

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

169H0652

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1279** - 01/30/2002

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

Introduced by: Representatives Peterson (Bill), Broderick, Jaspers, Madsen, Michels, Olson (Mel), Richter, and Smidt and Senators Everist, Brown (Arnold), Daugaard, Hutmacher, McCracken, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to establish the South Dakota Municipal Facilities  
2 Authority, to provide for the establishment of one or more special purpose corporations by  
3 the South Dakota Municipal Facilities Authority, to establish the powers of the South Dakota  
4 Municipal Facilities Authority and each such corporation, including the power to acquire,  
5 own, lease, sublease and dispose of certain land, improvements and capital equipment  
6 comprising all or a portion of any municipal facilities, including any system or part of a  
7 system of waterworks, sewage or waste disposal, and to establish or confirm the powers of  
8 the state, the Department of Environment and Natural Resources, the Board of Water and  
9 Natural Resources, the South Dakota Conservancy District and municipalities and other  
10 public entities of the state in connection therewith.

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

12 Section 1. Terms used in this Act mean:

13 (1) "Authority," the South Dakota Municipal Facilities Authority, a body corporate and



1 politic, created under section 2 of this Act;

2 (2) "Corporation," any special purpose body corporate and politic established by the  
3 authority by resolution of the authority board as provided in section 9 of this Act;

4 (3) "Lease," when used with respect to municipal facilities, any lease, sublease, purchase  
5 agreement, lease-purchase agreement, installment purchase agreement, lease-back  
6 agreement or other contract, agreement, instrument, or arrangement pursuant to  
7 which any rights, interests or property with respect to utility property are transferred  
8 to, by or from any party to, by or from one or more parties and any related  
9 documentation, instruments or arrangements entered into or to be entered into in  
10 connection therewith or ancillary thereto including, without limitation, support and  
11 operating agreements, service agreements, indemnity agreements, participation  
12 agreements, loan agreements or payment undertaking agreements;

13 (4) "Municipal facilities," all or any part of, or an undivided or other interest in, (a) any  
14 utility property or (b) any other land, buildings, improvements or capital equipment,  
15 and any property or other rights or interests ancillary or related to (a) or (b), whether  
16 owned or used by or leased by, to or from, or to be owned, used or leased by, to or  
17 from a public entity, or useful to or by a public entity;

18 (5) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together  
19 with (a) collateralized or noncollateralized obligations of, or any other payment  
20 undertaking, deposit or other agreement of, any bank or savings institution,  
21 investment banking firm or organization, financial institution, insurance company or  
22 bank or insurance holding company (or any subsidiary or affiliate of any of the  
23 foregoing), whether organized under the laws of the United States of America, any  
24 state or territory thereof, or the laws of any foreign nation, if at the time such

1 investments are acquired, the senior debt or claims paying ability of such person or  
2 entity is rated in, or such person or entity has its obligations in respect of such  
3 investments guaranteed or supported by a person or entity the senior debt or claims  
4 paying ability of which is rated in, or whose obligations in respect of the such  
5 investments are secured by bonds, notes, or other financial obligations issued by  
6 issuers rated in, the highest four basic rating classifications by at least one standard  
7 domestic rating service, (b) any bonds, notes or other obligations of any state or  
8 territory of the United States of America or any political subdivision thereof or any  
9 agency, authority or other instrumentality of the United States of America or any  
10 state, territory or political subdivision thereof, if at the time such investments are  
11 acquired such bonds, notes or other obligations are rated in, or the obligations in  
12 respect of such investments are guaranteed or supported by a person or entity the  
13 senior debt or claims paying ability of which is rated in, the four highest basic rating  
14 classifications established by at least one standard domestic rating service or (c) any  
15 bonds, notes or other obligation of the State of South Dakota, Board of Water and  
16 Natural Resources, the South Dakota Conservancy District, the authority, any  
17 corporation formed by the authority or any public body, authority or instrumentality  
18 now or hereafter existing under the laws of the State of South Dakota or any public  
19 entity;

20 (6) "Person," any natural person, firm, partnership, limited liability company, association,  
21 corporation, nonprofit corporation, trust, grantor trust, business trust or public entity;

22 (7) "Public entity," any county, township, municipality, political or administrative  
23 subdivision of state government, subdistrict, irrigation district, water user district,  
24 watershed district, drainage district, soil conservation district, or other public body,

1 authority or instrumentality recognized by state law and shall expressly include the  
2 authority and any corporation formed pursuant to this Act;

3 (8) "State," the State of South Dakota acting by and through the Department of  
4 Environment and Natural Resources;

