municipality;
- 20 (6) To convey, sell, give, dispose of, or lease both the personal and real property of the
21 municipality as provided by this title.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

670H0238

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1129** - 02/08/2002

Introduced by: Representatives Madsen, Brown (Jarvis), Duenwald, Eccarius, Elliott, Flowers, Frost, Fryslie, Garnos, Gillespie, Hansen (Tom), Hargens, Hunhoff, Jaspers, Juhnke, Klaudt, Kloucek, Koistinen, Lintz, McCaulley, McCoy, Monroe, Nachtigal, Napoli, Olson (Mel), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Pummel, Rhoden, Richter, Smidt, Teupel, and Van Etten and Senators Putnam, Apa, Bogue, Cradduck, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Everist, Greenfield, Hutmacher, Kleven, Madden, McCracken, Moore, Olson (Ed), Sutton (Dan), Vitter, and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding concealed pistol
2 permits.

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

4 Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The attorney general shall compare South Dakota permit issuance statutes with the permit
7 issuance statutes in states with which reciprocity is sought or requested in order to determine
8 whether the laws of the other state meet or exceed the requirements of this chapter for the
9 issuance of a permit. The secretary of state may enter into reciprocity agreements with other
10 states after the attorney general has notified the secretary of state that the other states' laws meet
11 or exceed the provisions of this chapter.



1 Section 2. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter
4 unless that person also has in his or her physical possession a valid South Dakota permit to carry
5 a concealed pistol or a permit effective pursuant to section 1 of this Act. A violation of this
6 section is a petty offense. However, if within twenty-four hours of being charged with a violation
7 of this section, the person produces a permit to carry a concealed pistol which was valid at the
8 time of the alleged offense in the office of the officer making the demand, the charge shall be
9 dismissed.

10 Section 3. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any person who is permitted to carry a concealed pistol in a state with which the secretary
13 of state has entered into a reciprocity agreement pursuant to this Act may carry a concealed
14 pistol in this state if the permit holder carries the pistol in compliance with the laws of this state.
15 A violation of this section is a Class 1 misdemeanor.

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

17 23-7-7. A permit to carry a concealed pistol shall be issued to any person by the sheriff of
18 the county ~~or the chief of police of the municipality~~ in which the applicant resides. The permit
19 shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. Prior to issuing the
20 permit, the sheriff shall execute a background investigation, including a criminal history check,
21 of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the
22 requirements of § 23-7-7.1. For the purposes of this section, a background investigation is
23 defined as a computer check of available on-line records.

24 Section 5. That § 23-7-7.1 be amended to read as follows:

1 23-7-7.1. A temporary permit to carry a concealed pistol shall be issued within five days of
2 application to a person if the applicant:

- 3 (1) Is eighteen years of age or older;
- 4 (2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime
5 of violence;
- 6 (3) Is not habitually in an intoxicated or drugged condition;
- 7 (4) Has no history of violence;
- 8 (5) Has not been found in the previous ten years to be a "danger to others" or a "danger
9 to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;
- 10 (6) Has been a resident of the county or municipality where the application is being made
11 for at least thirty days;
- 12 (7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or
13 misdemeanor in the two five years preceding the date of application or is not currently
14 charged under indictment or information for such an offense; and
- 15 (8) Is a citizen of the United States ~~or has been in the United States legally for at least~~
16 ~~two years; and~~
- 17 (9) Is not a fugitive from justice.

