

Guide to Legislative Drafting



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PART I. LEGISLATIVE DRAFTING IN SOUTH DAKOTA

An Overview

There is no one correct way to draft legislation, but there is a preferred style and form in each legislative setting that guides drafters in their work. The style that is preferred in South Dakota is explained and illustrated in this manual.

The purpose of this manual is to provide the information necessary to produce a usable and understandable bill draft. Joint Rule 6A-5 of the rules of the South Dakota Legislature requires that all legislation be reviewed for style and form by the Legislative Research Council (LRC) before introduction.

The cardinal principle of legislative drafting is to minimize the possibility of misunderstanding. Complex, legalistic language or the "boilerplate" often found in old statutes is undesirable because it is not easily understood. The simplest way to state a proposition accurately is usually the best.

Unfamiliarity or inexperience should not prevent a person from making an attempt to draft legislation. Experience provides the best instruction. This manual provides template language for various bill types, concurrent resolutions, joint resolutions, commemorations, House or Senate (simple) resolutions, and resolutions of disapproval. Examples of a particular type of bill or resolution drafted for the current year or prior years may be found on the LRC website, <http://sdlegislature.gov>.

For any questions regarding the drafting of legislation, please contact the LRC.

PART II. GLOSSARY

"ACT," a bill that has been approved by both houses of the Legislature in identical form.

"AMENDMENT," an alteration proposed to a bill or resolution.

"BILL," a proposal to the Legislature to create, change, or repeal law.

"CATCHLINE," the boldface material between the codified section number and the section material in the South Dakota Codified Laws. The catchline provides the general topic of the material in the section but is not part of the law.

"COMMEMORATION," an expression of the Legislature recognizing service or achievements of national or statewide importance or sorrow over a death or loss. A commemoration is done in the form of a resolution and is entered in the journals.

"CONCURRENT RESOLUTION," a document that expresses an opinion or principle of the Legislature, requests an interim study, instructs a department of state government, or petitions a federal agency.

"ENGROSS," to incorporate adopted amendments into the text of the bill.

"ENROLL," to prepare an Act to be presented to the Governor.

"HOGHOUSE AMENDMENT," an amendment in which everything after the enacting clause is deleted and new material is substituted.

"JOINT RESOLUTION," a document that proposes an amendment to the South Dakota Constitution, ratifies an amendment to the United States Constitution, or petitions Congress to call a constitutional convention.

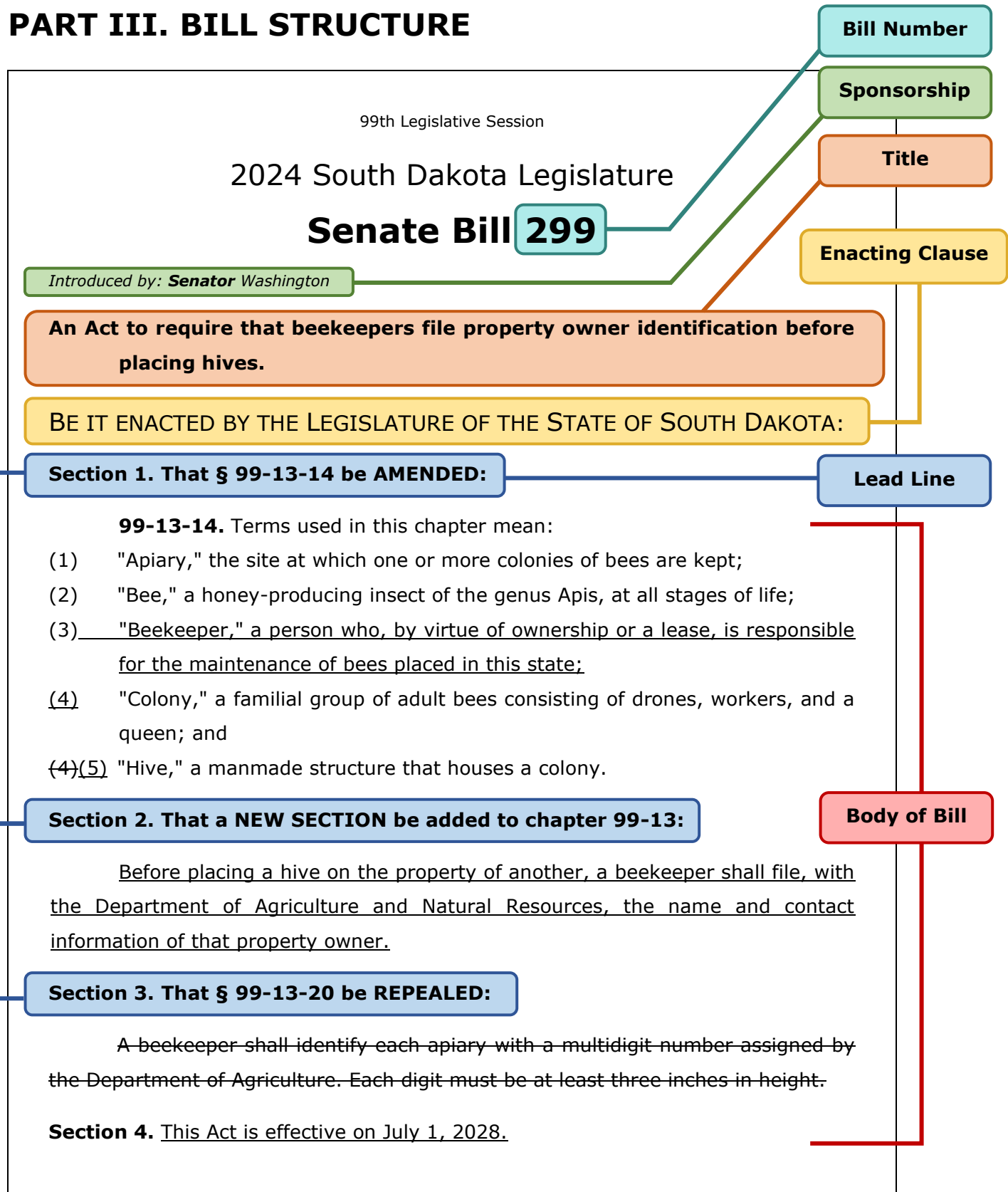
"RESOLUTION," a document that expresses an opinion or principle of one house, makes a request of the other house, regulates procedure, or refers to the Executive Board of the Legislative Research Council a topic for possible study by an interim study committee.

"RESOLUTION OF DISAPPROVAL," a document that suspends the operation of an executive order related to governmental reorganization.

"SESSION LAWS," an annual compilation of the laws, joint resolutions, rules of court, executive orders adopted pursuant to the Constitution, voter-approved initiated Constitutional amendments, and voter-approved initiated measures.

"SOUTH DAKOTA CODIFIED LAWS," the current codification of South Dakota laws of a general and permanent nature. It does not include appropriations or local or special laws.

PART III. BILL STRUCTURE



Section 1. Bill Number

A bill is assigned a sequential number at the time the bill is introduced. In the case of pre-filing, when a bill is introduced before the start of the legislative session, the Director of the Legislative Research Council assigns the bill number. The Senate and House of Representatives utilize the following numbering sequences:

	<u>Senate</u>	<u>House</u>
Bills:	1 to 500	1001 to 5000
Joint Resolutions:	501 to 600	5001 to 6000
Concurrent Resolutions:	601 to 700	6001 to 7000
Resolutions:	701 to 800	7001 to 8000
Commemorations:	801 to 900	8001 to 9000
Resolutions of Disapproval:	901 to 1000	9001 to 9999

The bill number also indicates the house of origin. A bill is referred to by its complete number, e.g., Senate Bill 39, rather than Bill 39.

Section 2. Sponsors

To be introduced, a draft must have the sponsorship of at least one legislator or a legislative committee. It is not required that a draft have a sponsor from each house. Only the name of the prime sponsor appears on a bill. The name of any co-sponsor is listed in the bill's history, which can be found on the LRC website.

The example below indicates that Senator Smith is the prime sponsor:

*Introduced by: **Senator Smith***

Any bill introduced at the request of a department, board, commission, or other state agency must be prefiled as a committee bill and must indicate the name of the state agency at whose request the bill is being introduced:

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

Introduced by: The Committee on Commerce and Energy at the request of the Electrical Commission

Per SDCL 2-7-6.1, if requested by the Governor or the Chief Justice of the Supreme Court, a bill may also be introduced by a standing committee:

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

Introduced by: The Committee on Judiciary at the request of the Chief Justice

If a member wishes to indicate that the introduction of a particular bill is at the behest of a constituent or other private person, the legislator may affix the term, by request, to the end of the introduction line:


*Introduced by: **Senator** Gerhardt by request*

However, this is not frequently done.

Section 3. Title

S.D. Const., Art. III, § 21 states that "No law shall embrace more than one subject, which shall be expressed in its title."

The title should briefly summarize, in a general statement, the subject of the proposed legislation so that a reader can understand what the enactment of the bill would accomplish without reading the body of the bill. It should be clear and direct. The title should be broad enough so that a minor change to the specifics of the bill will not necessitate a title amendment. Citations to an existing law (*e.g.*, "section 3-1-1," "§ 3-1-1," "SDCL 3-1-1") do not appear in the title.

 **DRAFTING TIP:** Consider drafting the title of a bill after the bill has been drafted. Only after drafting an entire bill can a drafter accurately capture a bill's contents.

3.1. Active Verbs

A title may only use active verbs in the infinitive form to express the purpose of the bill, *e.g.*, "An Act *to update* the official code of laws." The infinitive is a verb form that takes a "to" before the base form, as in "to establish" or "to increase."

Some of the most commonly used active verb forms are:

add	appropriate	authorize	clarify	codify
create	declare	define	delete	direct
establish	exempt	extend	increase	limit
modify	permit	prohibit	provide	reduce
regulate	remove	rename	repeal	require
restrict	revise	subject	transfer	update

3.2. Bill Title Phrases

If a bill includes an appropriation, the title must include the phrase "and to make an appropriation therefor."

If a bill establishes or increases a civil or criminal penalty, the title must include the phrase "and to provide a penalty therefor."


The word "therefor" is included with certain phrases because it is necessary to show in the title that the "penalty" or "appropriation" relates back to the subject in the remainder of the title.

If a bill establishes a new tax, the title must include the phrase "and to authorize a new tax."
If a bill increases a tax, the title must include the phrase "and to increase a tax."

The phrase "and to authorize a new tax" or "and to increase a tax" should be added whenever a new tax or tax increase is proposed, or a new fee or fee increase is proposed, if the fee proceeds are not merely used to cover the cost and expense of supervision or regulation. See *Valandra v. Viedt*, 259 N.W.2d 510 (S.D. 1977).

If a bill is to be effective before July 1 because of an emergency, the title must include the phrase "and to declare an emergency."

If a bill is introduced solely to repeal existing law, the title must include the phrase "to repeal provisions regarding [the subject matter of those repealed provisions]."

 **DRAFTING TIP:** A title should not include the phrase "certain provisions" if it is a one- or two-section bill.

Section 4. Enacting Clause

S.D. Const., Art. III, § 18 requires that each bill introduced in the Legislature contain the following enacting clause:

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

S.D. Const., Art. III, § 1 requires that each proposed initiated measure contain the following enacting clause:


BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

The enacting clause of a bill always immediately follows the title.

Section 5. Body of the Bill

5.1. Purpose

The body of a bill sets forth the material intended to be enacted and may include enactment of new substantive law, amendment of existing law, repeal of existing law, or appropriation of funds.

 **DRAFTING TIP:** If a draft appears to include more than one subject, it is better to draft separate bills than to include provisions of questionable relationship under a single title.

5.2. Bill Sections

The body of a bill should be divided into short sections comprised of plainly worded sentences. Generally, each distinct proposition should be in a separate section, which, in turn, may be divided into subdivisions, if necessary. The sections in a body of the bill should be identified as follows: Section 1, Section 2, etc.

The body of a bill may contain any number of sections, so long as each section relates to the single subject expressed in the title.

To ensure consistency, the various sections of a non-appropriation bill draft should be placed in the following order:

1. Statutory provisions that are being added or amended, in numerical order;
2. Statutory provisions that are being repealed, in numerical order;
3. Uncodified provisions (*e.g.*, temporary provisions, Code Commission instructions, applicability provisions);
4. Retroactivity provisions;
5. Effective dates;
6. Expiration dates; and
7. Emergency clauses.

Section 6. Catchlines

The material in the South Dakota Codified Laws at the beginning of each section following the section number is called the catchline. The catchline provides the general topic of the material in the section.

A catchline is not a part of the law. See SDCL 2-14-9 and SDCL 2-16-13.1. A bill may not include a catchline.

PART IV. DEFINITIONS

Section 1. General

A word is defined in a bill to ensure clarity and avoid repetition. If a word has a clear and common meaning applicable to the law in question, a definition is unnecessary. SDCL 2-14-1 provides that each word should be construed according to its common usage.

SDCL 2-14-2 defines the following words and phrases, which apply to the entire code:

according to usage	adult	children
compound interest	corporate surety	creditor
day	debtor	decree
depose	folio	full-time equivalent or FTE
good faith	Indian tribe	month
municipality	oath	person
personal property	population	property
real property	seal	several
signature or subscription	state	testify
third persons	township boards	usual and customary
valuable consideration	verdict	voter
will	writing or written	year

Section 2. Drafting Definitions

A word or phrase may be defined in a definition section that applies to an entire chapter or another section or sections, or in a standalone section to which the word defined applies.

