Chapter 33

(Senate Bill 165)

An Act to revise certain provisions pertaining to municipal government.

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

Section 1. That § 9-8-2 be AMENDED:

9-8-2. If there is a vacancy from any cause in the office of the mayor, the vacancy must be filled by appointment pursuant to a motion supported by a majority vote of all the aldermen~~,~~. The motion must be made at a meeting of the aldermen held as soon as practicable after the vacancy occurs~~, to serve~~. The individual appointed as the mayor serves until the office is filled by election for the unexpired term at the next ~~annual~~ regular municipal election or by special election as provided in § 9-13-14.2. Until the vacancy is filled, the powers and duties of the mayor are executed by the mayor pro tempore, as provided in § 9-8-13.

The president of the council shall serve as the mayor pro tempore until the vacancy in the office of the mayor is filled by appointment or election. In the case of a temporary absence or temporary incapacitation of the president of the council, or a vacancy in the office of the president of the council, the vice president of the council shall serve as the mayor pro tempore until the earliest of the following occurs:

(1) The temporary absence or temporary incapacitation of the president of the council concludes;

(2) The vacancy in the office president of the council is filled; or

(3) The vacancy in the office of the mayor is filled by appointment or election.

A resignation by the mayor must be in writing and must specify the effective date of the resignation. A temporary absence or temporary incapacitation of the mayor is not a vacancy in the office of the mayor.

Section 2. That § 9-8-3 be AMENDED:

9-8-3. The mayor presides at all meetings of the council. The mayor votes only in the case of a tie, except pursuant to § 9-8-10. The mayor performs other duties as may be prescribed by the laws and ordinances, and takes care that the laws and ordinances are faithfully executed. The mayor shall annually, or as may be necessary, give the council information relative to the affairs of the municipality, and recommend for the council's consideration the measures the mayor deems prudent. The mayor may sign or veto any ordinance or resolution ~~passed by the common council. The mayor may veto any part or item of an ordinance or resolution appropriating money~~ as provided in §§ 9-19-10 to 9-19-12, inclusive.

Section 3. That § 9-14-2 be AMENDED:

9-14-2. ~~Except as otherwise provided, no person may hold any elected municipal office who is not a qualified voter of the municipality and who has not resided therein at least three months next preceding his election or appointment. If the person has resided in an area annexed, pursuant to chapter 9-4, for at least three months, he may hold any municipal office. No person may hold any municipal office who is a defaulter to the municipality. This section does not apply to appointive officers.~~An individual is not eligible to hold elective office unless the individual:

(1) Is a qualified voter of the municipality, as described in § 12-4-1; and

(2) Has resided in the municipality or an area annexed, pursuant to chapter 9-4, for at least three months preceding the individual's election or appointment.

Section 4. That § 9-14-3 be AMENDED:

9-14-3. ~~Such officers as needed and provided for by ordinance shall be appointed. Each appointive officer of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities, each officer shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employees, police, and firefighters. Such officers shall be appointed annually or at intervals determined by the governing body.~~Each municipality may determine, by ordinance, which officers are to be appointed and describe the duties of each appointed officer.

Except as provided in chapter 9-10:

(1) In municipalities governed by a mayor and common council, each appointed officer is appointed by the mayor, with the approval of a majority vote of all the members of the common council qualified to serve pursuant to chapter 9-13; and

(2) In municipalities that are not governed by a mayor and common council, each appointed officer is appointed by a majority vote of all of the members qualified to serve on the governing body pursuant to chapter 9-13.

Each appointed officer may be appointed annually or at intervals determined by the governing body. Except where a property interest arises by written contract, the appointment does not confer any property interest in employment.

Section 5. That § 9-14-4 be AMENDED:

9-14-4. ~~All appointive officers except the auditor and marshal shall be commissioned by warrant, under the corporate seal, signed by the mayor and auditor. The marshal shall be commissioned by warrant, under the corporate seal, signed by the president of the Board of Trustees and the clerk. The mayor~~ Following appointment and qualification, the municipal finance officer shall issue a certificate of appointment under the seal of the municipality to ~~the auditor~~ each appointed officer.