5 (9) "Support and operating agreement," any contract, agreement or other arrangement  
6 pursuant to which a party agrees with another party to make certain municipal  
7 facilities, or rights with respect thereto or in connection therewith, available to such  
8 other party and which agreement may provide for the imposition of fees, rates or  
9 charges for the use or operation of or receipt of services from municipal facilities;

10 (10) "Utility," any system or part of a system of waterworks, or sewage and waste disposal  
11 described in § 9-40-1; and

12 (11) "Utility property," all or any part of any land, buildings, improvements or capital  
13 equipment and any property or rights ancillary or related thereto comprising a utility,  
14 including any extensions, additions, improvements or appurtenances to any such utility  
15 or combination of systems and any interest in any of the foregoing, whether owned,  
16 leased or used by, to or from the authority, any corporation formed by the authority,  
17 the state or any other public entity, or useful to or by a public entity, including,  
18 without limitation, as to which a public entity has arranged a service agreement.

19 Section 2. There is created the South Dakota Municipal Facilities Authority, a body  
20 corporate and politic, to consist of seven members appointed by the Governor. Not more than  
21 four of said seven members of the authority shall be of the same political party. At least one of  
22 the members to be appointed by the Governor shall be or shall have been an elected municipal  
23 official and at least one of such appointed members shall be or shall have been experienced in and  
24 having a favorable reputation for skill, knowledge, and experience in the field of municipal utility

1 property. The terms for the initial appointments shall be as follows: one member four years; two  
2 members three years; two members two years; and two members one year. No person shall be  
3 appointed to the authority who is an elected official of the State of South Dakota. One of the  
4 members shall be designated by the Governor as chairman.

5 Section 3. Following the expiration of the initial appointment, all subsequent appointments  
6 to the authority shall be made for a four-year term. Each member's term of office shall expire on  
7 the appropriate third Monday in January, but he or she shall continue to hold office until his or  
8 her successor is appointed and qualified. Any vacancy in the authority shall be filled by  
9 appointment for only the balance of the unexpired term. Four members of the authority shall  
10 constitute a quorum.

11 Section 4. Each member shall, before entering upon the duties of his or her office, take and  
12 subscribe the constitutional oath of office and give bond in the penal sum of twenty-five thousand  
13 dollars conditioned upon the faithful performance of his duties. The oath and bond shall be filed  
14 in the Office of the Secretary of State.

15 Section 5. No member of such authority shall receive any compensation for services rendered  
16 under this chapter. However, members shall be reimbursed for necessary expenses incurred in  
17 connection with duties and powers prescribed by this Act.

18 Section 6. In addition to all other powers hereunder, the authority shall have the power and  
19 authority, by resolution of the authority board, to establish one or more special purpose  
20 corporations each of which shall be a body corporate and politic and instrumentality of, but  
21 separate and apart from, the State of South Dakota and the authority. Any such corporation shall  
22 be established for the express limited public purposes set forth in this Act and no part of the net  
23 earnings of any such corporation shall inure to any private individual.

24 Any such corporation shall be governed by a board of trustees consisting of the members of

1 the board of the authority together with two additional persons appointed by the Governor,  
2 which two additional members shall be independent from the government of the state. The  
3 resolution establishing the corporation shall serve as the charter of the corporation and may be  
4 amended from time to time by resolution of the board, but such resolution shall at all times  
5 provide that the power and the authority of the corporation shall be subject to the terms,  
6 conditions and limitations of this Act and any applicable covenants or agreements of the  
7 corporation in any lease, indenture or other instrument, contract or agreement then in effect. The  
8 authority may delegate to the corporation any power granted to the authority under this Act,  
9 including the power to enter into contracts regarding any matter connected with any corporate  
10 purpose of the authority or the corporation within the objects and purposes of this Act.

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

18 No such corporation shall not have the authority to guarantee the debts of another.

19 No such corporation shall not be required to file any reports with the state other than those  
20 specified herein.

21 Except for debts incurred directly by the corporation, no lease or other contract, agreement,  
22 instrument or obligation, issued, incurred or created by the State of South Dakota or any state  
23 agency or instrumentality (other than such corporation) may be or become a lien, charge or  
24 liability against the corporation or the property or funds of the corporation.

1 Section 7. The authority and any corporation formed by the authority may delegate by  
2 resolution any duties or obligations to the Department of Environment and Natural Resources.