The following rules apply to definitions:

- When using a definition section, place definitions in alphabetical order.
- If amending a definition section that is not in alphabetical order, reorder the definitions and check cross references.
- Once a word is defined, use the word consistently throughout the draft.
- Do not use the term being defined in its own definition.
- Do not define a word already defined in the chapter being amended.
- Do not define a word that is not used in the bill or the law being amended.
- Do not include "unless the context requires otherwise." This makes it very unclear as to when the definition is being used and when it is not being used.

- Do not write substantive requirements into a definition.
- Definition language should be the same part of speech as the word being defined.

A definition section should be drafted as follows:

Section 1. That a NEW SECTION be added to chapter 99-14:


Terms used in this chapter mean:

- (1) "Actor," the person who takes the active part in a transaction;
- (2) "Crime of violence," aggravated assault, arson, burglary, kidnapping, manslaughter, murder, rape, robbery, and sexual contact;
- (3) "Critical infrastructure," any facility used for:
 - (a) Municipal water treatment;
 - (b) Natural gas storage; or
 - (c) Power generation; and
- (4) "Public employee," any person employed by this state or a political subdivision of this state.

If a definition is included in a section containing other substantive language, the definition language should be drafted as follows:

Section 6. That a NEW SECTION be added to chapter 99-15:

A person may use night-vision equipment while hunting on land that the person owns or leases. For the purposes of this section, the term, "night-vision equipment" means an electronic- or battery-powered device that enhances a person's ability to see in the dark.

 **DRAFTING TIP:** Check to see if a word is already defined in the applicable chapter before creating a standalone definition. Determine if a definition can be placed in a preexisting definition section applicable to another section or sections or chapter.

PART V. PROPER FORM AND STYLE IN BILL DRAFTING

Section 1. Consistency


In the context of bill drafting, consistency means foregoing elegant and varying word choices in favor of being repetitive. The same word or phrase should be used to denote the same thing throughout a bill.

- **Incorrect:** The owner of an automobile shall annually register the person's car.
- **Correct:** The owner of a motor vehicle shall annually register the motor vehicle.

A drafter must deliberately select words to clearly and accurately convey the sponsor's intent, not accidentally cast doubt on that intent.

- **Incorrect:** The state engineer shall verify that each construction project has been completed before authorizing payment. The chief engineer shall provide a list of all completed buildings to the Legislature.
- **Correct:** The state engineer shall verify that each construction project has been completed before authorizing payment. The state engineer shall provide a list of all completed projects to the Legislature.

Word choice must be consistent within a draft and compatible with the chapter of law in which the proposed language will be located.

 **DRAFTING TIP:** If a chapter of law refers to an individual under eighteen as a "minor," so too should your bill draft. Using synonyms such as "child" or "juvenile" may add variety, but it may also cause confusion.

Section 2. New, Amended, and Repealed Statutes

When drafting a bill, the text to be deleted are overstricken and new text is underscored. New text always follows the overstricken text.

If text is to be deleted and new text added, the single space before any deleted text should also be struck, with a single space added and underscored immediately before the new text:

- **Incorrect:** The term "covered individual" means a member, participant, beneficiary of a third-party payor, or ~~enrollee~~contract holder who is provided health coverage;
- **Correct:** The term "covered individual" means a member, participant, beneficiary of a third-party payor, or ~~enrollee~~ contract holder who is provided health coverage;

If text is to be deleted and new text added, and there is no space before the deleted text, such as when amending text that begins a new section, the space that follows the deleted text should be struck, with the new text immediately following and underscored and an underscored space added at the end:

- **Incorrect:** **13-42-7.** ~~An individual~~The board may refuse to issue or renew a certificate at any time for any reason referenced in § 13-42-9 or 13-42-10.
- **Correct:** **13-42-7.** ~~An individual~~The board may refuse to issue or renew a certificate at any time for any reason referenced in § 13-42-9 or 13-42-10.

Punctuation following overstricken text should be carried to the end of the new text.

Do not overstrike or underscore part of a word, number, numeric dollar amount, or citation:

- | | |
|---|---|
| <ul style="list-style-type: none">➤ Incorrect <p>animalss</p> <p>evidence-based<u>-based</u></p> <p>§ 32-14-79<u>87</u></p> <p>forty-five</p> <p>\$1,000,000 <u>\$500,000</u></p> | <ul style="list-style-type: none">➤ Correct <p>animal <u>animals</u></p> <p>evidence-based <u>evidence-based</u></p> <p>§ 32-14-79 <u>§ 32-14-87</u></p> <p>forty-five <u>forty</u></p> <p>\$1,000,000 <u>\$500,000</u></p> |
|---|---|

When amending, repealing, adding a new section to the Code, or adding a new chapter to the Code, use an appropriate lead line for each section of the bill:

That a NEW SECTION be added to a new title:

That a NEW SECTION be added to title 2:

That a NEW SECTION be added to chapter 2-23:

That § 2-23-71 be AMENDED:

That § 2-23-71 be REPEALED:

When amending or repealing a Session Law, use an appropriate lead line for each section of the bill:

That 2022 Session Laws, chapter 196, § 1 be AMENDED:

That 2022 Session Laws, chapter 196, § 1 be REPEALED:

When proposing amendments to the South Dakota Constitution by joint resolution, use an appropriate lead line for each section of the resolution:

That Article IX, § 1 of the Constitution of the State of South Dakota, be AMENDED:

That Article IX, § 2 of the Constitution of the State of South Dakota, be REPEALED:

That a NEW SECTION be added to Article X of the Constitution of the State of South Dakota:

That a NEW ARTICLE be added to the Constitution of the State of South Dakota:

Sections that include entirely new text must be underscored. The lead line will indicate that it is a new section.

Sections of a bill amending or creating code sections should appear in numerical order, followed by repealed sections in numerical order.

Examples of bills adding new sections to the Code, amending sections of the Code, and repealing sections of the Code can be found in the Appendix.

Section 3. Numbering Statutory Material

The South Dakota Codified Laws is organized by title, chapter, section, subdivision, and subsection. A title consists of multiple chapters; a chapter consists of multiple sections; and material in a section may be organized as subdivisions and subsections. A sample citation for a subsection might be subsection 77-3-31(2)(b).

- 77 is the title.
- 77-3 is the chapter.
- 77-3-31 is the section.
- 77-3-31(2) is the subdivision.
- 77-3-31(2)(b) is the subsection.

Graphically this arrangement is represented as follows:

77-3-31. Introductory material:

- (1) Subdivision;
- (2) Subdivision;
 - (a) Subsection;
 - (b) Subsection; and
 - (c) Subsection; and
- (3) Subdivision.

Do not create multiple subdivision lists within a section. Do not create multiple subsection lists within a subdivision.

Section 4. Imperative, Permissive, and Prohibitive Construction


The verbs used in legislation should be active and in the present tense. Verbs are generally imperative, permissive, or prohibitive. This is a guide to usage:

shall	=	required action
may	=	permitted action
may only	=	restricted permitted action
may not	=	prohibited action
must	=	action required as a condition of something; used with inanimate objects
must be	=	required condition
is	=	statement of condition

As used in the South Dakota Codified Laws, the term "shall" manifests a mandatory directive and does not confer any discretion in carrying out the action so directed. See SDCL 2-14-2.1.

Legislation giving discretion to an officer or board using "may" should also establish guidelines to be followed in exercising that discretion. "May not" negates the obligation and permission to act. "Shall" is not used to establish a description or condition.

- **Incorrect:** The term "commission" shall mean the water commission.
- **Correct:** The term "commission" means the water commission.
- **Incorrect:** The capital of the state shall be Pierre.
- **Correct:** The capital of the state is Pierre.

 **DRAFTING TIP:** "Shall not" negates the obligation but not the permission to act and therefore its use should be avoided.

Do not use "shall be" to make a statement that is true by operation of law. Use "is" or "are."

- **Incorrect:** The secretary's annual salary shall be twenty-one thousand dollars.
- **Correct:** The secretary's annual salary is twenty-one thousand dollars.

"Must" is used rather than "shall" when the sentence contains a necessary condition and the ability to phrase as a directive is not feasible or causes clarity issues, or the actor with the duty cannot be specified in the sentence.

- **Correct:** The agreement must establish the standards to be implemented.
- **Correct:** For licensure, a person must possess the qualifications set forth in section 2.
- **Correct:** The substance must be determinable by the scientific method.
- **Correct:** All documents must be in portable document format.

Section 5. Active Voice

Use the active voice whenever possible. The use of the active voice expressly identifies the principal actor—the individual or entity who has a power, privilege, or duty—as the subject of a sentence, logically followed by the mandate or prohibition, *i.e.*, verb and object, imposed. Passive voice generally employs the opposite order—object, verb, then subject—and is often indicated by the phrase "shall be."

- **Incorrect:** A director shall be appointed by the board.
(object) (verb) (subject)
- **Correct:** The board shall appoint a director.
(subject) (verb) (object)

The distinction between the correct use of active voice versus passive voice is provided by the examples below:

- **Incorrect:** Such challenge shall be determined in the same manner as if made to an individual juror for bias.
- **Correct:** The judge shall determine the challenge in the same manner as if made to an individual juror for bias.

Within the use of active voice, impersonal constructions should also be avoided.

- **Incorrect:** It is the duty of the board to appoint a director.
- **Correct:** The board shall appoint a director.

Do not use a negative subject with an affirmative "shall."

- **Incorrect:** No person shall . . .
- **Correct:** No person may . . .

The passive voice must be used when unidentified principals are necessarily involved.

- **Correct:** All plumbing and plumbing systems must be designed, constructed, installed, improved, extended, and altered in substantial accord with the requirements of the 2015 Uniform Plumbing Code.

The passive voice may be used when use of the active voice would cause awkwardness of construction. For example, one cannot generally use active voice for an exception or condition precedent to the statute's main effect. Passive voice should only be used when necessary for that purpose.

- **Correct:** If a child has been removed from the home and has been placed in the temporary custody of the department, the department shall make reasonable efforts to return the child to the home.

Section 6. Singular vs. Plural

Use singular nouns instead of plural. SDCL 2-14-6 provides that words used in the singular number include the plural, and vice-versa, as applicable. The verb must always agree with the subject in number.

- **Incorrect:** Defendants in criminal actions are presumed innocent until the contrary is proven.
- **Correct:** A defendant in a criminal action is presumed innocent until the contrary is proven.

Section 7. Common, Concise Language

A sentence should be as simple as possible without sacrificing clarity or precision. Use shorter, simpler words whenever possible. Avoid colloquialisms, jargon, legalisms, and redundancies.

Avoid adjectives such as "real," "true," and "actual," and adverbs such as "duly" and "properly." Do not use "total" before "amount." These ideas are normally implied. Expressing them creates doubt whether they are implied elsewhere. Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless one specifies what these words mean or refers to the standards that must be met.

Section 8. Multi-word Reference

A multi-word reference may, after its initial use, be shortened. Repeatedly using a multi-word reference may unnecessarily lengthen a section and impact readability. To remedy this, the use of a shortened reference, *e.g.*, "commission" for "South Dakota Code Commission," is permissible if there are no other terms in the section that contain the shortened reference.

2-16-8. Copyrights of material--Contract for use of state's copyright.

The South Dakota Code Commission shall provide that the material authorized for publication by § 2-16-6 will be copyrighted by the State of South Dakota, in the name of the State of South Dakota, to the extent permitted by federal copyright law.

The commission may contract with printers, publishers, and computer retrieval companies for use of the state's copyright.

Section 9. Acronyms and Initialisms

Acronyms and initialisms are two of the most common methods of abbreviation. An acronym shortens a phrase by combining the first letter of each word in a phrase to form a pronounceable word (*e.g.*, NASA, AIDS). An initialism consists of the initial letters of a phrase but is not pronounced as a word (*e.g.*, MLB, FBI, HIV).

Acronym and initialism use should be avoided, if possible, and may only be used in drafting if the acronym or initialism is so widely used that readers are more likely to recognize it than the full term. If an acronym or initialism appears in a standard dictionary, that is often a good indication of its wide use. If an acronym or initialism is used, it must be defined. Place the definition in alphabetical order according to the letters in the acronym or initialism, not according to the words for which the letters stand.

Although frequently used in legal practice to denote titles, chapters, and sections of the South Dakota Codified Laws, the initials "SDCL" should never be used in the body of a bill. Instead, the word "title" or "chapter" or the symbol "§" should be used as appropriate.

Section 10. Capitalization

Capitalize proper nouns (*e.g.*, person, place, organization) in the text of a bill. Capitalize officially titled federal or state acts. For example, Securities and Exchange Act of 1934; South Dakota Human Relations Act of 1972. Before capitalizing the name of a particular state act, check the South Dakota Codified Laws to be sure it does have a specific name. See, *e.g.*, SDCL 20-13-56.