Section 6. That § 9-14-5 be AMENDED:

9-14-5. Each ~~appointive~~ appointed municipal officer shall begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office ~~in the usual form provided by law~~, as provided in § 3-1-5. The officer shall file the form with the municipal finance officer within ten days after the first meeting of the month following the appointment. The officer shall hold office until the appointment and qualification of a successor, including during any interim term created by a change of form of government.

~~Each elective municipal officer, if~~A municipal officer elected to fill a vacancy~~,~~ shall begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office ~~in the usual form provided by law~~, as provided in § 3-1-5. The officer shall file the form with the municipal finance officer within ten days after the first meeting of the month following the election. ~~Except as otherwise provided, each officer, if elected for a full term, shall begin discharging the duties of the office on the first meeting of the month next succeeding the election or as soon thereafter as the officer has qualified~~ If the elected officer fails to file the form, a vacancy is created pursuant to § 9-13-28.

Any individual appointed to fill a vacancy for an elective office shall begin discharging the duties of the office as soon as the individual has qualified by filing an oath or affirmation of office, as provided in § 3-1-5. The appointed officer shall file the form with the municipal finance officer within ten days after the appointment. If

the appointed officer fails to file the form, a vacancy is created pursuant to § 9-13-28.

Section 7. That § 9-14-6 be AMENDED:

9-14-6. Each ~~appointive~~ appointed officer, before entering upon the discharge of the duties of the office, shall take ~~and subscribe~~ an oath or affirmation of office, in the ~~form required by the Constitution~~ usual form provided by law.

~~The~~ Each appointed officer shall furnish ~~an undertaking to be approved by the governing body. The undertaking shall be in a sum prescribed by the governing body and shall be conditioned~~ a bond for the faithful performance of the duties of the office and to account, pay over, and deliver all money or property coming into the officer's hands by virtue of that office ~~according to law~~. The governing body shall establish the amount of the bond applicable to each officer annually. The requirement for an individual bond is satisfied if the municipality provides blanket coverage pursuant to § 3-5-14.

Section 8. That § 9-14-9 be AMENDED:

9-14-9. ~~All undertakings~~ Any bond provided for in ~~§~~§§ 9-14-6 ~~to 9-14-7, inclusive, shall~~ must be filed, after approval, with the ~~governing body~~ municipal finance officer.

Section 9. That § 9-14-10 be AMENDED:

9-14-10. ~~The removal of any municipal officer from the ward or municipality for which the officer was elected or appointed, or the officer's failure, within ten days after the first meeting of the month following the election or appointment, to qualify and begin the duties of office, causes a vacancy in the office.~~An immediate vacancy is created if any elected municipal officer moves from the district, municipality, or ward for which the officer was elected or appointed to fill the vacancy of the office.

Section 10. That § 9-14-12 be AMENDED:

9-14-12. Except as otherwise provided, any ~~appointive~~ appointed officer of a municipality governed by a board of commissioners or board of trustees may be removed by a majority vote of ~~the~~ all members ~~of such board~~ of the governing body who are qualified to serve on the governing body by election or appointment pursuant to chapter 9-13.

Section 11. That § 9-14-13 be AMENDED:

9-14-13. ~~In an aldermanic-governed municipality, the mayor, except as otherwise provided, may remove from office any officer appointed by the mayor, if the mayor believes that the interests of the municipality demand such removal. The mayor shall report the reasons for removal to the council at its next regular meeting.~~In a municipality governed by a mayor and common council pursuant to chapter 9-8, the mayor may remove from office any officer appointed by the mayor, if the mayor believes the removal is in the interest of the municipality. The mayor shall report the reasons for removal to the common council at the next regular meeting. The report may be given in executive session, pursuant to § 1-25-2, but in all cases the fact of the presentation of the report must be placed in the minutes of the meeting.

Section 12. That § 9-14-14 be AMENDED:

9-14-14. Any municipality may adopt an ordinance establishing a civil service system for its municipal employees, ~~policemen and firemen, and providing for the~~ law enforcement officers, and firefighters, which provides for:

(1) The appointment of a civil service board, prescribing its powers, duties and compensation~~, and providing for the~~; and

(2) The suspension or removal of any employee, ~~policeman or fireman~~ law enforcement officer, or firefighter for cause~~,~~.