3 Section 8. The purposes of the authority and any corporation formed by the authority are:

4 (1) To acquire, own, lease, sublease, sell, transfer or otherwise use, operate, obtain  
5 service from or dispose of municipal facilities to, for or on behalf of, the state, any  
6 public entity or other person;

7 (2) To make, acquire, dispose of or pledge loans in connection with any transactions  
8 involving municipal facilities and to enter into deposit, payment undertaking or similar  
9 arrangements in connection with such transactions;

10 (3) To serve the Legislature by making reports concerning the providing of such property  
11 and facilities;

12 (4) To finance or refinance municipal facilities and to enter into transactions a purpose  
13 of which is to raise capital or provide access to capital for or by public entities; and

14 (5) To invest, on its own behalf or on behalf of any party to any lease, any funds or any  
15 other amounts in permitted investments.

16 Section 9. The state, the authority and any corporation formed by the authority may enter  
17 into any conveyance, lease or contract necessary or desirable in furtherance of the purposes set  
18 forth in this Act, including, without limitation, to acquire, own, lease, sell, transfer or otherwise  
19 use, operate or obtain services from or dispose of land or municipal facilities and any other  
20 improvements made upon or under such land and capital equipment necessary or useful for the  
21 operation of the municipal facilities to be acquired by it pursuant to this Act, including, without  
22 limitation, lease, lease-purchase, and, subject to compliance with the provisions of South Dakota  
23 Constitution, Art. XIII, § 1, installment purchase contracts. Without limitation, the state, the  
24 authority or any corporation formed by the authority may include in such conveyances, leases

1 or contracts any of the following provisions:

2 (1) In lease contracts, options to purchase the property subject to the lease or the lessor's  
3 interest therein, and provisions for the deferred payment or prepayment by lessee to  
4 lessor of rent, and provisions for designating a portion of the periodic payments to be  
5 made thereunder as interest, not of all other costs and expenses of ownership,  
6 operation, maintenance, and insurance of the leased property by the authority or any  
7 such corporation as agent of the lessor; and

8 (2) In lease-purchase contracts or installment purchase contracts, provisions of the type  
9 specified in subdivision (1), and provisions for designating a portion of the periodic  
10 payments to be made thereunder as interest, for prepayment, and for acquisition of  
11 unencumbered title or fee title to the property subject to the contract.

12 No term of a lease, lease-purchase or an installment purchase contract may exceed one  
13 hundred years, and for such purpose, all renewal terms shall be included.

14 Section 10. The state, the authority and each corporation formed by the authority shall have  
15 the power and authority:

16 (1) To acquire and enter into leases of municipal facilities, support and operating  
17 agreements, deposit agreements, payment undertaking agreements, service  
18 agreements and any and all contracts, agreements or other instruments related or  
19 ancillary thereto, and to secure payment or performance of obligations in connection  
20 therewith with any property, funds, investments or rights of the state, the authority  
21 or any corporation;

22 (2) To pledge as security for any arrangement entered into with respect to municipal  
23 facilities (i) any rights under any lease, support and operating agreement, deposit  
24 agreements, payment undertaking agreements, service agreement or other contract,



1 agreement or instrument (ii) any rights with respect to investment of monies, including  
2 permitted investments and contracts related or ancillary thereto, (iii) moneys or other  
3 funds deposited with, payable to or held by or on behalf of the authority or any  
4 corporation and (iv) the proceeds of the foregoing. Any such pledge so made shall be  
5 valid and binding from the time such pledge is made. The property, interests,  
6 revenues, moneys, other funds and rights so pledged and thereafter held or received  
7 by or on behalf of the pledgor shall immediately be subject to the lien of such pledge  
8 without any physical delivery thereof or further act; and, subject only to the provisions  
9 of prior pledges or agreements of the pledgor, the lien of such pledge shall be valid  
10 and binding as against the state, the authority, any public entity and any corporation  
11 and all persons having claims of any kind in tort, contract or otherwise against the  
12 state, the authority, any public entity or any corporation irrespective of whether such  
13 persons have notice thereof. No ordinance, resolution, trust agreement or other  
14 instrument by which such pledge is created need be filed or recorded;

15 (3) To enter into one or more support and operating agreements, service agreements or  
16 other arrangements to provide additional security, property or liquidity in connection  
17 with any lease or other contract or arrangement relating to municipal facilities. Such  
18 arrangements may include, without limitation, bond insurance, letters of credit and  
19 lines of credit;

20 (4) To enter into contracts necessary or appropriate to permit it to manage payment or  
21 interest rate risk or credit risk in connection with any sale, lease or other contract,  
22 agreement, instrument or arrangement relating to municipal facilities or the investment  
23 of funds of the state, any public entity, the authority or any corporation in connection  
24 therewith. These contracts may include, but are not limited to, interest rate exchange