The proper name of a department, governmental agency, organizational unit within a department or agency, or institution is capitalized:

Governor	Board of Pharmacy
Legislature	Department of Revenue
House of Representatives	Division of Insurance
Senate	Environmental Protection Agency
Supreme Court	Human Services Center
University of South Dakota	South Dakota National Guard

The following terms are also capitalized:

Native American	English
Indian	Spanish

Classifications of criminal punishments are capitalized, *e.g.*, Class A felony, Class 2 misdemeanor.

Do not capitalize the following:

agency	department
board	division
chief justice	secretary
county commission	university

The titles of state officials, other than the Governor, and county, municipal, and district officials are not capitalized:

county commissioner	secretary of state
mayor	supervisor
secretary of agriculture	

Substitutions for official titles, such as "secretary" or "director," are not capitalized.

The title of a federal or state program is not capitalized, *e.g.*, medicaid, social security, medical assistance program, 24/7 sobriety program.

The titles of county and municipal boards are not capitalized.

The full title of a fund is not capitalized:

motor vehicle fund

Unified Judicial System court automation fund

water and environment fund

The words "title," "article," "chapter," "section," or "rule" are not capitalized.

Section 11. "Including but Not Limited To"

Do not use the phrase "including, but not limited to" The plain definition of the term, including, is not exhaustive.

If there is a general statement in statute, there should not be examples. If there are listed examples, they should be exhaustive; there should be no general statement.

- **Incorrect:** Contains the applicant's relevant personal identifying and contact information, including the applicant's legal name, address, telephone number, e-mail address, and website address.
- **Correct:** Contains the applicant's legal name, address, telephone number, e-mail address, and website address.
- **Correct:** Contains the applicant's relevant personal identifying and contact information.

Section 12. Gender

Whenever possible, use gender-neutral terms, such as "applicant," "licensee," or "individual," in bill drafting. Do not use the phrases "he or she" or "him or her" as in "he or she shall file." Do not use "they" or "their" as a singular subject.

- **Incorrect:** The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.
- **Correct:** The Governor may recall a warrant of arrest or may issue another warrant whenever the Governor deems proper.
- **Incorrect:** If a license plate is mailed to the applicant, he must pay mailing fees pursuant to this chapter. If he requests that the license plate be express mailed, he must pay the actual costs of postage and handling.
- **Correct:** If a license plate is mailed to the applicant, the applicant must pay mailing fees pursuant to this chapter. If the applicant requests that the license

plate be express mailed, the applicant must pay the actual costs of postage and handling.

In the process of amending statute, if the statute uses terms that should be gender-neutral, it is appropriate to amend the language to reflect gender neutrality.

Section 13. Person-first Language

When referring to an individual with a disability, it is generally best to reference the individual first and the disability thereafter.

- **Incorrect:** the developmentally disabled
- **Correct:** an individual with a developmental disability
- **Incorrect:** the visually impaired
- **Correct:** an individual with a visual impairment

Additionally, do not make the individual synonymous with the disability (*e.g.*, autist, epileptic, quadriplegic).

Section 14. Trade Names, Brand Names, or Private Entities

Do not reference a trade name, brand name, or private entity. It is preferable to describe the item, service, or entity generally, without specific reference. See S.D. Const., Art. III, § 23 (prohibition on private and special laws).

Section 15. Hyphenation

Examples of words that should be hyphenated:


auditor-general	low-income	pari-mutuel
e-mail	low-level	right-of-way
full-time	non-ad valorem	rule-making authority
long-term	over-the-counter	state-owned

Examples of words that should not be hyphenated:

ex parte	nonresident	prorate
interstate	prima facie	statewide
intrastate	pro rata	vice president

A compound modifier generally consists of two or more words connected by a hyphen acting as one adjective, unless the compound modifier follows the noun it modifies. Compound modifiers that contain -ly adverbs are not hyphenated.

- **Incorrect:** employ a practice that is evidence-based
- **Correct:** shall use an evidence-based practice
(compound modifier) (noun)
- **Incorrect:** the design must be state-of-the-art
- **Correct:** any state-of-the-art design
(compound modifier) (noun)

 **DRAFTING TIP:** To answer questions about hyphenation, consult *Merriam Webster's Collegiate Dictionary* or the *Chicago Manual of Style*.

If numbers are spelled out, only compound numbers, or that portion of the number forming a compound number, should be hyphenated.

- | | |
|---|---|
| <ul style="list-style-type: none">➤ Incorrect <p>forty five</p> <p>one-hundred-and-fifty-seven</p> <p>thirty-million, sixty-seven-thousand,
nine-hundred-and-two</p> | <ul style="list-style-type: none">➤ Correct <p>forty-five</p> <p>one hundred and fifty-seven</p> <p>thirty million, sixty-seven thousand,
nine hundred and two</p> |
|---|---|

Hyphens should be used between all fractions.

- **Correct**
- one-half
- five-sixteenths
- twenty-one-thirtieths

Section 16. Numbers

Most numbers used in the body of a bill, including sums of money, should be written out rather than indicated by numerals:

- | | |
|-----------------------|---|
| ➤ Incorrect | ➤ Correct |
| within 10 days | within ten days |
| fixed at 25% | fixed at twenty-five percent |
| not less than \$1,200 | not less than one thousand, two hundred and twenty-five dollars |

Exceptions to this rule are dates, criminal penalties, formulas, proper nouns containing numerals, and numerals used in tables. In appropriation bills, it is proper to use the numerical form as follows: ". . . appropriates \$7,031.12." The percent symbol (%) should not be used in lieu of the word percent.

Section 17. Date and Time

Dates should be written as follows:

- December 31, 2003
- December thirty-first of the application year

Specific times must be depicted as "a.m." or "p.m." Do not use "o'clock."

Section 18. Using Proper Punctuation

The use of punctuation in bill drafting is the same as correct formal usage. Some rules to be observed in the use of punctuation include:

- Do not use a colon except to introduce a series of subdivisions;
- In a series of subdivisions following a colon, use a semicolon at the end of each provision;
- Quotation marks should be used around a word being defined but should otherwise be avoided. When quotations are used:
 - The comma or period is placed inside a quotation mark, but other punctuation marks are placed outside the quotation mark, unless part of the quotation; and
 - In the preamble to a concurrent or simple resolution, or in the preamble to a commemoration, use a comma after the word "WHEREAS," and use a semicolon at the end of each clause, followed by an "and"; and
- Use a serial comma, *i.e.*, the comma that comes before the "and" in a list, such as A, B, C, and D.

Section 19. Referring to Existing Law

Any reference to existing law is generally made to the South Dakota Codified Laws. However, within the body of a bill, the abbreviation "SDCL" is not used. The section symbol "§" is used unless the word "section" begins a sentence. In that instance, "section" is spelled out.

➤ **Referencing a SDCL title or chapter:**

Pursuant to Title 42 . . .

Pursuant to this title . . .

Pursuant to chapter 46 . . .

Pursuant to this chapter . . .

➤ **Referencing SDCL sections:**

One section: § 2-14-1

Two sections: §§ 2-14-2 and 2-14-2.1

Three or more consecutive sections: §§ 2-14-3 to 2-14-9, inclusive

Three or more non-consecutive sections: §§ 2-14-2, 2-14-5, and 2-14-55

Sections connected by "or": § 2-14-1 or 2-14-2

Three or more consecutive sections and another section: §§ 2-14-1 to 2-14-9, inclusive, and 2-14-14

➤ **Referencing SDCL subdivisions:**

One subdivision: subdivision 2-14-2(18)

Two subdivisions in different sections: subdivisions 2-14-2(18) and 2-16-6(1)

Two subdivisions in the same section: subdivisions 2-14-2(18) and (19)

Three or more subdivisions in the same section: subdivisions 2-14-2(18), (19), and (20)

➤ **Referencing SDCL subsections:**

One subsection: subsection 2-14-2(3)(b)

Two subsections in different sections: subsections 2-14-2(3)(b) and 2-16-6(4)(e)

Two subsections in the same section: subsections 2-14-2(3)(b) and (c)

Three or more subsections in the same section: subsections 2-14-2(3)(b), (c), and (d)

➤ **Referencing Session Laws:**

2023 Session Laws, chapter 5, § 1

➤ **Referencing legislation enacted during the current session:**

Senate Bill 61, as enacted by the Ninety-ninth Session of the South Dakota Legislature

➤ **Referencing the South Dakota Constitution:**

S.D. Const., Art. XVIII, § 8

➤ **Referencing the United States Constitution:**

U.S. Const., Art. IV, § 3, cl.

➤ **Referencing federal law or regulation:**

42 U.S.C. § 1983 (June 1, 2012)


2 C.F.R. § 200.423 (October 31, 2001)

National Energy Act, Pub. L. No. 121-146, § 17, 184 Stat. 179 (2010)

If a legal authority needs to be cited other than the above examples, consult The Bluebook for the proper citation format.

Before incorporating a federal law or regulation in a bill, a drafter should consider whether the language of the federal law or regulation can simply be inserted into state law without a reference. Any reference to a federal law or federal regulation that incorporates any portion of that law or regulation should include the date of the version of the law or regulation being incorporated so that the reader knows precisely what version of law is being incorporated. An unconstitutional delegation of legislative power to the federal or other state government may be found where the past tense, *i.e.*, "as amended" or "as defined," is not used in reference to the incorporated authority. *Indep. Cmty. Bankers Ass'n of S.D., Inc. v. State*, 346 N.W.2d 737, 744 (S.D. 1984). See examples in Appendix.

A drafter should not cite a different state's law to incorporate it into South Dakota law. Instead, reproduce the language of the different state's law, using South Dakota's style and form.

 **DRAFTING TIP:** When drafting a bill that repeals an existing statute, look for references to the statute being repealed. Those statutes will also need to be amended to reflect the repeal.

Section 20. Cross-referencing a "Chapter" vs. an "Act"

In determining whether the proper cross-reference is to a "chapter" or an "Act," a drafter must examine the intended scope of the verbiage being drafted.

Will the verbiage apply to an entire existing chapter, or only certain sections of that existing chapter? If the chapter is being created in the bill draft, will the verbiage apply to all sections being created or only to certain sections being created?

If it is intended that a section, whether new or amended, is applicable to the existing chapter in which the section will be placed, the cross reference should be to "this chapter."

Section 1. That a NEW SECTION be added to chapter 99-99:

An individual under the age of eighteen may not perform any functions otherwise permitted by this chapter.

Section 2. That § 99-99-15 be AMENDED:

An individual who is eighteen years of age or older may engage in the function without obtaining a license. An individual under the age of eighteen may not perform any functions otherwise permitted by this chapter.

If it is intended that a new section or an amended section is applicable to an existing chapter other than the one in which the section will be placed, the cross reference should be to the specific chapter.

Section 3. That § 99-99-15 be AMENDED:

An individual who is eighteen years of age or older may engage in the function without obtaining a license. An individual under the age of eighteen may not perform any functions otherwise permitted by chapter 87-86.

If it is intended that a new section or an amended section is applicable only to certain sections of an existing chapter, the cross references should be to the numbered SDCL sections.

Section 4. That a NEW SECTION be added to chapter 99-99:

An individual under the age of eighteen may not perform any functions otherwise permitted by §§ 29-98-03 to 29-98-05, inclusive.

In all other instances, the cross references should be to "this Act" or to specified sections of "this Act."

Section 5. That a NEW SECTION be added to chapter 99-99:

An individual under the age of eighteen may not perform any functions otherwise permitted by this Act.

Section 6. That a NEW SECTION be added to chapter 99-99:

An individual under the age of eighteen may not perform any functions otherwise permitted by §§ 3 to 5, inclusive, of this Act.

Section 21. Establishing Interest Rates

The Legislature has adopted a uniform method of addressing interest rates in the Code. The official state interest rates, as found SDCL 54-3-16, are shown below:

- Category A:** Four and one-half percent per year;
- Category B:** Ten percent per year;
- Category C:** Twelve percent per year;
- Category D:** One percent per month or fraction thereof;
- Category E:** Four percent per year;
- Category F:** Fifteen percent per year;
- Category G:** Five-sixth percent per month or fraction thereof.

Refer to one of these categories when establishing an interest rate.