18 A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

19 Section 6. That § 23-7-8 be amended to read as follows:

20 23-7-8. The application for a permit to carry a concealed pistol shall be in triplicate on a form
21 prescribed by the secretary of state. The application shall require the applicant's complete name,
22 address, occupation, place and date of birth, physical description, a statement that the applicant
23 has never pled guilty to, nolo contendere to, or been convicted of a crime of violence, a sworn
24 statement that the information on the application is true and correct, and the applicant's

1 signature. The original shall be delivered to the applicant as the temporary permit, the duplicate
2 shall within seven days be sent by first class mail to the secretary of state who shall issue the
3 official permit, and the triplicate shall be preserved for four years by the authority issuing the
4 permit.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

447H0382

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1130** - 01/31/2002

Introduced by: Representatives Murschel, Adelstein, Derby, Hennies (Thomas), Hunhoff, and Van Etten and Senators McCracken, Ham, Reedy, Vitter, and Whiting

1 FOR AN ACT ENTITLED, An Act to revise the provisions related to the sale of surplus
2 governmental property.

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

4 Section 1. That § 6-13-5.2 be amended to read as follows:

5 6-13-5.2. In lieu of receiving sealed bids as required by this chapter, a school district,
6 municipality, or county may sell real property at public auction or by listing the property with one
7 or more licensed real estate brokers. The ~~school board~~ governing body may accept any offer for
8 purchase of real property provided the offer exceeds ninety percent of the appraised value of the
9 real property as required by § 6-13-2. If a ~~school board~~ governing body sells real property by
10 public auction or through a real estate broker, the ~~school board~~ governing body shall give notice
11 of the sale of the real property as required by § 6-13-4.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

744H0489

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1165** - 01/31/2002

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Napoli, Juhnke, and Madsen and Senators Apa, Greenfield, Kleven, and Madden

1 FOR AN ACT ENTITLED, An Act to permit more time to file local referendums.

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

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

5 Any referendum petition to refer a measure passed by a local unit of government may be
6 circulated immediately upon final passage of the measure.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

807H0521

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1188 - 02/08/2002

Introduced by: Representatives Teupel, Adelstein, Derby, Frost, Hennies (Thomas), Kooistra, Madsen, Pummel, and Rhoden and Senators Apa, Brosz, McCracken, Olson (Ed), Reedy, Symens, and Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain penalties for moving or obtaining a used
2 mobile home or manufactured home without an affidavit from the county treasurer.

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

4 Section 1. That § 32-5-16.6 be amended to read as follows:

5 32-5-16.6. If the owner of the used mobile home or manufactured home, prior to moving the
6 home, fails to obtain an affidavit from the county treasurer of the county in which the used
7 mobile home or manufactured home is registered, stating that the current year's taxes are paid
8 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil
9 penalty ~~of two hundred fifty dollars to~~ on the owner. If a regulated lender, as defined in
10 § 54-3-14, is repossessing a used mobile home or manufactured home and fails to obtain an
11 affidavit, prior to moving the home, from the county treasurer of the county in which the used
12 mobile home or manufactured home is registered, stating that the current year's taxes are paid
13 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil
14 penalty ~~of two hundred fifty dollars to~~ on the lender.



1 The court shall levy a civil penalty of two hundred fifty dollars for the first violation within
2 a one-year period, five hundred dollars for the second violation within a one-year period, and one
3 thousand dollars for each subsequent violation within a one-year period. All civil penalties
4 collected pursuant to this section shall be deposited in the county general fund of the county in
5 which the used mobile home or manufactured home is registered. The county treasurer shall
6 notify the Department of Revenue of any violation resulting in a civil penalty assessment for
7 failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

8 Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If a transporter of a used mobile home or manufactured home, prior to transporting, fails to
11 obtain an affidavit from the county treasurer of the county in which the used mobile home or
12 manufactured home is registered, stating that the current year's taxes are paid as described in
13 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the court shall assess a civil penalty on the
14 transport owner. If a manufacturer or licensed dealer, as defined in chapter 32-7A, is moving,
15 repossessing, trading, purchasing, or receiving onto the manufacturer's or licensed dealer's lot
16 a used mobile home or manufactured home and fails to obtain an affidavit from the county
17 treasurer of the county in which the used mobile home or manufactured home is registered,
18 stating that the current year's taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive,
19 or § 10-9-3, the court shall assess a civil penalty on the manufacturer or licensed dealer.