The decision to suspend or remove any employee, law enforcement officer, or firefighter is subject to review ~~and affirmance, reversal or modification of such action by the civil service board~~ at a hearing ~~before such board~~ of the civil service board, if requested by the ~~employee, policeman or fireman~~ suspended or ~~discharged, at which~~ removed employee, law enforcement officer, or firefighter. At the hearing, the employee, ~~policeman or fireman~~ law enforcement officer, or firefighter is entitled to be present in person or by counsel~~, which~~. The civil service board may affirm, modify, or reverse the suspension or removal. Any final order of the civil service board may be appealed to the circuit court pursuant to chapter 1-26.

The ordinance ~~after adoption~~ establishing a civil service system may not be repealed or modified so as to affect the standing of any employee, ~~policeman or fireman under the provisions thereof~~ law enforcement officer, or firefighter, except pursuant to the negotiation process provided for in chapter 3-18~~, and which~~. The ordinance establishing a civil service system may be repealed only by an initiated ordinance. ~~However, an~~

An employee, ~~policeman or fireman~~ law enforcement officer, or firefighter represented by a labor or employee organization, authorized by chapter 3-18, may not request the civil service board to review any suspension or removal, unless the labor contract covering ~~such~~ the employee, law enforcement officer, or firefighter specifically provides for ~~such~~ review. ~~Any final order of a civil service board may be appealed to the circuit court pursuant to chapter 1-26~~.

Section 13. That § 9-14-15 be AMENDED:

9-14-15. ~~Policemen, firemen, and~~ Except as otherwise provided in this section, municipal employees, law enforcement officers, and firefighters appointed under any civil service ordinance and not represented by any labor or employee organization authorized by chapter 3-18 may be removed only pursuant to the provisions of the ordinance. Nothing in this section restricts the Governor's authority, pursuant to § 3-17-3, to remove local law enforcement officers, including those appointed under any civil service ordinance. Officers and employees appointed by a city manager may be removed by ~~him~~ the city manager.

Section 14. That § 9-14-16 be AMENDED:

9-14-16. ~~No mayor, alderman, commissioner, or trustee~~ Except as otherwise provided in § 9-14-16.1, an elected municipal officer may not hold any other ~~office under~~ position with the municipality while ~~an incumbent of such~~ in office. The term ~~"office"~~ "position" does not include membership on any ~~municipality~~ municipal board, commission, or committee, if the ordinance or resolution establishing the board, commission, or committee specifically includes the ~~mayor, an alderman, commissioner, or trustee~~ elected officer in the membership of the board. ~~No mayor, alderman, commissioner, or trustee~~

An elected officer is not disqualified from holding ~~such~~ office in any municipality as a result of holding ~~any liquor license,~~ or being the spouse of ~~a person~~ an individual holding, any ~~liquor~~ alcoholic beverage license. ~~No mayor, alderman, commissioner, or trustee~~, pursuant to chapter 35-4. An elected officer who is the holder of a ~~liquor~~ license may vote on the issuance or transfer of any ~~such~~ other alcoholic beverage license. ~~No auditor or clerk may hold the office of treasurer under the municipality while an incumbent of such office.~~

Section 15. That § 9-14-16.1 be AMENDED:

9-14-16.1. The provisions of § 9-14-16 do not prohibit any ~~mayor, alderman, commissioner, or trustee~~ elected officer from serving in any other volunteer, unsalaried municipal position or providing any service for a municipality if the compensation for ~~such~~ the service does not exceed ~~five~~ ten thousand dollars per calendar year. The provisions of § 9-14-16 do not prohibit any ~~mayor, alderman, commissioner, or trustee~~ elected officer from receiving compensation in excess of ~~five~~ ten thousand dollars per calendar year for service to a municipal ambulance service in municipalities of the second or third class.