PART VI. WORD PREFERENCES

Section 1. Avoiding Certain Words

The wording of legislation should be precise, clear, and concise. Avoid both conversational and legalistic expressions. Use shorter, simpler words if there is a choice. The following words or phrases are often incorrectly used in drafting and can usually be replaced by a better word or phrase:

AVOID	PREFERABLE
absolutely null and void	void
aforesaid, aforementioned, before-mentioned	the, that, or those
afforded or accorded	given
and/or	either A or B, or both
any and all	any, or all
at such time as, at the time of	when
attorney and counselor at law	attorney
authorize and empower	may
be and the same is hereby	is
bonds, checks, drafts, notes, etc.	evidence of indebtedness
can	may
carry out	execute or complete
constitute and appoint	appoint
deal with	address or conduct
deemed to include	includes
during such time as	while
during the course of	during
each and every	each, or every
either directly or indirectly	<i>(remove entirely)</i>
employ (meaning to use)	use
enter into a contract with	contract with
every individual, all individuals	any individual, or each individual
examine witnesses and hear testimony	take testimony
fail, refuse, or neglect	fail

following section	section 3 of this Act
for the duration of	during
for the reason that	because
forthwith	immediately
from and after	after
from July first	after June thirtieth
full and complete	full
give consideration to	consider
give recognition to	recognize
have need of	need
hereinafter, hereinbefore, hereinabove, above, below, following, preceding (when referring to the position of a provision)	if reference is necessary, specify the chapter, section, etc.
in case, in cases which, in the event that	if
in the interests of	for
inquire	ask
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is required to	shall
is unable to	cannot
it is the individual's duty to	shall
it is lawful to	may
law passed	law enacted
make application	apply
make a determination	determine or decide

make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
means and includes	means
member of a partnership	partner
no later than June thirtieth	before July first
none whatsoever	none
not later than	before
null and void	void
occasion (as a verb)	cause
of a technical nature	technical
on an individual's own application	upon request
ordered, adjudged, and decreed	ordered
or, in the alternative,	or
per annum	a year
per centum	percent
period of time	period
prior to	before
prosecute its business	conduct its business
purchase	buy
rules and regulations	rules
said	the, that, or those
same	<i>(appropriate noun or pronoun)</i>
shall be construed to mean	means
shall be deemed to be	is
shall have the power to	may
shall not	may not
should	shall or must
sole and exclusive	exclusive
State of South Dakota	this state
subsequent to	after
such	the

suffer	allow
to wit	<i>(remove entirely)</i>
under the provisions of	pursuant to
unless and until	unless or until
until such time as	until
utilize	use
when, where (as a condition)	if
whenever	when or if
wheresoever	where
whosoever	whoever

Section 2. Using "Person" or "Individual"

"Person" may be used to apply a provision to human beings and nonhuman entities, such as corporations and governmental bodies.

If "person" is used to apply a provision to a human being, the context must clearly indicate that the application may only apply to a human being.

When it is not clear from the context that the application of a provision only applies to a human being, "individual" should be used.

Section 3. Using "That" or "Which"

The choice of using "that" or "which" is dependent on the intent of the sentence.

If a phrase is intended to provide information integral to the sentence, *e.g.*, a restriction or description, use "that." A phrase using "that" is not set off by commas.

- **Correct:** A fence that surrounds a swimming pool must be ten feet in height.

If a phrase is intended to provide additional but not essential information, use "which." Since a bill draft rarely includes nonessential information, "which" is not often used. A phrase using "which" is set off by commas.

- **Correct:** The fence, which may be constructed out of wood or metal, must be ten feet in height.

Section 4. Using "Less" or "Fewer," "Greater" or "More"

Whether to use "less" or "fewer" depends on the noun that is being modified. If the noun is countable or plural, use "fewer."

- **Correct:** less land
- **Correct:** fewer acres

Use "more" rather than "greater than." "Greater than" may be used in limited circumstances when comparing the degree, level, or number of the items referenced.

Section 5. Using "Whether" or "Whether or Not"

When to use only the word "whether," as opposed to the phrase "whether or not," depends on that which is being modified.

If the "whether" clause is the object of a verb, then "or not" is unnecessary.

- **Correct:** The applicant shall indicate whether the license was revoked.
(subject) (verb) (object)

If the "whether" clause is the object of a preposition, "or not" is unnecessary.

- **Correct:** The board shall base the decision on whether the error was remedied.
(preposition) (object)

"Whether or not" is necessary when the "whether" clause modifies a verb or when the phrase "regardless of whether" could logically be used in the sentence.

- **Correct:** The board shall vote, whether or not all members are present.
(verb) (clause)

PART VII. PENALTIES

A bill requiring or prohibiting a certain action will likely include a criminal or civil penalty for a violation. A section that describes the required or prohibited action should contain the penalty for any violation of the section. The violation should be written as one of the existing classes of felonies or misdemeanors, SDCL 22-1-4; as a petty offense, SDCL 23-1A-22; or as having a civil penalty. This eliminates the need to specify the punishment and provides consistency within the Code. The current classifications of penalties are as follows:

Section 1. Felonies, SDCL 22-6-1

Class A: Death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed.

Class B: Life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed.

Class C: Life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

Class 1: Fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

Class 2: Twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

Class 3: Fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed.

Class 4: Ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed.

Class 5: Five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed.

Class 6: Two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

Section 2. Misdemeanors, SDCL 22-6-2

Class 1: One year imprisonment in a county jail or two thousand dollars fine, or both.

Class 2: Thirty days imprisonment in a county jail or five hundred dollars fine, or both.

Section 3. Petty Offenses, SDCL 23-1A-22

If the plaintiff prevails in a petty offense case, the plaintiff is granted a judgment of twenty-five dollars. However, the trial court may reduce or eliminate the award in the interest of justice. No award may be granted a defendant in a petty offense case. A petty offense is treated as a civil matter, with the state named as the plaintiff. SDCL 22-6-77.

Section 4. Determining the Appropriate Criminal Penalty

The following may assist a drafter in determining an appropriate criminal penalty for a violation of the law:

- **Felonies:** For serious injury to a person or damage to property.
- **Class 1 misdemeanors:** For minor injury to a person or damage to property.
- **Class 2 misdemeanors:** For failure to carry out a mandatory duty or a violation of an agency rule.
- **Petty offenses:** For a nuisance violation causing no serious injury or damage.

Section 5. Drafting a Criminal Penalty

A criminal penalty should be drafted as follows:

Section 3. That a NEW SECTION be added to chapter 99-18:


A person may not intentionally prevent or obstruct the transmission, distribution, or receipt of programming material carried by the equipment of a community antenna television system. A violation of this section is a Class 2 misdemeanor.

Section 6. Civil Penalty

A civil penalty is a financial payment assessed by a court or state agency for violation of a statute or rule. It is primarily sought to compensate the state for harm done to it. Any bill including a civil penalty should indicate who is assessing the civil penalty and where the civil penalty collected will be deposited. It should also include a limit on the amount of the penalty. A single act may result in both a civil and criminal sanction. An example of a section of law containing a civil penalty is as follows:

Section 1. That a NEW SECTION be added to chapter 37-25A:

The director may impose a civil penalty against a person for violating section 8 of this Act. The amount of the civil penalty may not exceed five thousand dollars. The director shall forward any civil penalty collected under this section to the state treasurer for deposit in the state general fund.

 **DRAFTING TIP:** When drafting a section that prohibits an act, always provide a penalty. If a penalty is unintentionally omitted, SDCL 22-6-2 automatically prescribes a Class 2 misdemeanor to the offense.

PART VIII. EFFECTIVE DATES

Section 1. General

If an Act is passed during a regular session, the effective date is July 1, unless the Act includes an emergency clause or provides a different effective date. If an Act is passed during a special session, the effective date is the 91st day after final adjournment of the session, unless otherwise prescribed. See SDCL 2-14-16.

Legislation may take effect 90 days after the adjournment of a regular session but before July 1 without needing an emergency clause, if the bill prescribes when it takes effect:

Section 27. This Act is effective beginning June 28, 2024.

See S.D. Const., Art. III, § 22.

An effective date may apply to an entire Act or to specific sections. If the effective date applies to specific sections, the remaining sections take effect on July 1 of the year of passage, unless prescribed otherwise:

Section 40. Section 27 to 39, inclusive, of this Act are effective beginning June 28, 2024.

Section 2. Emergency

An emergency clause gives effect to an Act of the Legislature immediately upon approval by the Governor. If a bill contains an emergency clause, the bill requires concurrence by two-thirds of the members of each house. See S.D. Const., Art. III, §§ 1 and 22. The emergency clause is used for:

1. The support of state government and its existing institutions; or
2. The immediate preservation of public peace, health, or safety.

The title of the bill must include the phrase "and to declare an emergency."

For bills related to taxation, the raising of revenue, or appropriations, use the following "for the support of state government" emergency clause:

Section 10. Because this Act is necessary for the support of state government and its existing institutions, an emergency exists, and this Act is effective from and after its enactment.

For bills that are regulatory in nature, use the following "preservation of public peace" emergency clause:

Section 10. Because this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency exists, and this Act is effective from and after its enactment.

PART IX. EXPIRATION DATES

An expiration date clause is used to indicate the date on which one or more sections of an Act will cease to be effective. Depending on the intended scope, the clause is expressed as:

Section 3. This Act expires on December 31, 2024.

Section 4. Section 3 of this Act expires on December 31, 2024.

Section 5. Sections 6 to 10, inclusive, of this Act expire on December 31, 2024.

An expiration date clause may be used if a new section is intended to have a limited duration and there is no need to include that duration permanently the SDCL:

Section 1. That a NEW SECTION be added to chapter 99-99:

The Board of Examiners must increase an individual's license renewal fee by five percent, if the individual does not submit the fee electronically.

Section 2. Section 1 of this Act expires on December 31, 2024.

Consider whether, given issues of clarity, comprehensibility, and duration, it is preferable to insert at date range in the SDCL section rather than utilize a separate section containing an expiration date clause:

Section 1. That a NEW SECTION be added to chapter 99-99:

Beginning July 1, 2025, to December 31, 2025, the Board of Examiners must increase an individual's license renewal fee by five percent, if the individual does not submit the fee electronically.

Section 1. That § 99-99-17 be AMENDED:

99-99-17. ~~The~~ Beginning July 1, 2025, to December 31, 2025, the Board of Examiners must increase an individual's license renewal fee by ~~five~~ ten percent, if the individual does not submit the fee electronically.

An expiration clause may be used if a provision is intended to have a limited duration and the existing law is to be reinstated thereafter:

Section 1. That § 99-99-17 be AMENDED:

99-99-17. The Board of Examiners must increase an individual's license renewal fee by ~~five~~ ten percent, if the individual does not submit the fee electronically.

Section 2. Section 1 of this Act expires on December 31, 2024.

This means that the amendment of section 1 expires on the stated date, thereby returning the section to its pre-amendment version.

An expiration date may not be used in place of a repeal. If the intent is to repeal a provision and the repeal is to be effective at a later date, the drafter must provide for the repeal and provide for the date on which the repeal of the section is to become effective.

Section 1. That § 99-99-17 be REPEALED:

~~The Board of Examiners must increase an individual's license renewal fee by five percent, if the individual does not submit the fee electronically.~~

Section 2. Section 1 of this Act is effective on December 31, 2024.

PART X. UNCOMMON SECTIONS OF A BILL

Section 1. Retroactive Application

SDCL 2-14-21 provides that no part of the code of laws "shall be construed as retroactive unless such intention plainly appears." If retroactive application of a law is necessary, it must be specifically stated. The following are examples:

Section 11. That a NEW SECTION be added to chapter 92-11:

Each benefit provided by this Act applies retroactively to the surviving beneficiaries of each member of the retirement system who has died since July 1, 2021.

Section 12. That a NEW SECTION be added to chapter 92-11:

Section 2 of this Act applies retroactively to claims arising on or after July 1, 2021.

Section 2. Code Commission Authorization Clause

If a bill requires technical changes to many sections of the Code, it may be best to authorize the Code Commission to implement the change. For example, if the bill sponsor wanted to change the name of the office of "state's attorney" to "counsel for the county," one would amend the Code section in which the office is statutorily created and, at an appropriate place in the bill, include a section to this effect:

Section 13. That a NEW SECTION be added to title 65:

The term "state's attorney," wherever it is used in the code, means "counsel for the county." In future supplements and revisions of the South Dakota Codified Laws, the code commission shall substitute the term "counsel for the county" and its derivatives for the term "state's attorney" and its derivatives.

Similarly, if the bill sponsor wanted to change the name of a state agency, include a section to this effect:

Section 15. That a NEW SECTION be added to chapter 1-18:

In future supplements and revisions of the South Dakota Codified Laws, the code commission shall delete all references to "State Historical Society" and substitute therefor "South Dakota State Historical Society."

It is important to remember that the Code Commission is not inherently authorized to make the above changes to Code. The Commission can correct "apparent errors" and eliminate "obviously obsolete or ambiguous sections," but even where the Commission has authority to "substitute terms or phraseology" like the first example above, or "names of boards, commissions, and agencies," like the second example, such authority only comes from the Legislature intending the Commission to make the change "expressly or by implication." In these latter examples, then, the change is created by statute and then the authority to implement that change is granted to the Code Commission.

Section 3. Compensation for Commission Members

The Legislature does not set per diem and expense allowances of existing boards or commissions in legislation other than a general appropriations act. For newly created boards and commissions, the special committee created by SDCL 4-8A-2 may temporarily set the rates during its interim meetings between sessions.

PART XI. NONESSENTIAL SECTIONS OF A BILL

Section 1. Declaration of Purpose or Legislative Intent

A bill should not need a declaration of purpose or other statement of legislative intent. Courts look to the plain language of the statute's operative provisions to obtain legislative intent. Declarations of purpose are not binding on courts.

In the rare occurrence that a statement of policy or purpose is to be included, it is ordinarily the first section of the bill and should be short and concise. If such a statement is used, it might appear in the following form:

Section 1. In enacting legislation to provide loans and scholarships for the study of medicine, it is the intention of the South Dakota Legislature to alleviate the shortage of physicians.

While declarations of purpose can be found in the South Dakota Codified Laws, and they may continue to be included in a law despite attempts to discourage their use, by virtue of a directive issued by the Code Commission in October 2019, such new content will no longer be codified. Additionally, such content falls under "prefatory subject matter" that is excluded from the Code per SDCL 2-16-13.1.