20 The court shall levy a civil penalty of two hundred fifty dollars for the first violation within
21 a one-year period, five hundred dollars for the second violation within a one-year period, and one
22 thousand dollars for each subsequent violation within a one-year period. All civil penalties
23 collected pursuant to this section shall be deposited in the county general fund of the county in
24 which the used mobile home or manufactured home is registered. The county treasurer shall

1 notify the Department of Revenue of any violation resulting in a civil penalty assessment for
2 failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

3 Section 3. For the purposes of sections 1 and 2 of this Act, if the owner, lender, licensed
4 dealer, or transporter are the same party the court may not assess multiple civil penalties for any
5 one violation.

6 Section 4. That chapter 32-9 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The department may, pursuant to chapter 1-26, revoke and cancel or suspend the commercial
9 motor vehicle certificate which belongs to any person who the court has assessed a civil penalty
10 pursuant to section 2 of this Act four or more times within a one-year period.

11 Section 5. That chapter 32-9 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The department may, pursuant to chapter 1-26, revoke or suspend the transporter plate
14 issued pursuant § 32-9-57 which belongs to any transporter who the court has assessed a civil
15 penalty pursuant to section 2 of this Act four or more times within a one-year period. It is a Class
16 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its lawful
17 demand any transporter plate which has been revoked or suspended.

18 Section 6. That § 32-7A-4.2 be amended to read as follows:

19 32-7A-4.2. The department may deny any application, or suspend or revoke any license
20 issued under the provisions of this chapter, for a violation of any of the following provisions:

- 21 (1) Commission of fraud or willful misrepresentation in the application for or in obtaining
22 a license;
- 23 (2) A previous manufacturer or dealer license revocation in this or any other state;
- 24 (3) Willful violation, which leads to a conviction, of any law of this state which relates to

- 1 dealing in manufactured homes or mobile homes;
- 2 (4) Willful failure to comply with any administrative rule promulgated by the department;
- 3 (5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes
4 or mobile homes;
- 5 (6) Failure to allow department inspections, including initial and annual inspections,
6 complaint investigations and necessary follow-up inspections;
- 7 (7) Willful misrepresentation through false, deceptive, or misleading statements with
8 regard to the sale or financing of manufactured homes or mobile homes which a dealer
9 has, or causes to have, advertised, printed, displayed, published, distributed,
10 broadcast, televised, or made in any manner with regard to the sale or financing of
11 manufactured homes or mobile homes;
- 12 (8) Refusal to comply with a licensee's responsibility under the terms of the new
13 manufactured home or mobile home warranty issued by its respective manufacturer,
14 unless such refusal is at the direction of the manufacturer;
- 15 (9) Willful failure to comply with the terms of any bona fide written, executed agreement
16 pursuant to the sale of a manufactured home or mobile home;
- 17 (10) Violation by the dealer of any applicable manufactured home building or safety code;
- 18 (11) Failure to continuously occupy a principal place of business licensed under § 32-7A-2;
- 19 (12) Willful failure to deliver the manufacturer's statement of origin to the county treasurer
20 or the certificate of title to a person entitled to it within ~~fifteen~~ thirty days after date
21 of delivery;
- 22 (13) Conviction within the previous ten years, of a crime that related directly to the
23 business of the dealer or manufacturer involving fraud, misrepresentation or misuse
24 of funds;

- 1 (14) Inability to obtain or renew a surety bond;
- 2 (15) Misuse of the dealers' metal plates and lending for use on mobile homes or
3 manufactured homes not owned by the manufacturer or dealer;
- 4 (16) Transporting a used mobile home or manufactured home without an affidavit, four or
5 more times within a one-year period, from the county treasurer of the county in which
6 the mobile home or manufactured home is registered, stating that the current year's
7 taxes are paid; or
- 8 (17) Having a used mobile home or manufactured home located on the licensed dealer's or
9 manufacturer's lot without an affidavit, four or more times within a one-year period,
10 from the county treasurer of the county in which the mobile home or manufactured
11 home is registered, stating that the current year's taxes were paid when the licensed
12 dealer acquired the home.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0726

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1299 - 02/08/2002

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to change the definition and venue of perjury prosecutions
2 and to provide for the verification of certain information on certain state applications or other
3 documents.

