

State of South Dakota

EIGHTY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2007

537N0676

HOUSE ENGROSSED NO. **HB 1252** - 02/12/2007

Introduced by: Representatives Gillespie, Burg, Dykstra, Halverson, Hargens, Hunt, Juhnke, Peters, Street, Vanneman, and Willadsen and Senators Koetzle, Duenwald, Hansen (Tom), Hanson (Gary), McCracken, McNenny, Olson (Ed), and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to provide certain provisions concerning the
2 indemnification of the directors of cooperatives.

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

4 Section 1. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Except as otherwise provided in section 2 of this Act, a rural electric cooperative may
7 indemnify a director who is a party to a proceeding by reason of being a director, against
8 liability incurred in the proceeding if the director:

9 (1) Acted in good faith; and

10 (2) Reasonably believed:

11 (a) In the case of conduct in an official capacity, that the conduct was in the best
12 interests of the cooperative; and

13 (b) In all other cases, that the conduct was at least not opposed to the best interests
14 of the cooperative; and



1 (3) In the case of any criminal proceeding, had no reasonable cause to believe the
2 conduct was unlawful.

3 A rural electric cooperative may also, except as provided in section 2 of this Act, indemnify
4 a director who is a party to a proceeding against liability incurred in the proceeding if the
5 director engaged in conduct for which broader indemnification has been made permissible or
6 obligatory under a provision of the articles of incorporation.

7 A director's conduct with respect to an employee benefit plan for a purpose the director
8 reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan
9 is conduct that satisfies the requirement of subsection (2)(b) of this section.

10 The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
11 plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not
12 meet the relevant standard of conduct described in this section.

13 Section 2. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Unless otherwise ordered by a court, a rural electric cooperative may not indemnify a
16 director:

17 (1) In connection with a proceeding by or in the right of the cooperative, except for
18 reasonable expenses incurred in connection with the proceeding if it is determined
19 that the director has met the relevant standard of conduct pursuant to section 1 of this
20 Act; or

21 (2) In connection with any proceeding with respect to conduct for which the director was
22 adjudged liable on the basis that the director received a financial benefit to which the
23 director was not entitled, whether or not involving action in the director's official
24 capacity.

Section 3. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as follows:

A rural electric cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party by reason of being a director of the cooperative, against reasonable expenses incurred in connection with the proceeding.

Section 4. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as follows:

Except as otherwise provided in section 5 of this Act, a cooperative may indemnify a director who is a party to a proceeding by reason of being a director, against liability incurred in the proceeding if the director:

(1) Acted in good faith; and

(2) Reasonably believed:

(a) In the case of conduct in an official capacity, that the conduct was in the best interests of the cooperative; and

(b) In all other cases, that the conduct was at least not opposed to the best interests of the cooperative; and

(3) In the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

A cooperative may also, except as provided in section 5, indemnify a director who is a party to a proceeding against liability incurred in the proceeding if the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation.

A director's conduct with respect to an employee benefit plan for a purpose the director

1 reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan
2 is conduct that satisfies the requirement of subsection (2)(b).

3 The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
4 plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not
5 meet the relevant standard of conduct described in this section.

6 Section 5. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Unless otherwise ordered by a court, a cooperative may not indemnify a director:

9 (1) In connection with a proceeding by or in the right of the cooperative, except for
10 reasonable expenses incurred in connection with the proceeding if it is determined
11 that the director has met the relevant standard of conduct pursuant to section 4 of this
12 Act; or

13 (2) In connection with any proceeding with respect to conduct for which the director was
14 adjudged liable on the basis that the director received a financial benefit to which the
15 director was not entitled, whether or not involving action in the director's official
16 capacity.

17 Section 6. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A cooperative shall indemnify a director who was wholly successful, on the merits or
20 otherwise, in the defense of any proceeding to which the director was a party by reason of being
21 a director of the cooperative, against reasonable expenses incurred in connection with the
22 proceeding.

23 Section 7. That § 47-21-21.1 be repealed.

24 ~~47-21-21.1. A rural electric cooperative may indemnify any person who was or is a party or~~

1 ~~is threatened to be made a party to any threatened pending or completed action, suit, or~~
2 ~~proceeding, whether civil, criminal, administrative, or investigative other than an action by or~~
3 ~~in the right of the cooperative by reason of the fact that that person is or was a director, officer,~~
4 ~~employee, or agent of the cooperative, or is or was serving at the request of the cooperative as~~
5 ~~a director, officer, employee, or agent of another corporation, limited liability company,~~
6 ~~partnership, joint venture, trust, or other enterprise, against expenses including attorneys' fees,~~
7 ~~judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person~~
8 ~~in connection with the action, suit, or proceeding if that person acted in good faith and in a~~
9 ~~manner that person reasonably believed to be in or not opposed to the best interests of the~~
10 ~~cooperative and, with respect to any criminal action or proceeding, had no reasonable cause to~~
11 ~~believe such conduct was unlawful.~~

12 Section 8. That § 47-17-19 be repealed.

13 ~~—47-17-19. A cooperative may indemnify any person who was or is a party or is threatened~~
14 ~~to be made a party to any threatened pending or completed action, suit, or proceeding, whether~~
15 ~~civil, criminal, administrative, or investigative other than an action by or in the right of the~~
16 ~~cooperative by reason of the fact that that person is or was a director, officer, employee, or agent~~
17 ~~of the cooperative, or is or was serving at the request of the cooperative as a director, officer,~~
18 ~~employee, or agent of another corporation, limited liability company, partnership, joint venture,~~
19 ~~trust, or other enterprise, against expenses including attorneys' fees, judgments, fines, and~~
20 ~~amounts paid in settlement actually and reasonably incurred by that person in connection with~~
21 ~~the action, suit or proceeding if that person acted in good faith and in a manner that person~~
22 ~~reasonably believed to be in or not opposed to the best interests of the cooperative and, with~~
23 ~~respect to any criminal action or proceeding, had no reasonable cause to believe such conduct~~
24 ~~was unlawful.~~