1 agreements; contracts providing for payment or receipt of funds based on levels of or  
2 changes in interest rates; contracts to exchange cash flows or series of payments; and  
3 contracts incorporating interest rate caps, collars, floors, or locks;

4 (5) To purchase, acquire, own, operate, contract with other parties to operate, pledge,  
5 lease, sublease, encumber, sell, mortgage or otherwise transfer any or all right, title  
6 and interest in and to municipal facilities;

7 (6) To make loans in connection with any transactions involving municipal facilities or to  
8 enter into deposit, payment undertaking or similar arrangements in connection with  
9 such transactions;

10 (7) To raise funds through the sale, lease, transfer, pledge, encumbrance, mortgage or  
11 other conveyance of the rights, interests, property or contracts described in this  
12 section.

13 Section 11. The authority and any corporation formed by the authority shall also have the  
14 power and authority:

15 (1) To serve the Legislature by making reports concerning the foregoing;

16 (2) To sue and be sued and to prosecute and defend, at law or in equity, in any court  
17 having jurisdiction of the subject matter and of the parties;

18 (3) To have and to use a corporate seal and to alter the same at pleasure;

19 (4) To maintain an office at such place or places as the authority or the board of trustees  
20 of the corporation by resolution may designate;

21 (5) To receive and invest in permitted investments any funds transferred to it by the  
22 authority, any corporation, the State of South Dakota, any public entity or any other  
23 person;

24 (6) To receive deposits or prepayments and to establish, fund and apply any reserve

- 1 accounts or funds for any purpose;
- 2 (7) To establish, assess, levy and collect, or cause to be established, assessed, levied and  
3 collected, fees, rates and charges for the use of utility property or other municipal  
4 facilities which are subject to a lease authorized hereunder or which are otherwise  
5 owned, leased or controlled by the state, corporation, the authority, any public entity  
6 or other person pursuant to a transaction authorized hereby;
- 7 (8) To employ attorneys, accountants, engineers, attorneys, consultants and financial  
8 experts, managers, advisors and such other employees and agents as may be necessary  
9 in its judgment and to fix their compensation;
- 10 (9) Make and execute contracts and all other instruments necessary or convenient for the  
11 performance of its duties and the exercise of its powers and functions under this Act;
- 12 (10) Contract with the South Dakota Building Authority to provide staff and support  
13 services;
- 14 (11) Procure insurance against any loss in connection with the property and other assets,  
15 including loans and loan notes in such amounts and from such insurers as it may deem  
16 available;
- 17 (12) Procure insurance, letters of credit, guarantees, or other credit enhancement  
18 arrangements from any public or private entities, including any department, agency,  
19 or instrumentality of the United States, for payment of all or any portion of any  
20 obligations of the authority or corporation, including the power to pay premiums, fees  
21 or other charges on any such insurance, letters of credit, guarantees, or credit  
22 arrangements;
- 23 (13) Receive and accept from any source aid or contributions of moneys, property, labor,  
24 or other things of value to be held, used, and applied to carry out the purposes of this

1 chapter subject to the conditions upon which the grants or contributions are made,  
2 including, but not limited to, gifts or grants from any department, agency, or  
3 instrumentality of the United States for any purpose consistent with the provisions of  
4 this chapter;

5 (14) Enter into agreements with any department, agency, or instrumentality of the United  
6 States, any public entity or this state and with lenders or others and enter into loan  
7 agreements, sales contracts and leases, or other financing arrangements with  
8 contracting parties for the purpose of planning, regulating and providing for the  
9 financing or refinancing of any municipal facilities;

10 (15) Enter into contracts or agreements for the operation, use, maintenance or  
11 improvement of municipal facilities;

12 (16) Cooperate with and exchange services, personnel and information with any federal,  
13 state, or local governmental agency or public entity;

14 (17) Enter into agreements for management by or on behalf of the State of South Dakota,  
15 the authority or any corporation of any municipal facilities upon such terms and  
16 conditions as may be mutually agreeable;

17 (18) Sell, exchange, donate, and convey any or all of its properties whenever the board of  
18 the authority or any corporation shall find such action to be in furtherance of the  
19 purposes for which the authority or corporation was organized;

20 (19) To establish bank accounts and securities accounts, or have such accounts established  
21 on its behalf at any trust, banking or financial institution;

22 (20) Do any act and execute any instrument which in the authority's judgment is necessary  
23 or convenient to the exercise of the powers granted by this chapter or reasonably  
24 implied from it;

1 (21) Promulgate rules pursuant to chapter 1-26 to implement the provisions of this  
2 chapter;

3 (22) To do all things necessary and convenient to carry out the purposes of this chapter.  
4 To accomplish projects of the kind listed in this Act, the authority and any corporation  
5 formed by the authority may convey property, without charge, to the State of South Dakota or  
6 any public entity, if all obligations which have been secured by the property have been paid.