Section 2. Legislative Findings

The Legislature cannot alter past events or scientific facts by passing a law. However, if construction of a statute depends on a factual situation, the Legislature may wish to present its understanding of the situation in a "finding of fact" section. If such a statement is needed, it might appear in the following form:

Section 1. The Legislature finds that the Lakota, Nakota, and Dakota dialects of the Sioux Language are historically unwritten languages and are defined as such by the provisions of Public Law 94-73 as of January 1, 2000.

The use of footnotes for legislative findings or for any purpose in a bill or resolution is not legislative practice and is therefore discouraged.

As with declarations of purpose or statements of intent, legislative findings will not be codified by virtue of the directive issued by the Code Commission in October 2019. Moreover, such content falls under "analyses" that are excluded from the Code pursuant to SDCL 2-16-13.1.

Legislative findings typically are a product of the legislative process itself, beginning with the committee hearings.

Section 3. Severability Clauses

Although severability clauses are frequently encountered in the laws of other states, they are typically not included in any South Dakota bill. Severability is a long-established doctrine of the Supreme Court of South Dakota, sometimes called "the doctrine of severability." The Court is required to uphold any part of a legislative measure that will stand on its own without the part that is unconstitutional. See *State ex rel. Mills v. Wilder*, 73 SD 330, 42 N.W. 2d 891 (1950); *Nelson et al v. City of Miller*, 83 S.D. 611, 163 N.W. 2d 533 (1968).

If a uniform or model act contains a severability clause, the severability clause may be retained to maintain uniformity among the states.

Section 4. Inseverability Clauses

Occasionally, the reverse situation may exist. It may be desirable to indicate that parts of the bill are not intended to be severable. In such a case, a section should be inserted to reverse the presumption of severability:

Section 7. The provisions of this Act are essentially and inseparably connected and interdependent.

Section 5. Short Titles

The use of short titles in a bill is inconsistent with the practice of codification in South Dakota and discouraged. Short titles are titles expressed in bill text, independent of the title required of all bills. An example in statute is provided below:

39-8-15. Citation of chapter.

This chapter is known as the "South Dakota Frozen Desserts Law."

These provisions should not be included in bills because the legal purpose of the title is already fulfilled by the constitutional title at the top of the bill. To add another "title" only creates confusion.

Codified statute specifies that such "titles . . . constitute no part of any statute." SDCL 2-14-9. Accordingly, new such provisions will not be codified.

An exception may be made for Uniform State Laws because a short title for a uniform act indicates that courts in other states may have already construed the provision.

PART XII. APPROPRIATIONS AND STATE MONEYS AND FUNDS

Section 1. General

S.D. Const., Art. XII, § 1 provides, "No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer." The term "appropriation" means "an authorization by the Legislature to a budget unit to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization." SDCL 4-7-1(1).

An appropriation can be understood as permission to spend a certain amount of money for a stated purpose over a set amount of time, including indefinitely. Even if there exists legal authority for a state entity to accomplish a certain task, and even if moneys are already available, the entity may not spend moneys for that task without an appropriation. See *Pennington Cnty. v. State ex rel. Unified Jud. Sys.*, 641 N.W.2d 127, 133 (S.D. 2002). An expense cannot be incurred without an appropriation. To avoid unfunded mandates, both the authority to act and the authority to spend moneys must be provided by law.

The term "moneys" is used to describe an amount available to be spent in an appropriation bill. The term "fund" is used to describe a pool of moneys designated for a particular purpose. An appropriation authorizes the spending of moneys from a fund. Most commonly, moneys are appropriated from the general fund, the state's primary operating fund. An agency may also use federal funds, which contain moneys granted by the federal government that become state moneys upon receipt, or other funds, which are limited funds used to collect agency-specific fee and tax revenues.

The two forms of appropriations outlined in the South Dakota Constitution are the general appropriation bill and special appropriation bills. See S.D. Const., Art. XII, § 2. The general appropriation bill includes "appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools." *Id.* The general appropriation bill includes all regular, ongoing state expenses.

All other appropriations, known as special appropriations, must "be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature." *Id.* While the general appropriations bill includes appropriations for various purposes, each special appropriation must only address one purpose.

The Joint Committee on Appropriations considers requests for indefinite funding for a new program or additional indefinite funding for an existing ongoing program. The committee analyzes each annual funding request in setting the current year's budget through the general appropriation bill or by amending the previous year's general appropriation bill. The general appropriation bill is drafted using a unique motion sheet process. Special appropriations, which are also reviewed by the committee, are proposed to support novel, time-limited

programs and capital construction projects. Special appropriations must be drafted as separate bills.

Section 2. Special Appropriations

The title of a special appropriations bill must include the phrase "and to make an appropriation therefor" and include the general purpose of the appropriation.

An Act to support firefighter training efforts and to make an appropriation therefor.

An appropriation may only be used for the specific purpose first made. See S.D. Const., Art. XI, § 9. *E.g.*, the goal of an appropriation is to make moneys available only for a precise, narrowly defined goal and not generally available for a state entity's wide-ranging use. To draft a special appropriation, the drafter should answer the following six questions:

1. **Where** are the moneys coming from?
2. **How much** is being appropriated?
3. **To what** state entity are the moneys going?
4. **For what** purpose are the moneys to be used?
5. **What framework** is required to spend the moneys? and
6. **When** is the appropriation effective, and when does it revert?

Section 1. There is appropriated from the general fund the sum of \$2,000,000 to the Department of Human Services for providing grants to support the development and expansion of adult day services programs serving adults living with dementia or symptoms in alignment with dementia.

Section 2. To be eligible for a grant, an applicant must demonstrate the capacity to serve a new or underserved area with qualifying services. The department shall prioritize grants to support the development of adult day services programs in counties without a program.

Section 3. The secretary of the Department of Human Services shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 5. This Act is effective July 26, 2024.

2.1. From Where and How Much

A special appropriation begins with the phrase "There is appropriated." Then, list the specific fund to be used and the moneys to be appropriated. Amounts should always be written with a dollar sign followed by numerals.

Section 1. There is appropriated from the general fund the sum of \$13,000,000 . . .

General, federal, and other fund expenditure authority must be kept separate. For clarity, specify the federal program and act for which federal fund expenditure authority will be used. With other fund expenditure authority, specify the other fund to be used.

Section 1. There is appropriated \$13,000,000 in federal fund expenditure authority for the expenditure of State Fiscal Recovery Fund moneys authorized by the American Rescue Plan Act . . .

Section 1. There is appropriated from the water and environment fund the sum of \$13,000,000 . . .

When the specific federal program or act or other fund to be used is not yet known, instead appropriate a set amount of "federal fund expenditure authority" or "other fund expenditure authority."

2.2. To What Entity and For What Purpose

The bill must provide to whom the moneys are appropriated, *i.e.*, a state agency, board, or commission, and for what the moneys are to be used. An appropriation must be made to a public entity. See S.D. Const., Art. III, § 23. Add as much detail as is necessary to ensure the moneys are only put toward their intended purpose and no others. No commas are necessary in the first section.

Section 1. There is appropriated from the general fund the sum of \$8,000,000 to the Department of Health for providing grants toward pediatric cancer research projects in South Dakota.

2.3. What Framework

The drafter should provide the legislative framework for the appropriation, including:

- Denominations of moneys awarded;
- Criteria for receiving the moneys;
- Conditions for releasing the moneys;

- The agency's duties in managing the distribution of moneys;
- Rulemaking authority;
- Reporting requirements; and
- Outcome measures.

Section 2. Before any money is expended under this Act, the Capitol Complex Restoration and Beautification Commission shall review each proposed restoration, maintenance, or repair project. If the commission determines the project will protect and preserve the integrity of a historic area, money appropriated in this Act may be expended for the project as prescribed by this Act.

2.4. Voucher Language (To Whom)

The third to last section explains who shall approve vouchers, *i.e.*, obligations of moneys, which are later submitted to the Office of the State Auditor to determine whether the voucher is for an appropriate expenditure of state moneys. This section must also note the state auditor shall draw warrants to pay such expenditures. While the individual approving vouchers will depend on the entity receiving moneys, the state auditor must always be authorized to draw warrants. See SDCL 4-9-1. The individual approving vouchers can be a commissioner, executive director, president, or secretary, depending on the agency involved.

Section 3. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

2.5. Reversion Language (When)

The penultimate section explains how the moneys appropriated revert to their original fund if the moneys are not spent or obligated. By default, special appropriations revert after four full fiscal years following the effective date of the appropriation. For example, if an act went into effect April 1, 2024, any amounts remaining would revert automatically on June 30, 2028, as each new fiscal year starts July 1. See SDCL 4-8-21. If the default timeframe is sufficient, it is not necessary to include a specific date, only a reference to chapter 4-8.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

If moneys are expected to revert on any other date, the date must be listed. There is no set limit on when a special appropriation must revert.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2030, shall revert in accordance with the procedures prescribed in chapter 4-8.

2.6. Effective Date (When)

The final section must note if the Act is to be effective on any date other than July 1. An effective date is only necessary if the appropriation will use moneys from the current fiscal year. The effective date must be at least 90 days after the adjournment of session. S.D. Const., Art. III, § 22.

Section 5. This Act is effective June 26, 2025.

While emergency clauses are not preferred, they may be included if requested in lieu of an effective date. In such instances, remember to add "and to declare an emergency" to the title of the bill.

Section 3. Appropriations for Construction Projects

An appropriation for a construction project authorizes expenditures for new buildings or facilities. Generally, construction includes architectural and engineering services; site preparation; construction, furnishing, and equipping the buildings and facilities for use, including heating, plumbing, ventilation, water, sewer, and electricity; adding sidewalks and parking; and landscaping and grounds. See SDCL 5-14-1(1).

No expenditure may be made for land acquisition costs from appropriations provided for new construction. A land acquisition appropriation must be a separate section in a bill that also appropriates moneys for construction, or the land acquisition appropriation must be brought in a separate bill. A land acquisition includes both the purchase of land and "sewer, street, and curb and gutter improvements that may start at the time of purchase of the land or later result as improvements to the land so acquired." SDCL 5-14-1(2).

For an appropriation for a construction project, the title must encompass all the components required for the project, *i.e.*, land purchase, construction, or both.

An Act to make an appropriation for the purchase of certain real property and the construction of a prison facility in Rapid City.

An appropriation for a construction project requires additional elements. The first section(s) must provide an agency with the authority to construct and purchase land, specifically mentioning what is to be constructed and where the site is if its location has been determined.

If the agency requires authority to purchase land and construct a new building, use two sections, with the land purchase listed first.

Section 1. The Department of Health may design, construct, furnish, and equip an addition to the Dr. Robert Hayes Building on the Capitol Complex located in Pierre, South Dakota, including all services or actions necessary to complete the project.

The next section should note the appropriation is for the purposes listed in the previous section(s).

Section 2. There is appropriated from the general fund the sum of \$6,000,000 and appropriated the sum of \$1,000,000 in other fund expenditure authority to spend moneys accepted pursuant to section 3 of this Act to the Department of Health for the purposes described in section 1 of this Act.

An agency may receive gifts and other contributions to help supplement state moneys in capital projects. In these circumstances, the bill may include a clause permitting the agency to accept moneys from outside sources and requiring the agency to create a new, temporary fund to hold such moneys.

Section 3. The Department of Health may accept moneys obtained for the project from donations or any other external sources, all of which comprise a special fund for the benefitted project, but the department may only expend moneys up to the limit prescribed in section 2 of this Act.

Lastly, a paragraph is needed to explain the design and construction of the project will be under the charge and supervision of the Bureau of Human Resources and Administration. The only exception is the Department of the Military, which supervises its own projects. If the agency is being appropriated moneys, this section is not needed. The rest of the appropriation may then be drafted as normal.

Section 4. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Human Resources and Administration as provided in chapter 5-14.

Section 4. Appropriations With Multiple Funds

An appropriation may involve multiple funds and funding sources to reach the total amount needed. Any combination of funding sources is acceptable as long as each source is properly referenced. Be sure to specify which amounts are being appropriated from which sources.

Section 1. There is appropriated from the general fund the sum of \$1,500,000 and appropriated the sum of \$6,500,000 in federal fund expenditure authority for expenditure of State Fiscal Recovery Fund moneys authorized by the American Rescue Plan Act to the Department of Labor and Regulation for modernizing the reemployment assistance enterprise system.

Section 5. Appropriations With Multiple Agencies

An appropriation may involve two or more agencies or other entities receiving moneys. To organize this type of appropriation, use multiple sections, with one section per agency. Be sure to separately specify who shall approve vouchers for each section.

Section 1. There is appropriated from the general fund the sum of \$150,000 to the Department of Agriculture and Natural Resources for aerial predator control.

Section 2. There is appropriated from the general fund the sum of \$150,000 to the Department of Game, Fish and Parks for aerial predator control.

Section 3. The secretary of the Department of Game, Fish and Parks shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized in section 1 of this Act.

Section 4. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized in section 2 of this Act.