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

5 Section 1. That § 22-29-1 be amended to read as follows:

6 22-29-1. Any person who, having taken an oath that he or she will testify, declare, depose,
7 or certify truly before any competent tribunal, officer, or person, in any ~~of the cases~~ state or
8 federal proceeding or action in which such an oath may by law be administered, intentionally and
9 contrary to ~~such the~~ the oath, states any material matter which ~~he~~ the person knows to be false, is
10 guilty of perjury.

11 Section 2. That chapter 23A-16 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Perjury may be prosecuted in the circuit court for either the county where the proceeding or
14 action is venued or where the act of perjury was committed.

15 Section 3. Any person who submits any petition, application, information, or other document



1 for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall
2 verify, under oath, that such petition, application, or information is true and correct. However,
3 it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or
4 written thereon in the form following: "I declare and affirm under the penalties of perjury that
5 this claim (petition, application, information) has been examined by me, and to the best of my
6 knowledge and belief, is in all things true and correct." Any person who signs such statement as
7 provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be
8 guilty of perjury.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

445H0554

HOUSE ENGROSSED NO. **HCR 1014** - 02/08/2002

Introduced by: Representatives Nachtigal and Bartling and Senator Hutmacher

1 A CONCURRENT RESOLUTION, Urging Congress to revise eligibility requirements for
2 certain Medicaid recipients of long-term care assistance.

3 WHEREAS, federal regulations currently provide that Medicaid to individuals in medical
4 institutions, nursing facilities, and intermediate care facilities for the mentally retarded is effective
5 with the first day of a period of not less than thirty consecutive days of institutionalization; and

6 WHEREAS, this requirement applies if an eligible individual's income minus twenty dollars
7 is greater than the Supplemental Security Income standard but less than three hundred percent
8 of the Supplemental Security Income standard; and

9 WHEREAS, this requirement precludes a nursing facility from recovering any amount for
10 long-term care provided to these individuals for periods of stay that are less than thirty
11 consecutive days; and

12 WHEREAS, nursing facilities are struggling financially in South Dakota and should be paid
13 for the care provided to individuals who pass away before residing in the nursing facility for
14 thirty consecutive days:

15 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-



1 seventh Legislature of the State of South Dakota, the Senate concurring therein, that Congress
2 be urged to revise the regulation that precludes coverage for certain Medicaid eligible residents
3 of nursing facilities unless they have been residents of the facility for thirty consecutive days and
4 instead provide payment for these individuals upon the first day of institutionalization.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

579H0759

HOUSE ENGROSSED NO. **HCR 1017** - 02/08/2002

Introduced by: Representative Olson (Mel)

1 A CONCURRENT RESOLUTION, Requesting the South Dakota Investment Council to
2 explore investing limited state resources in South Dakota venture capital.

3 WHEREAS, the State of South Dakota has the work force, the quality of life, and the
4 entrepreneurial spirit to succeed; and

5 WHEREAS, our universities have tremendous educators and brilliant students with
6 innovative ideas; and

7 WHEREAS, agriculture producers across the state are increasingly proficient and strongly
8 believe they can become low-cost producers; and

9 WHEREAS, South Dakota has limited statewide mechanism to foster innovation and
10 commercialize good ideas:

11 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-
12 seventh Legislature of the State of South Dakota, the Senate concurring therein, that the South
13 Dakota Investment Council explore investing a portion of the Education Enhancement Trust
14 Fund, the Healthcare Trust Fund, and the Cement Plant Trust Fund in South Dakota venture
15 capital.