7 Section 12. No obligation of any corporation formed by the authority under any lease,  
8 support and operating agreement or other contract or agreement may be or become a lien, charge  
9 or liability against the State of South Dakota or the authority within the meaning of the  
10 Constitution or statutes of South Dakota. No instrument of conveyance, lease or other contract  
11 or other agreement entered into by the state, the authority or any corporation formed by the  
12 authority, relating to municipal facilities shall be a debt of the state or the authority within the  
13 meaning of the constitution or statutes of the State of South Dakota, and this Act shall not be  
14 construed as a guarantee by the state or the authority of the obligations of the corporation or any  
15 other person. Nothing in this chapter shall be construed to authorize the authority, any  
16 corporation formed by the authority, or any department, board, commission, or other agency to  
17 create an obligation of the State of South Dakota within the meaning of the constitution or  
18 statutes of South Dakota.

19 Section 13. The State of South Dakota pledges to and agrees with any party to any sale,  
20 lease, or other contract, agreement, instrument or other arrangement created under this Act that  
21 the state will not limit or alter the rights and powers vested in the authority, any corporation  
22 formed by the authority or other public entity by this Act so as to impair the terms of any such  
23 contract made by the state, the authority, any such corporation or other public entity with such  
24 party or in any way impair the rights and remedies of such party until such contract is satisfied.

1 The authority, any such corporation and any public entity is each authorized to include their  
2 pledges and agreements of the state in any such contract created under this Act.

3 Section 14. The authority and any corporation formed by the authority are hereby declared  
4 to be performing a public function on behalf of the state and to be a public instrumentality of the  
5 state. The income of the authority and any corporation, and all municipal facilities and any other  
6 property at any time owned by the authority or any corporation, and the acquisition, sale,  
7 transfer, lease or purchase of municipal facilities by or from the state, the authority or any  
8 corporation or any public entity, and the pledge of any right, title or interest in any municipal  
9 facilities by any person, shall be exempt from all taxation in the State of South Dakota. Each  
10 corporation shall be exempt from all filing, reporting and similar requirements otherwise  
11 applicable to nonprofit and other corporations.

12 Section 15. To accomplish the purposes or projects of the kind listed in this Act, the  
13 authority or any corporation may adopt all necessary bylaws, rules, and regulations for the  
14 conduct of the business and affairs of the authority, and for the management and use of municipal  
15 facilities acquired under the powers granted by this Act.

16 Section 16. Any public entity and any department, board, commission, agency, or officer of  
17 this state may sell, lease or otherwise transfer jurisdiction of or title to or any interest in any  
18 property under its or his control to the authority or any corporation formed by the authority  
19 hereunder.

20 Section 17. The state, the authority and any corporation formed by the authority may each  
21 acquire by purchase, condemnation (including the power of condemnation in accordance with  
22 chapter 21-35), lease, gift or otherwise dispose of such utility property without any further  
23 authorization from the Legislature. In addition, if the Legislature by law declares it to be in the  
24 public interest, the authority and any corporation formed by the authority may each acquire by

1 purchase, condemnation (including the power of condemnation in accordance with chapter 21-  
2 35), lease, gift or otherwise, construct, complete, remodel, maintain and equip such other or  
3 further municipal facilities subject to any limit as to appraised value or such other or further  
4 terms and conditions as shall be so specified by the Legislature in such declaration. The authority  
5 shall obtain and consider when determining the value of any municipal facilities to be leased, sold  
6 or acquired, at least one independent appraisal.

7 Section 18. Any lease authorized hereby by, to or from the state, the authority, any  
8 corporation formed by the authority or any other public entity may be:

9 (1) Upon such terms, conditions, and rentals, subject to available appropriations as in the  
10 judgment of the authority are in the public interest; or

11 (2) For a term of one or more years, with an option in the lessee to extend the term of the  
12 lease for a term of one year from the expiration of the original term of the lease and  
13 for one year from the expiration of each extended term of the lease, until the original  
14 term of the lease has been extended for a total number of years to be agreed upon by  
15 the parties at a rental which, if paid for the original term and for each of the full  
16 number of years for which the term of the lease may be extended, will pay or amortize  
17 the total cost of any financing or the appraised value of the property or such other  
18 amount as the authority or any corporation formed by the authority shall determine  
19 to be appropriate under the circumstances;