Section 16. That § 9-14-17 be AMENDED:

9-14-17. ~~The municipal finance officer shall keep an office at a place directed by the governing body. The finance officer shall keep the corporate seal, all papers and records of the municipality, and a record of the proceedings of the governing body, whose meetings the finance officer shall attend. The finance officer shall draw and countersign all warrants on the treasury in pursuance of orders or resolutions of the governing body and keep a full and accurate account of all such warrants in books provided for that purpose. The finance officer shall make or cause to be made estimates of the expenses of any work to be done by the municipality and countersign all contracts made on its behalf and certificates of work authorized by any committee of the governing body or by any municipal officer. However, the finance officer may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.~~A municipal finance officer shall:

(1) Keep an office at a place directed by the governing body;

(2) Keep the corporate seal and all documents and records of the municipality;

(3) Attend all meetings of the governing body;

(4) Keep a record of the proceedings of the governing body;

(5) Draw and countersign all warrants on the treasury pursuant to orders or resolutions of the governing body;

(6) Except as provided in chapter 9-10, supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit;

(7) Keep a full and accurate account of all warrants in book or electronic format;

(8) Cause estimates to be provided for the expense of any work to be done by the municipality;

(9) Keep a list of all certificates issued for work or any other purpose;

(10) Countersign all contracts and certificates of work authorized by the governing body, unless the contract is approved by:

(a) Any municipal board with authority to approve contracts by statute or by ordinance; or

(b) Any municipal officer with authority to approve contracts pursuant to a spending policy adopted by the governing body of the municipality;

(11) Keep regular accounts of all indebtedness of the municipality, which show at all times the financial condition of the municipality;

(12) Countersign and keep accurate account of bonds, warrants, certificates, or other evidence of indebtedness issued or redeemed by the governing body, and the amount of each that is outstanding;

(13) Record the amount, purpose, and recipient of any bond, warrant, or other evidence of indebtedness of the municipality;

(14) Keep an account with all receiving and disbursing officers of the municipality, showing the amount received from the different sources of revenue and the amount that was disbursed under the direction of the governing body;

(15) Audit and adjust all claims and demands against the municipality before they are allowed by the governing body;

(16) Keep a record of the finance officer's acts and doings; and

(17) Perform other duties as may be required by ordinance, resolution, or direction of the governing body.

The governing body may determine which duties, if any, a municipal finance officer may not delegate to an employee under the supervision of the municipal finance officer.

The municipal finance officer may destroy any record of the municipality in a manner consistent with chapter 1-27 or other applicable law.

Section 17. That § 9-14-22 be AMENDED:

9-14-22. ~~When required by the governing body or any officer of the first and second class municipality, the~~ Except to the extent inconsistent with § 16-18-A, the city attorney ~~shall furnish~~ shall:

(1) Furnish an opinion upon any matter relating to the affairs of the municipality or the official duties of ~~such officer; conduct~~ municipal officers;

(2) Conduct the prosecution of all actions or proceedings arising out of the violation of any ordinance; and ~~perform such~~

(3) Perform any other professional services ~~incident to his office as may be~~ as required by ordinance or directed by the governing body.

Section 18. That § 9-14-23 be AMENDED:

9-14-23. ~~The governing body of any municipal corporation~~ A municipality may contract for legal services or employ an attorney ~~under such terms and conditions as the governing body shall deem proper. Any contract for legal services with an attorney shall be made by ordinance or resolution. Such contract shall set forth the compensation to be paid and the specific services to be rendered~~ to provide legal services for the municipality.

Section 19. That § 9-14-24 be AMENDED:

9-14-24. ~~If a~~ A municipality ~~chooses to~~ may contract with or employ ~~or retain a person to serve as~~ a city engineer, ~~the city engineer shall~~ who must be a licensed professional engineer under chapter 36-18A. If the city engineer is not also licensed as a land surveyor under chapter 36-18A, the city engineer ~~shall~~ must delegate any duties that are defined in chapter 36-18A as the practice of land surveying to a licensed land surveyor.

The governing body shall, by ordinance or ~~agreement~~ contract, prescribe the duties ~~and fix the compensation~~ of the city engineer.

All surveys, profiles, plans, ~~or~~ and estimates made by the city engineer for the municipality are the property of the municipality ~~and shall~~, must be carefully preserved in the municipality's office or the office of the city engineer, and are open to public inspection.

Section 20. That § 9-14-26 be AMENDED:

9-14-26. Any ~~peace~~ law enforcement officer of ~~any~~ a municipality ~~which~~ that is situated in more than one county may serve and execute any civil or criminal process within any of the counties in which ~~such~~ the municipality is situated.

Section 21. That § 9-14-27 be AMENDED:

9-14-27. ~~The~~ A governing body may prescribe by ordinance additional duties to be performed by any appointed municipal officer not inconsistent with the laws of this state.