Section 6. Creating a Fund

A fund to hold state moneys may only be created by law. Funds are primarily used to hold moneys collected from ongoing revenues but may be used for short-term purposes in rare instances. When creating a new fund, state "There is created in the state treasury" followed by the name of the fund in lowercase. Explain what the fund will consist of, who is responsible for maintaining and administering the fund, the purpose of the fund, and how moneys in the fund are to be appropriated, either through the general appropriation bill, through special appropriations, or through a continuous appropriation. If requested, also explain where interest earned must be deposited, either to remain in the fund or transferred to the general

fund. If not included, such a determination on interest is later made by the Bureau of Finance and Management and approved by the Joint Committee on Appropriations.

Section 1. That a NEW SECTION be added to chapter 1-41:

There is created in the state treasury the environment and natural resources fee fund. The fund consists of all fees imposed pursuant to chapters 1-41, 10-39B, and 34-44 and all other moneys designated for deposit in the fund. The Department of Agriculture and Natural Resources shall maintain and administer the fund. The purpose of the fund is to defray the expenses associated with the programs administered by the Department of Agriculture and Natural Resources and any other purpose authorized by law. Interest on moneys credited to the fund must remain in the fund. Expenditures from the fund shall be budgeted through the general appropriations act.

If the fund will not hold ongoing revenues through the general appropriations act, remember to transfer moneys into the fund. Such a fund is generally used for long-term capital projects not included in the general appropriations act. When moneys in the fund are to be appropriated using special appropriations, such an appropriation may be included in the same bill using a distinct section. The title of the bill must reflect both the transfer and special appropriation.

Section 2. The state treasurer shall transfer from the general fund the sum of \$10,000,000 to the state IT modernization fund created in section 1 of this Act.

Section 3. There is appropriated from the state IT modernization fund, created in section 1 of this Act, the sum of \$5,000,000 to the Bureau of Information and Telecommunications for the purposes described in section 1 of this Act.

Section 7. Continuous Appropriations

A continuous appropriation is an appropriation for an undetermined amount and for an indefinite period. A continuous appropriation may not be made from the general fund, as such an appropriation can only be used for spending moneys in one of the other funds.

Unlike other appropriations, a continuous appropriation must be permanent continuing law. Include the name of the new fund in lowercase, who will administer the fund, the purpose of the fund, where interest earned must be deposited, and language stating that the fund is continuously appropriated to the entity administering the fund.

Section 1. That a NEW SECTION be added to chapter 11-54:

There is established in the state treasury the extraordinary litigation fund. The fund shall be maintained separately and administered by the Bureau of Administration. The fund may be used for plaintiff attorney award fees, retention of outside counsel, settlement costs, or other litigation expenses. Unexpended moneys and any interest that may be credited to the fund shall remain in the fund. Moneys in the extraordinary litigation fund, including any subfunds created within it, are continuously appropriated to the Bureau of Administration.

Section 8. Amending Previous Appropriations

The Legislature has the power to alter, change, or transfer an appropriation unless it has been obligated "under circumstances where the charge on such appropriation has become a vested right." *See Apa v. Butler*, 638 N.W.2d 57, 63 (S.D. 2001).

When reducing the amount of a previously passed appropriation, changing the authorized entity, or changing the purpose of the appropriation, the corresponding session law must also be amended. The title must state the bill is to "amend an appropriation" rather than make an appropriation.

An Act to amend an appropriation for a new bioproducts facility at the research park in Brookings.

Section 1. That 2023 Session Laws, chapter 244, § 8 be AMENDED:

There is appropriated from the general fund the sum of ~~-\$20,000,000~~ \$15,000,000 to the Board of Regents for the purpose authorized in section 1 of this Act.

When the intent is to increase the amount of a previously passed appropriation, draft a new appropriation rather than amend the session laws. The appropriation may reference the

session law establishing the original appropriation. This process helps avoid confusion regarding how many new moneys are being spent on old projects.

Section 1. There is appropriated the sum of \$1,500,000 in other fund expenditure authority to the Bureau of Administration for covering increased costs related to the construction of an addition the Kinsman Building in Pierre as established in 2023 Session Laws, chapter 231, § 18.

Section 7. Transferring Moneys

Moneys may be transferred from one fund to another, usually from the general fund to one of the other funds, for a future project. A transfer of moneys is typically included in the general appropriations act rather than a special appropriations bill.

A transfer with an appropriation must include the amount of the transfer, the fund from which the moneys will be transferred, and the fund into which the moneys will be deposited. Depending on the complexity of the transfer and appropriation, multiple sections may be used.

Section 1. There state treasurer shall transfer \$300,000 from the general fund to the conservation district special revenue fund created in § 39-84-58. The amount transferred in this section is appropriated to the State Conservation Commission for the purposes described in § 39-84-58.

Full examples of all appropriations described in Part XII may be found in the Appendix.

PART XIII. CHECKLIST FOR BILL DRAFTING

- Is the title short, yet clearly expressive of the subject matter of the bill?
- Are definitions provided for those words used in the bill that do not have a fixed and single meaning in normal usage and that might give rise to ambiguity?
- Are words used consistently with their definitions throughout the bill? Are words defined but never used in the bill?
- Is the bill written in a clear style that can be easily understood by those who are affected by it and those who must administer it?
- Are the sections of the bill numerically arranged?
- Is the bill divided into sections and subdivisions in such a way as to achieve maximum clarity?
- Does the bill accomplish its intended purpose?
- Does the bill do more than is intended?
- Does the bill affect existing laws without intending to do so?
- If the bill is intended to affect existing laws, are its provisions properly integrated with those laws so that no conflict will arise in the interpretation or administration?
- Are statutory references in the bill accurate?
- Are internal references in the bill correct?
- Are conflicting statutes specifically repealed or revised?
- If a section is repealed, are all cross references to that section removed from existing law?
- When does the bill become effective? Does the bill need an effective date or emergency clause?

PART XIV. RESOLUTIONS AND COMMEMORATIONS

There are four types of resolutions: joint, concurrent, House or Senate, and resolutions of disapproval. The Joint Rules also provide for a special type of less formal resolution called a commemoration. Each type of resolution is drafted for a particular purpose. Full examples of all resolutions may be found in the Appendix.

Section 1. Joint Resolution

A joint resolution is employed in the process of amending both the United States Constitution and the South Dakota Constitution. A joint resolution is used to:

1. Propose and submit to the voters of the state an amendment to the South Dakota Constitution;
2. Petition Congress to call for a constitutional convention to propose amendments to the United States Constitution pursuant to U.S. Const., Art. V;
3. Ratify a proposed amendment to the United States Constitution; or
4. Withdraw previous ratification of a proposed amendment to the United States Constitution.

A joint resolution proposing and submitting an amendment to the South Dakota Constitution does not contain "WHEREAS" clauses or a "BE IT RESOLVED" conclusion.

A joint resolution ratifying or withdrawing ratification of a proposed amendment to the United States Constitution or petitioning Congress to call a constitutional convention pursuant to U.S. Const., Art. V includes "WHEREAS" clauses and a "BE IT RESOLVED" conclusion.

Section 2. Concurrent Resolution

A concurrent resolution is a document that expresses an opinion or principle of the Legislature, requests an interim study, instructs a department of state government, or petitions a federal agency.

Section 3. House or Senate Resolution

A resolution is a document that expresses an opinion or principle of one house, makes a request of the other house, regulates procedure, or refers to the Executive Board of the Legislative Research Council a topic for possible study by an interim study committee.

Section 4. Resolution of Disapproval

A resolution of disapproval is the means by which a house expresses its disapproval of an executive order related to governmental reorganization.

Section 5. Commemoration

A commemoration is an expression of the Legislature recognizing service or achievements of national or statewide importance or sorrow over a death or loss. A commemoration is done in the form of a resolution and is entered in the journals. A commemoration is not subject to a vote. If any member makes a timely objection to a commemoration, the commemoration fails. Commemorations should deal only with congratulations, condolences, expressions of gratitude, or recognition of a special event or celebration

Section 6. Drafting Resolutions and Commemorations

Most concurrent or simple resolutions consist of a title, a preamble, and a body.

The title states the type and subject of the resolution. It should be clear, concise, and give an accurate description of the resolution's contents.

The preamble is a series of "WHEREAS" clauses that describe the situation or conditions for which the resolution proposes action. Language in a preamble may be more literary or rhetorical than would be appropriate in other forms of legislation.

A joint resolution does not ordinarily contain a preamble.

The preamble of a commemoration should not contain more than three short "WHEREAS" clauses since commemorations are usually enrolled as one-page documents suitable for framing.

The body of a resolution is the closing, or resolving clauses, which propose action or express the opinion of the Legislature.

PART XV. AMENDMENTS

An amendment proposes a change to a bill or resolution after the bill is introduced. An amendment must identify the bill number and the bill version, *i.e.*, introduced or engrossed. The principles of style and form that apply to a bill also apply to an amendment.

In the following example, section 1 illustrates how a bill may be amended by adding text to, subtracting text from, and reverting statutory text in a bill. Section 2 illustrates how a bill may be amended by adding a new section. Because of the addition of the new section, it is also appropriate to amend the title of this example bill, which can be seen in the first line.

An Act to provide for a legal definition of bourbon and regulate how it is distributed.

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

Section 1. That § 99-13-14 be AMENDED:

99-13-14. For the purposes of §§ 99-13-14 to 99-13-25, inclusive, the term "bourbon" means a distilled spirit that is:

- (1) Aged in a new barrel that is made of ~~oak-hickory~~ wood and charred on the inside and outside;
- (2) Distilled at less than one hundred and sixty proof ~~or eighty percent alcohol by volume~~;
- (3) Poured in the new ~~oak-hickory~~ barrel at less than one hundred and twenty-five proof; ~~and~~
- (4) Bottled at more than eighty proof or forty percent alcohol by volume;
- (5) Produced in the United States; and
- (6) Produced using at least fifty-one percent corn.

Section 2. That a NEW SECTION be added to chapter 99-13:

A distiller shall label any bottle of bourbon that has been aged with the number of years that the bourbon has been aged. If bottled bourbon contains any added coloring, flavoring, or un-aged neutral grain spirit, the distiller must label the bottle as blended.


In the following example, section 2 illustrates how a bill may be amended by removing a section previously included in the bill. Section 3 illustrates how a bill may be amended by adding a section repealing an existing section. Note that for a section being removed from a bill, the lead line is overstricken.

~~Section 2. That chapter 99-13 be amended with a NEW SECTION:~~

~~A distiller must label any bottle of bourbon that has been aged pursuant to section 1 of this Act with the number of years that it has been aged. If a bottle of bourbon contains any added coloring, flavoring, or un-aged neutral grain spirit, the distiller must label the bottle as blended.~~

~~Section 3. That § 99-13-14.1 be REPEALED:~~

~~No distiller, carrier, or dispenser may refer to a bourbon that has been aged for fewer than four years as whiskey.~~

 **DRAFTING TIP:** While the bill drafting software automatically renumbers sections, a drafter must still ensure internal cross-references remain accurate.

PART XVI. RULE-MAKING AUTHORITY

Section 1. Administrative Procedure Act

In many instances, any legislation of substantial scope must be administered either by some agency, board, or commission. The provisions of the Administrative Procedure Act found in SDCL chapter 1-26 should be used to avoid unnecessary repetition and to provide uniformity for the rule-making procedure of state agencies, for hearings, and for appeals to the courts.

Section 2. Rules for New Programs

If a special appropriations bill establishes a new program, authority to promulgate rules could be considered in the areas of eligibility for moneys, audit requirements, or standards for distributing the moneys. The important issues to be considered in this area concern how the moneys are to be spent and whether additional conditions are to be imposed concerning the distribution of the moneys.

Section 3. Narrow and Specific Rule-making Authority

Rule-making authority is quasi-legislative authority that is delegated to an executive agency. This delegation can only be done in law. Specifically, administrative rules require proper "general authority to promulgate rules" and the law "implement[ed]" by the rule. SDCL 1-26-6.2. General authority is the "clearly expressed legislative will to delegate the power to adopt the particular rule." *S.D. Migratory Bird Ass'n v. SD Game, Fish & Parks*, 312 N.W.2d 374, 375 (S.D. 1981). The law implemented is "a policy, standard, or rule" that prevents the agency from exercising "unlimited or absolute discretion" in its power to adopt a particular rule. *State v. Moschell*, 2004 S.D. 35, ¶ 17, 677 N.W.2d 551, 559; *see also S.D. Migratory Bird Ass'n*, supra.

Authority to allow an agency to promulgate rules should be narrowly drawn. A statement such as "The department may promulgate rules to implement this chapter" is a grant of rule-making power without standards and may be an unconstitutional delegation of legislative authority.

Instead, determine what rules the agency needs and draft specific rule-making authority accordingly that cites SDCL chapter 1-26. For an example of general authority, see below:

Section 10. That a NEW SECTION be added to chapter 73-2:

The secretary of the Department of Public Safety shall promulgate rules, pursuant to chapter 1-26, in the following areas:

- (1) Commercial driver license waivers;
- (2) Single license requirements;

- (3) Notification requirements and employer responsibilities;
- (4) Federal disqualifications and penalties;
- (5) Testing and licensing procedures;
- (6) Vehicle groups and endorsements;
- (7) Required knowledge and skills;
- (8) Tests;
- (9) Commercial driver license documents; and
- (10) Other rules necessary to implement the provisions of C.F.R. 49, Chapter 3, Subchapter B, parts 383, 384, 390, 391, and 392, January 1, 1990, as of January 1, 1996.