20 (3) Provide that the rental may be deposited, paid or prepaid at any time or such times as  
21 the parties to the lease agree upon, and if prepaid, any or all of such prepayment may  
22 be deposited with a lessor and invested in permitted investments or may be used to  
23 satisfy or repay any outstanding debt or obligations. The lessee may receive credits  
24 for such prepayment or deposit at such times and in such manner specified in the

1 lease;

2 (4) Provide that the lessee may, at the expiration of the original or any extended term,  
3 purchase the leased premises at a stated price, which may be the appraised value of  
4 the leased property or such other amount paid or amortized by the payment or  
5 prepayment of rents previously made by the lessee;

6 (5) Provide that in the event of the exercise of the option to purchase the leased premises  
7 or in the event the lease has been extended for the full number of years which it is  
8 agreed the same may be extended, and all rents and other amounts provided for in the  
9 lease have been made, the lessor shall convey the premises or the lessor's interest  
10 therein to the lessee with or without a covenant or warranty of title;

11 (6) Provide that the lessee shall, as additional rent for the leased premises, pay, or provide  
12 for the payment of, all taxes assessed against the leased premises if any, the cost of  
13 insuring the building erected thereon against loss or damage by casualty or otherwise  
14 in such sum as may be agreed by the parties thereto and any other costs associated  
15 with the property or any financing, and that lessee shall indemnify and hold the  
16 authority, corporation and any lenders or other parties harmless for any costs, claims,  
17 taxes or damages relating to or arising out of the lease or any financing or other  
18 contract or any other matters relating to the transactions contemplated thereby. Any  
19 lessee of municipal facilities owned or leased by or to the authority or corporation is  
20 hereby authorized to self-insure the municipal facilities on such terms or conditions  
21 approved by the authority or set forth in the lease.

22 Section 19. The authority or any corporation formed by the authority may, in the event of  
23 nonpayment of rents or other amounts reserved in a lease, maintain and operate such facilities  
24 and sites or execute leases thereof to or service contracts with others for any suitable purposes.



1 Section 20. The charges, fees, or rentals established by the authority or any corporation  
2 formed by the authority, as lessor, for the use of any municipal facilities acquired, constructed,  
3 completed, remodeled, or equipped in whole or in part with the proceeds of any financing or  
4 other transaction as provided in this Act shall be sufficient at all times to pay maintenance and  
5 operation costs for such facilities (unless under a lease maintenance and operation costs are  
6 otherwise provided for), and a proportion of the administrative expenses of the authority and any  
7 corporation as provided for by each lease, and such reserves as may be provided in the lease or  
8 any other resolution or other agreement of the authority.

9 Section 21. Any lease obligation of the state, the authority or any corporation formed by the  
10 authority pursuant to this Act shall be payable solely and only from:

- 11 (1) Revenues to be derived by the state, the authority or such corporation from the  
12 ownership, sale, lease, disposition and operation of any municipal facilities leased in  
13 connection therewith;
- 14 (2) Income to be derived from leases to or involving any public entity or other person;
- 15 (3) Any funds or permitted investments, and any earnings thereon, to the extent pledged  
16 therefor;
- 17 (4) Revenues to be derived by the authority or corporation from any public entity or from  
18 any support and operating agreement, service agreement or any other agreement with  
19 any person;
- 20 (5) Funds, if any, appropriated for such purpose by the Legislature;
- 21 (6) Revenues derived from the exercise of any power provided under this Act;
- 22 (7) Income or proceeds from any collateral pledged or provided therefor; and
- 23 (8) Revenues to be derived in connection with municipal facilities from (a) the foreclosure  
24 of any mortgages, deeds of trust, notes, debentures, bonds, and other security

1 interests held by it, or pledged and assigned by it in connection with the lease, either  
2 by action or by exercise of a power of sale, (b) the sale of the equity of redemption  
3 in said security interests in accordance with the terms of said instruments and  
4 applicable state law or (c) other actions to enforce any obligation held by it. Each such  
5 lease shall state that it does not constitute an obligation of the State of South Dakota  
6 or the authority within the meaning of any provisions of the Constitution or statutes  
7 of the State of South Dakota.

8 Section 22. Any lease or other instrument or agreement authorized hereunder shall be  
9 executed by such officers of the authority as shall be designated by the authority. Any lease or  
10 other instrument or agreement authorized hereunder bearing the signature of officers in office  
11 at the date of signing thereof shall be valid and binding for all purposes, notwithstanding that  
12 before delivery thereof any or all such persons whose signature appears thereon shall have ceased  
13 to be such officers.

14 Section 23. The provisions of this Act and of any resolution or proceeding authorizing any  
15 lease of municipal facilities shall constitute a contract with any person claiming rights under or  
16 pursuant to the lease. The provisions thereof shall be enforceable either in law or in equity, by  
17 suit, action, mandamus, or other proceeding in any court of competent jurisdiction to enforce and  
18 compel the performance of any duties required by this Act or any resolution or proceeding  
19 authorizing the lease, including the establishment of sufficient charges, fees, or rentals and the  
20 application of the income from municipal facilities under this Act.

21 Section 24. The state may acquire from any public entity or other person by purchase, lease  
22 or any other form of contract, agreement, instrument or conveyance all or any portion of  
23 municipal facilities and may own, operate, use or otherwise contract with any public entity or  
24 other person to own, operate, use or contract for use or operation of municipal facilities, and the

1 state may dispose of all or any portion of municipal facilities by sale, lease or any other form of  
2 contract, instrument or conveyance to any public entity or other person, subject only to any  
3 applicable terms and conditions set forth herein.

4 Any sale, acquisition, disposition, lease or other form, contract, instrument or conveyance  
5 by the state of municipal facilities property pursuant to this Act shall be evidenced by an  
6 instrument or agreement in writing signed on behalf of the state by the secretary of the  
7 Department of Environment and Natural Resources. The secretary of the Department of  
8 Environment and Natural Resources shall file a certified copy of any such instrument or  
9 agreement with the Legislature promptly upon execution and delivery thereof. Upon the filing  
10 of a certified copy of any such instrument or agreement by the secretary of the Department of  
11 Environment and Natural Resources, such sale, lease, acquisition, disposition or other contract  
12 shall, for all purposes, be valid, binding and enforceable in accordance with the terms thereof and  
13 all deeds, bills of sale, leases and other instruments, contracts and agreements related thereto,  
14 including any pledge, grant of security interest or other encumbrance made by the state, the  
15 corporation, the authority or any public entity are not subject to disavowal, disaffirmance,  
16 cancellation or avoidance by reason of insolvency of any party, lack of consideration or any other  
17 fact, occurrence or rule of law.

18 Section 25. The Board of Water and Natural Resources or the South Dakota Conservancy  
19 District may become a party to a lease authorized by this Act whereby the Board of Water and  
20 Natural Resources or South Dakota Conservancy District loans in an initial amount of not  
21 greater than ninety percent of the appraised value of utility property leased to, by or from the  
22 state, authority, corporation or other public entity pursuant to this Act. The Board of Water and  
23 Natural Resources or South Dakota Conservancy District may also be lender, lessor and/or  
24 lessee in connection with any transaction contemplated by this Act, provide a deposit agreement,

1 payment undertaking or similar contract to any party to a lease or lease transaction, and, in the  
2 event it is lessee, it may sublease such property.

3 Section 26. Notwithstanding any other provisions of law, all funds received by the authority  
4 and any corporation formed by the authority shall be set forth in an informational budget as  
5 described in § 4-7-7.2 and be annually reviewed by the Legislature.

6 Section 27. The authority shall be audited annually in accordance with chapter 4-11 and any  
7 such audit shall include any corporation formed by the authority.

8 Section 28. The authority shall keep an accurate record of the rental payments under each  
9 lease entered into by the authority or corporation.

10 Section 29. No member, officer, agent, or employee of the state, the authority or any  
11 corporation formed by the authority, nor any other person who executes a lease, shall be liable  
12 personally by reason of the issuance thereof.

13 Section 30. The governing body of a public entity may by ordinance or resolution exercise  
14 all the powers conferred on (a) the South Dakota Building Authority and the Governor pursuant  
15 to §§ 5-12-15, 5-12-19, and 5-12-42 to 5-12-45, inclusive, and (b) the authority or any  
16 corporation formed by the authority under this Act, with respect to the acquisition, lease,  
17 ownership, operation, sale and leaseback of utility property or other municipal facilities.