Notice that the above example merely lists rule-making subject matter. It does not provide limits on the extent of the agency's ability to propound rules regarding that subject matter. An example of such "law implemented" for this rule-making authority is instead provided below:

Section 11. That a NEW SECTION be added to chapter 73-2:

Any person age sixteen or older and a resident of this state may apply for a commercial driver license on an application form supplied by the Department of Public Safety. The applicant shall submit a form, duly signed and witnessed, certifying that the applicant is of sufficient health and has a driving history that indicates an ability to drive heavy trucks and other restricted motor vehicles. The department shall test applicants on the safe and appropriate operation of heavy trucks and other restricted motor vehicles. The department may provide different endorsements generally recognized by other states for operation of specialty restricted motor vehicles if the minimum requirements to apply and the test for a license is tailored by the department to the safe operation of the specialty vehicle. The department may waive a commercial driver license requirement where the driver has a valid commercial driver license from another state.

The above example guides how the general authority is to be implemented by the agency for many of the general authorities listed in the first example. Some of the language is narrow and specific and some of it is broad, but each sentence provides the scope for administrative rules associated with CDL licensing.

In some cases, law implemented and general authority exist in the same provision, as shown in this statute:

89-34B-4. Promulgation of safety standards--Considerations.

The commission shall promulgate rules pursuant to chapter 1-26, to establish safety standards, but not more stringent than federal safety standards as provided by § 49-34B-3, for the intrastate transportation of gas and gas pipeline facilities. The standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of gas pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing do not apply to pipeline facilities in existence on the date the standards are adopted by either this state or the federal government. The safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing the standards, the commission shall consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the standards are appropriate for the particular type of pipeline transportation of gas;
- (3) The reasonableness of any proposed standards;
- (4) The extent to which the standards will contribute to public safety; and
- (5) The existing standards established by the secretary of the United States Department of Transportation pursuant to the United States Code, title 49, section 60101 et seq. as amended to January 1, 2019.

Section 4. Amending Rule-making Authority

A bill may remove or revise an agency's statutory authority to adopt rules. SDCL 1-26-8.1 states that a rule is void if the authority to adopt it is repealed. When drafting legislation to remove an agency's statutory authority to adopt rules, be sure to check what the agency has cited as its "general authority" and "law implemented," and that the intended authority is removed or revised by the legislation. Many agencies have more than one statute authorizing the agency to adopt rules.

Section 5. Amending Administrative Rule by Law

While statutes can amend rule-making authority, statutes should not amend administrative rules directly. Once adopted through the SDCL chapter 1-26 rule-making process, an administrative rule can only be amended, suspended, or repealed through the rulemaking process. SDCL 1-26-6.7. Failure to follow the administrative rule-making process may render the amendment, suspension, or repeal unenforceable in court. SDCL 1-26-6.8.

PART XVII. APPENDIX

Section 1. A Bill to Amend a Section of the SDCL

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 299

Introduced by: **Senator** Washington

An Act to require that beekeepers file property owner identification before placing hives.

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

Section 1. That § 99-13-14 be AMENDED:

99-13-14. Terms used in this chapter mean:

- (1) "Apiary," the site at which one ~~colony~~ or more colonies of bees ~~is~~ are kept;
- (2) "Bee," a honey-producing insect of the genus *Apis*, at all stages of life;
- (3) "Beekeeper," a person who, by virtue of ownership or a lease, is responsible for the maintenance of bees placed in this state;
- (4) "Colony," a familial group of adult bees consisting of drones, workers, and a queen;
and
- ~~(4)~~(5) "Hive," a manmade structure that houses a colony.

Section 2. A Bill to Amend a Section of Session Law

99th Legislative Session

2024 South Dakota Legislature

House Bill 1199

*Introduced by: **Representative** Adams*

An Act to make an appropriation for the revised design costs of a bioproducts facility.

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

Section 1. That 2023 Session Laws, chapter 547, § 4 be AMENDED:

There is appropriated from the general fund the sum of \$800,000 to the Board of Regents, for the purpose of contracting with an architectural firm for the design of a bioproducts facility, to be located on the campus of ~~an institution of higher education~~ a technical college under the control of the ~~board~~ South Dakota Board of Technical Education.

Section 3. A Bill to Add a New Section to the SDCL

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 300

*Introduced by: **Senator** Jefferson*

An Act to exempt a hospital employee from liability if complying with medical records requirement.

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

Section 1. That a NEW SECTION be added to chapter 88-34:

A hospital employee who complies with the requirements for providing medical records, as set forth in this chapter, may not be held liable for any injury or damage resulting from that compliance.

Section 4. A Bill to Add a New Subdivision to a Section of the SDCL

99th Legislative Session

2024 South Dakota Legislature

House Bill 1200

*Introduced by: **Representative** Madison*

An Act to increase the qualifications for members of the State Arboretum Board.

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

Section 1. That § 79-36-13 be AMENDED:

79-36-13. An individual is eligible to be nominated for membership on the State Arboretum Board, if the individual verifies in writing that the individual:

- (1) Is at least eighteen years of age;
- (2) Holds a baccalaureate degree in forestry;~~and~~
- (3) Has ten years of experience in forestry management; and
- (4) Resides in this state.

Section 5. A Bill to Remove a Subdivision From a Section of the SDCL

99th Legislative Session

2024 South Dakota Legislature

House Bill 1201

*Introduced by: **Representative** Monroe*

An Act to reduce the qualifications for members of the State Arboretum Board.

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

Section 1. That § 79-36-13 be AMENDED:

79-36-13. An individual is eligible to be nominated for membership on the State Arboretum Board, if the individual verifies in writing that the individual:

- (1) Is at least eighteen years of age;
- (2) Holds a baccalaureate degree in forestry;
- (3) Has ten years of experience in forestry management; and
- (4) ~~Has served for five years on the board of a national arboretum association; and~~
- (5) ~~Has experience in the tourism industry.~~
- (6) Resides in this state.

Section 6. A Bill to Repeal a Section of the SDCL

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 301

*Introduced by: **Senator** Jackson*

An Act to repeal a provision requiring that the secretary of agriculture compile and report data regarding cooperative enterprises.

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

Section 1. That § 88-13-41 be REPEALED:

~~The secretary of agriculture shall assemble, compile, and maintain files of statistical data relating to the work and progress of cooperative enterprises in this state and shall report the data to the Executive Board of the Legislative Research Council before September 1, 1975.~~

Section 7. A Bill to Repeal Multiple Sections of the SDCL

99th Legislative Session

2024 South Dakota Legislature

House Bill 1202

*Introduced by: **Representative** Van Buren*

An Act to repeal provisions requiring that the secretary of agriculture perform supervisory and reporting functions.

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

Section 1. That § 88-13-40 be REPEALED:

~~The secretary of agriculture shall attend to and have supervision of all correspondence relating to advertising the resources and opportunities of the state. The secretary shall encourage investments of capital within the state and facilitate the establishment of new business enterprises in the state.~~

Section 2. That § 88-13-41 be REPEALED:

~~The secretary of agriculture shall assemble, compile, and maintain files of statistical data relating to the work and progress of cooperative enterprises in this state and shall report the data to the Executive Board of the Legislative Research Council before September 1, 1975.~~

Section 8. A Bill to Repeal a Section of Session Law

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 302

*Introduced by: **Senator** Harrison*

An Act to repeal a requirement that the secretary of health compile data regarding fatal snake bites.

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

Section 1. That 2023 Session Laws, chapter 445, § 7 be REPEALED:

~~On or before September 30, 2024, the secretary of agriculture shall assemble, compile, and maintain files of statistical data relating to fatal snake bites occurring in this state annually.~~

Section 9. A Bill to Amend a Section of a Bill Enacted Earlier in the Same Session

99th Legislative Session

2024 South Dakota Legislature

House Bill 1203

*Introduced by: **Representative** Tyler*

An Act to modify the submission date for remittances to the Department of Revenue.

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

Section 1. That HB 1350, § 6, as enacted by the Ninety-ninth Legislature, be AMENDED:

Any person who holds a gross receipts permit shall provide a return and remittance to the Department of Revenue, on forms prescribed by the department, on or before the ~~twenty-~~first tenth day of the month following each calendar quarter of the year.

Section 10. A Bill Containing an Emergency Clause

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 303

*Introduced by: **Senator Polk***

An Act to require the creation of a student attendance advisory committee and to declare an emergency.

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

Section 1. That a NEW SECTION be added to chapter 88-34:

On or before March 1, 2024, the secretary of education shall appoint an advisory council to examine issues regarding student attendance in the elementary and secondary schools of this state. The council must consist of:

- (1) One superintendent representing a school district having more than five thousand students enrolled;
- (2) One principal representing a nonpublic school having fewer than two hundred students enrolled;
- (3) Three parents having students who are at least ten years of age but less than fifteen years of age.

The secretary shall compile a report and deliver the report to the Executive Board of the Legislative Research Council before June 10, 2024.

Section 2. Because this Act is necessary for the support of state government and its existing institutions, an emergency exists, and this Act is effective from and after its enactment.

Section 11. A Bill Containing an Effective Date

99th Legislative Session

2024 South Dakota Legislature

House Bill 1204

*Introduced by: **Representative** Taylor*

An Act to require that beekeepers file property owner contact information before hive placement.

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

Section 1. That a NEW SECTION be added to chapter 91-52:

Before placing a hive on the property of another, a beekeeper shall file, with the Department of Agriculture and Natural Resources, the name and contact information of that property owner.

Section 2. This Act is effective beginning January 1, 2028.

Section 12. A Bill Containing an Expiration Date

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 304

*Introduced by: **Senator** Filmore*

An Act to provide for an alternate meeting location following a natural disaster.

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

Section 1. That a NEW SECTION be added to chapter 73-19:

If as a result of a natural disaster, the governing body of a political subdivision is unable to meet at its usual and customary time and place, the governing body may meet at another location within the county or meet electronically.

Section 2. This Act expires on December 31, 2024.

Section 13. A Bill Containing an Expiration Date That Affects Only One Section

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 304

*Introduced by: **Senator** Filmore*

An Act to provide for an alternate meeting location following a natural disaster.

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

Section 1. That a NEW SECTION be added to chapter 73-19:

If as a result of a natural disaster, the governing body of a political subdivision is unable to meet at its usual and customary time and place, the governing body may meet at another location within the county or meet electronically.

Section 2. That a NEW SECTION be added to chapter 73-19:

Within ten days after the governing board of a political subdivision meets, the board shall post the meeting minutes on its website and provide a printed copy to any person upon request.

Section 3. Section 1 of this Act expires on December 31, 2024.

Section 14. A Bill Establishing a Civil Penalty

99th Legislative Session

2024 South Dakota Legislature

House Bill 1205

*Introduced by: **Representative** Pierce*

An Act to provide a civil penalty for failure to file a financial statement.

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

Section 1. That a NEW SECTION be added to chapter 75-16:

The secretary of state may impose a civil penalty against any person who fails to file a financial statement as required by this chapter. The penalty may not exceed one hundred dollars for each day the statement remains unfiled. The secretary shall forward any civil penalty collected under this section to the state treasurer for deposit in the state general fund.

Section 15. A Bill That References a Federal Statute

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 305

*Introduced by: **Senator** Buchanan*

An Act to establish requirements for the issuance of a trail use permit.

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

Section 1. That a NEW SECTION be added to chapter 78-46:

Before issuing a trail use permit under this chapter, the secretary of agriculture and natural resources shall require an applicant to meet the conditions set forth in:

- (1) The Agricultural Disclosure Act, 96 U.S.C. § 4332 (January 1, 2018);
- (2) The Federal Environmental Impact Agricultural Act of 1998, 97 U.S.C. § 1504, et seq. (January 1, 2019); and
- (3) The Federal Public Land Utilization Act, 98 U.S.C. § 1401 to 1405, inclusive, and § 1409 (March 31, 2022).

Section 16. A Bill That References a Federal Regulation

99th Legislative Session

2024 South Dakota Legislature

House Bill 1206

*Introduced by: **Representative Lincoln***

An Act to establish requirements for the issuance of a trail use permit.

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

Section 1. That § 82-33-14 be AMENDED:

Each health maintenance contract that covers a female and is delivered, issued for delivery, or renewed in this state, must include coverage for breast cancer screening by low-dose mammography.

This section applies only to plans grandfathered under 85 C.F.R. §§ 54 and 602 (March 31, 2022), 89 C.F.R. § 2590 (March 31, 2023), and 90 C.F.R. § 147 (March 31, 2024).

Section 17. A Bill That Updates a Reference to a Federal Statute

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 306

*Introduced by: **Senator** Johnson*

An Act to update Internal Revenue Code references.

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

Section 1. That § 94-13-14 be AMENDED:

Any qualified benefit must be reduced in compliance with the Internal Revenue Code of 1986, 26 U.S.C. § 664 (January 2, ~~2018~~ 2024).

Section 18. A Bill That Makes a Special Appropriation

99th Legislative Session

2024 South Dakota Legislature

House Bill 1207

Introduced by: **Representative Grant**

An Act to make an appropriation to provide funding for major infrastructure projects to support South Dakota airports.