18 For the purposes of this section, (1) any sale price shall not be required to exceed the  
19 appraised value of the municipal facilities being sold or otherwise transferred, (2) no lease or  
20 other contract or agreement entered into by a public entity as provided herein shall have a term  
21 in excess of one hundred years, (3) only the net proceeds remaining with the public entity after  
22 any deposit, payment or prepayment required by any lease, contract, agreement or other  
23 arrangement entered into in connection therewith or relating to or concerning such municipal  
24 facilities are subject to § 6-13-8, (4) to the extent that a public entity sells, transfers or otherwise

1 conveys municipal facilities to the state, the authority, any corporation or other person as  
2 provided hereunder and enters into a lease, support and operating agreement or other contract,  
3 agreement or other arrangement as described herein, as modified hereby, such public entity and  
4 such sale, transfer, conveyance, lease, contract, agreement and other arrangement shall not be  
5 subject to any restriction, condition or limitation or procedural requirement prescribed by any  
6 other law or charter applicable to such public entity; and (5) at the time of lease or sale of  
7 municipal facilities by a public entity, unless the public entity retains pursuant to lease, contract  
8 or other arrangement the right to possession of such facilities, the public entity shall enter into  
9 a franchise agreement, a utility service contract, or other contract, requiring the purchaser to  
10 furnish the public entity, its residents and users located in the area now served by the facilities  
11 sold, utility service, at such rates as are approved by the public entity and on such further terms  
12 and conditions as are determined by the public entity's governing body. The public entity may  
13 enter into all other contracts considered necessary or desirable with respect to the municipal  
14 facilities being sold, including but not limited to, contracts relating to the operation, maintenance,  
15 insurance, improvements, replacement, and extension of the facilities sold or similar new facilities  
16 to be operated in conjunction therewith by the public entity or the other contracting party.

17 Section 31. All municipal facilities owned, leased, acquired, sold or operated by or for the  
18 benefit of the state, the authority, any corporation formed by the authority or any other public  
19 entity pursuant to a lease having a term (including, for such purpose, all renewal options) in  
20 excess of three years or a lease-purchase or installment purchase contract, or pursuant to an  
21 operating contract described in section 30 of this Act shall constitute a separate class of property  
22 which is exempt from all taxation.

23 Section 32. Any public entity which enters into a lease or other transaction described in this  
24 Act may also enter into one or more support and operating agreements, participation agreements,

1 indemnity agreements, payment undertaking agreements and such other contracts or  
2 arrangements related thereto or ancillary therewith with the corporation, authority, state or any  
3 other public entity or person if the governing board of such public entity determines such  
4 agreements or arrangements are reasonably necessary to induce lenders or investors to  
5 participate therein, and such agreements or arrangements may include, without limitation,  
6 indemnities for losses or claims of any nature or cause, agreements to charge, assess, levy or  
7 collect fees and charges for the use of municipal facilities, an agreement to subsidize any such  
8 fees or charges and the pledge of the full faith and credit of the public entity to pay any  
9 obligations of the public entity under or with respect to any such lease, agreement or other  
10 arrangement.

11 Section 33. Under no circumstances shall the authority, any corporation formed by the  
12 authority, the state, either in its own name or acting through the Department of Environment and  
13 Natural Resources, or any person which is a lender for or investor in, or the lessor, lessee or  
14 nominal title owner with respect to, the utility property have any liability with respect to any  
15 violation of any environmental law or regulation, including as a result of any release of any  
16 hazardous substance or any other act or omission in connection with the ownership or operation  
17 of any utility property which is the subject of any lease or other agreement or arrangement  
18 authorized by this Act unless, in the case of a lessor or lessee, such person actually operates the  
19 utility property with its own employees. Nor shall the authority, any corporation formed by the  
20 authority, the state, either in its own name or acting through the Department of Environment and  
21 Natural Resources, or any person which is a lender for or invested in, or the lessor, lessee or  
22 nominal title owner with respect to, the utility property be deemed to be a responsible party or  
23 an owner or operator of any utility property within the meaning of any environmental law or  
24 regulation, it being the intention of the Legislature that all liability for environmental laws and

1 compliance therewith and with respect to and in connection with any utility property which is the  
2 subject of any lease, contract or other arrangement authorized by this Act shall be retained by  
3 the municipality, district or other local public entity whose residents and businesses receive  
4 services or other benefits from the utility property which is the subject of any such lease, contract  
5 or other arrangement.

6 Section 34. The powers conferred by this Act are in addition to all other powers conferred  
7 upon the state, the authority, any corporation and any public entity, and their exercise shall be  
8 subject only to such restrictions as may be provided by the South Dakota Constitution and are  
9 not subject to any restriction or procedural requirements related to the acquisition, leasing,  
10 financing, sale, use, operation or encumbering of municipal facilities prescribed by any other law  
11 or charged, including, without limitation, any public procurement or bidding requirements.

12 Section 35. If any clause or other portion of this Act shall be held invalid, that decision shall  
13 not affect the validity of the remaining portions of this Act. It is hereby declared that all such  
14 remaining portions of this Act are severable, and that the Legislature would have enacted such  
15 remaining portions if the portions that may be so held to be invalid had not been included in this  
16 chapter.