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

Section 1. There is appropriated from the general fund the sum of \$1,000,000 to the Department of Transportation for providing grants to supplement local and federal funding for the following South Dakota airport infrastructure projects:

- (1) Buying equipment for mowing or snow removal;
- (2) Rehabilitating or constructing pavement for runways and taxiways;
- (3) Building or remodeling arrival and departure terminals; and
- (4) Building or remodeling terminal systems eligible for state or federal matching funds.

Section 2. The Aeronautics Commission, created in chapter 50-2, may advise the secretary of the Department of Transportation on determining grant awards in section 1 of this Act.

Section 3. The secretary of the Department of Transportation shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 5. This Act is effective beginning June 26, 2023.

Section 19. A Bill That Makes a Special Appropriation Associated with Capital Construction

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 307

*Introduced by: **Senator Hayes***

An Act to make an appropriation for the construction of a year-round rodeo practice facility on the campus of South Dakota State University.

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

Section 1. The Board of Regents may design, construct, furnish, and equip a year-round rodeo practice facility, with indoor and outdoor arenas, offices and classrooms, boarding stables, and a storage shed for feed and equipment, on the campus of South Dakota State University, including all services or actions necessary to complete the project.

Section 2. There is appropriated from the general fund the sum of \$8,000,000 and appropriated the sum of \$10,000,000 in other fund expenditure authority to spend moneys accepted pursuant to section 3 of this Act to the Board of Regents for the purposes authorized in section 1 of this Act.

Section 3. The Board of Regents may accept moneys obtained for the project from donations or any other external sources, all of which comprise a special fund for the benefitted project, but the board may only expend moneys up to the limit prescribed in section 2 of this Act.

Section 4. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Human Resources and Administration as provided in chapter 5-14.

Section 5. The executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 7. This Act is effective beginning June 26, 2023.

Section 20. A Bill That Makes an Appropriation Involving Multiple Funds

99th Legislative Session

2024 South Dakota Legislature

House Bill 1208

Introduced by: **Representative** Garfield

An Act to make an appropriation for improving Capitol Lake and the surrounding grounds.

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

Section 1. There is appropriated from the general fund the sum of \$3,200,000 and appropriated from the maintenance of buildings and grounds fund the sum of \$2,000,000 to the Bureau of Human Resources and Administration for securing the defective well supplying water to Capitol Lake, replacing the water source for Capitol Lake, and accommodating additional memorials and improvements around Capitol Lake.

Section 2. The Capitol Complex Restoration and Beautification Commission, created in § 5-15-1, shall oversee the expenditure of funds authorized by this Act.

Section 3. The commissioner of the Bureau of Human Resources and Administration shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 5. This Act is effective beginning June 26, 2023.

Section 21. A Bill That Makes an Appropriation Involving Multiple Agencies

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 308

*Introduced by: **Senator** Arthur*

An Act to make an appropriation for aerial predator control.

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

Section 1. There is appropriated from the general fund the sum of \$150,000 to the Department of Game, Fish and Parks for aerial predator control.

Section 2. There is appropriated from the general fund the sum of \$150,000 to the Department of Agriculture and Natural Resources for aerial predator control.

Section 3. The secretary of the Department of Game, Fish and Parks shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 5. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 6. This Act is effective beginning June 26, 2023.

Section 22. A Bill That Creates a Fund

99th Legislative Session

2024 South Dakota Legislature

House Bill 1209

*Introduced by: **Representative** Cleveland*

An Act to create the state IT modernization fund and make an appropriation therefor.

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

Section 1. That a NEW SECTION be added to chapter 1-33:

There is created in the state treasury the state IT modernization fund. The Bureau of Information and Telecommunications shall administer the fund. The purpose of the fund is to replace or update applications and programs difficult or costly to fix or with a propensity to fail regularly, as well as to improve digital access to state agency information for the public. Interest on moneys credited to the fund must be deposited into the general fund. Expenditures out of the fund must be appropriated through special appropriations.

Section 2. The state treasurer shall transfer from the general fund the sum of \$10,000,000 to the state IT modernization fund, created in section 1 of this Act.

Section 3. There is appropriated from the state IT modernization fund, created in section 1 of this Act, the sum of \$5,000,000 to the Bureau of Information and Telecommunications for the purposes described in section 1 of this Act.

Section 4. The commissioner of the Bureau of Information and Telecommunications shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 5. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 6. This Act is effective beginning June 26, 2023.

Section 23. A Bill That Makes a Continuous Appropriation

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 309

*Introduced by: **Senator Harrison***

An Act to create the conservation district special revenue fund and make an appropriation therefor.

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

Section 1. That a NEW SECTION be added to chapter 38-8:

There is established in the state treasury the conservation district special revenue fund. The State Conservation Commission shall administer the fund. The purpose of the fund is to aide, assist, and cooperate with conservation districts of the state through securing, by purchase or otherwise, necessary equipment, trees, planting materials, and supplies as needed in furthering conservation programs in these districts. Interest on moneys credited to the fund must remain in the fund. Any repayment of the principal amount of a loan and any interest thereon must be deposited into the fund and used for making new loans. The conservation district special revenue fund is continuously appropriated to the State Conservation Commission.

Section 24. A Bill That Amends a Previous Appropriation

99th Legislative Session

2024 South Dakota Legislature

House Bill 1210

*Introduced by: **Representative** McKinley*

An Act to make an appropriation for increased costs related to the construction of a new state public health laboratory.

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

Section 1. There is appropriated from the general fund the sum of \$12,000,000 to the Department of Health for design, architectural, and engineering services related to the construction of a new state public health laboratory and renovation of the existing laboratory as established in 2022 Session Laws, chapter 208, § 12.

Section 2. The secretary of the Department of Health shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 4. This Act is effective beginning June 26, 2023.

Section 25. A Bill That Transfers Moneys

99th Legislative Session

2024 South Dakota Legislature

Senate Bill 310

*Introduced by: **Senator** Roosevelt*

An Act to authorize the Department of Corrections to construct a new prison facility, make an appropriation therefor, and transfer moneys to the incarceration construction fund.

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

Section 1. The Department of Corrections may design, construct, furnish, and equip a new prison facility for offenders committed to the Department of Corrections.

Section 2. The state treasurer shall transfer the sum of \$87,031,734 from the general fund and \$183,685,079 from the general revenue replacement fund to the incarceration construction fund, created in § 1-15-37, for the future construction of a state prison facility described in section 1 of this Act.

Section 3. There is appropriated from the general fund the sum of \$25,359,551 and appropriated from the incarceration construction fund the sum of \$26,640,449 in other fund expenditure authority to the Department of Corrections for the purposes authorized in section 1 of this Act.

Section 4. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Human Resources and Administration as provided in chapter 5-14.

Section 5. The secretary of the Department of Corrections shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures described in chapter 4-8.

Section 7. This Act is effective beginning June 26, 2023.

Section 26. A Joint Resolution Proposing an Amendment to the South Dakota Constitution

99th Legislative Session

2024 South Dakota Legislature

House Joint Resolution 5001

*Introduced by: **Senator Taft***

A JOINT RESOLUTION, Proposing and submitting to the voters at the next general election an amendment to the Constitution of the State of South Dakota, changing the name of the state.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

Section 1. That at the next general election held in the state, the following amendment to Article I of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article I, § 1 of the Constitution of the State of South Dakota, be AMENDED:

§ 1. The name of the state shall be ~~South~~ Dakota.

Section 27. A Joint Resolution Petitioning Congress to Call An Article V Convention to Propose Amendments to the U.S. Constitution

99th Legislative Session

2024 South Dakota Legislature

Senate Joint Resolution 501

Introduced by: **Senator** Wilson

A JOINT RESOLUTION, Applying to the United States Congress under Article V of the United States Constitution to call for a convention proposing amendments to the United States Constitution.

BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

Section 1. WHEREAS, U.S. Const., Art. V allows the legislatures of the respective states to petition Congress to call a convention for the purpose of proposing amendments to the United States Constitution; and

Section 2. WHEREAS, no amendment to the United States Constitution has ever been proposed through this method; and

Section 3. WHEREAS, the *South Dakota Guide to Legislative Drafting* is benefitted by an example of a Joint Resolution that petitions Congress to call for an Article V convention:

Section 4. NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Ninety-ninth Legislature of the State of South Dakota, the Senate concurring therein, that the South Dakota Legislature makes an application to the Congress of the United States, as provided by U.S. Const., Art. V, to call a convention for the purpose of proposing an amendment to the United States Constitution; and

Section 5. BE IT FURTHER RESOLVED, that the secretary of state is requested to transmit copies of this application to the President and Secretary of the United States Senate; to the Speaker and Clerk of the United States House of Representatives; and to the Chairman of the Judiciary Committee of the United States House of Representatives. The secretary of state is

directed to transmit copies of this application to the presiding officers of each of the legislative houses in the several states, requesting their cooperation; and

Section 6. BE IT FURTHER RESOLVED, that this application constitutes a continuing application in accordance with U.S. Const., Art. V until the legislatures of two-thirds of the several states have made applications to Congress to call a convention to propose amendments to the United States Constitution.

Section 28. A Concurrent Resolution

99th Legislative Session

2024 South Dakota Legislature

House Concurrent Resolution 6001

*Introduced by: **Representative** Harding*

A CONCURRENT RESOLUTION, Urging the United States Congress to repeal the eleventh amendment to the United States Constitution.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

WHEREAS, the Supreme Court of the United States was correct in its decision in *Chisholm v. Georgia*;

NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Ninety-ninth Legislature of the State of South Dakota, the Senate concurring therein, that the United States Congress propose an amendment that would repeal the eleventh amendment to the United States Constitution.

Section 29. A Resolution

99th Legislative Session

2024 South Dakota Legislature

Senate Resolution 701

*Introduced by: **Senator** Coolidge*

A RESOLUTION, Urging meteorologists in the state to forecast better weather during the Ninety-ninth Legislative Session.

WHEREAS, the weather during the Ninety-eighth Session of the South Dakota Legislature was not conducive to maintain the morale of the members of the Senate; and

WHEREAS, the weather during the Ninety-eighth Session of the South Dakota Legislature made traveling to and from Pierre inconvenient; and

WHEREAS, the weather in this state is typically snowy and cold during the months of January, February, and March:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninety-ninth Legislature of the State of South Dakota, the House of Representatives concurring therein, that the Senate hereby urges the meteorologists employed in the State of South Dakota to forecast weather that is conducive to the work of the Legislature during the time that the Legislature is in session.

Section 30. A Commemoration

99th Legislative Session

2024 South Dakota Legislature

House Commemoration 8001

*Introduced by: **Representative Hoover***

A LEGISLATIVE COMMEMORATION, Celebrating John and Abigail Adams on the occasion of their seventieth wedding anniversary.

WHEREAS, in the year 1954, when Elizabeth acceded to the throne of the United Kingdom, the New York Yankees defeated the Brooklyn Dodgers to win the World Series, "Singing in the Rain" was playing in theaters across the country, and the cost of a first-class stamp was three cents, a beautiful young woman named Abigail married a dashing young man named John; and

WHEREAS, that special day in Braintree, Massachusetts, was both the culmination of a romantic relationship that began when both Abigail and John were in elementary school and the beginning of an adventure together that continued for the next seventy years; and

WHEREAS, Abigail and John were able to weather the trials and tribulations that came to them after that happy day by remembering to prioritize the love that they shared and the values and respect that brought them together; and

WHEREAS, after sharing their lives with six children, twelve grandchildren, and twenty-seven great-grandchildren, Abigail and John have much for which to be thankful, much to celebrate, and much to still eagerly anticipate in the years to come:

NOW, THEREFORE, BE IT COMMEMORATED, by the Ninety-ninth Legislature of the State of South Dakota, that on January 31, 2024, Abigail and John will have shared the incredible adventure of their lives together in marriage, side-by-side, and hand-in-hand, for seventy years.

Section 31. A Resolution of Disapproval

99th Legislative Session

2024 South Dakota Legislature

Senate Resolution of Disapproval 901

*Introduced by: **Senator** Roosevelt*

A RESOLUTION OF DISAPPROVAL, Proposing to disapprove Executive Order 2024-03 as set forth on pages 52 to 64, inclusive, of the Senate Journal.

WHEREAS, the Governor of the State of South Dakota has submitted to the Ninety-ninth Legislature on the fifth day thereof Executive Order 2024-03; and

WHEREAS, Executive Order 2024-03 proposes to abolish the Department of Agriculture and the Department of Environment and Natural Resources and to create new Department of Agriculture and Natural Resources; and

WHEREAS, agriculture is South Dakota's number one industry and economic driver and deserves a state department whose resources and expertise are devoted to the promotion of the agricultural industry; and

WHEREAS, forty-eight states, including South Dakota, have recognized the necessity of having a standalone Department of Agriculture; and

WHEREAS, the current missions of the Department of Agriculture and the Department of Environment and Natural Resources as independent departments serve as a valuable check and balance on the other department; and

WHEREAS, a combination of the two departments will diminish the focus of services to the agricultural producers in the state:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninety-ninth Legislature of the State of South Dakota, that Executive Order 2024-03 presented to the Ninety-ninth Legislature as the same appears in the Senate Journal on pages 52 to 64, inclusive, is disapproved pursuant to S.D. Const., Art. IV, § 8.