Section 22. That § 9-14-29 be AMENDED:

9-14-29. ~~Every chief of police or other policeman,~~ On or before the last day of each month, each law enforcement officer receiving a salary ~~for his services, shall account for and pay over on or before the end of each month to the treasurer~~ from

the municipality shall provide and remit to the municipal finance officer an itemized account and receipts for all fees received by ~~him~~ the officer in the service of any civil process~~, taking a receipt therefor and filing an itemized account thereof with the auditor or clerk~~.

Section 23. That § 9-14-30 be AMENDED:

9-14-30. ~~The municipalities of the State of South Dakota and their several offices, boards, and departments may, in their discretion,~~ Any municipality may provide, either by ~~self insurance, or by purchase from private companies~~ self-insurance or contract, group life, health, and accident insurance, or any ~~one or more of such insurance risks~~ combination of coverage, for ~~their respective~~ employees and officers of the municipality, and the immediate families of ~~such~~ the employees and officers~~, as the terms "employee" and "officer" are defined in § 9-14-31. Such accident~~. Accident insurance applies only if benefits under the worker's compensation law are not applicable.

Section 24. That § 9-14-33 be AMENDED:

9-14-33. ~~Authority and power is hereby given to said employees or officers to direct the municipalities of the State of South Dakota covered hereby to pay~~ A municipality may deduct out of the salary or wages of ~~such~~ municipal employees or officers the amount of their participation in the cost of insurance provided pursuant to § 9-14-30.

Section 25. That § 9-14-35.1 be AMENDED:

9-14-35.1. Any health insurance plan or policy provided ~~by a municipality for municipal officers and employees and other persons~~ pursuant to §§ 9-14-30 and 9-14-35 may include the use of flexible spending accounts~~, which may include payment or reimbursement~~ that may be paid or reimbursed through the use of debit cards, direct deposit to financial institutions, ~~by~~ check, or a combination of these.

Section 26. That § 9-14-36 be AMENDED:

9-14-36. The governing body ~~of any municipal corporation in this state is hereby empowered and authorized to enter into insurance contracts for the protection and benefit of its employees and such insurance contracts may be in the form of group life insurance,~~ of any municipality may provide for salary saving~~,~~ or retirement annuities~~. A municipal corporation entering into any such insurance contracts is authorized to~~, and may deduct from the salary or wages of ~~such~~ any employee ~~protected by such insurance contract or contracts, his or her~~, included in the life insurance, salary sharing, or retirement annuity plan, the pro rata share of the cost of ~~such~~ the insurance, and pay the premium for ~~such~~ the insurance out of the ~~funds so~~ deducted~~. Discretion is vested in the governing~~ moneys. The governing body ~~to~~ may determine ~~what~~ which particular class or group of employees ~~shall be~~ is protected by ~~such~~ the insurance contracts~~. Provided~~, provided that when ~~such~~ the class or group has been determined, ~~no~~ an insurance ~~contracts shall~~ contract may not be made or entered into without the consent of at least sixty percent of ~~such~~ the class or group.

Section 27. That § 9-14-37 be AMENDED:

9-14-37. It is a Class 2 misdemeanor for any ~~member of the governing body or other municipal~~ elected or appointed officer or employee to commit a palpable omission of duty or to intentionally commit oppression, misconduct, or malfeasance in the discharge of ~~the~~ official duties ~~of his office~~. Upon conviction of a violation of this section, the court ~~in which such conviction is had may in its discretion~~ may enter an order removing the ~~member of the governing body or other officer so~~ convicted elected or appointed officer or employee from ~~his~~ the municipal office or position.

Section 28. That § 9-14-39 be AMENDED:

9-14-39. ~~Any person having been an officer of any municipality shall, within~~ Within five days after ~~demand,~~ leaving office, an officer of a municipality shall deliver to ~~his~~ the officer's successor ~~in office~~ all books, property, and effects of every description ~~in his possession~~ belonging to the municipality or pertaining to ~~his~~ the office. ~~Upon refusal so to do he shall be~~ A former officer in violation of this section is personally liable for all ~~the~~ damages caused ~~thereby and to such~~ by the violation, any additional penalties ~~as may be~~ prescribed by ordinance, and associated reasonable attorney fees and costs related to the violation. The municipality may also obtain injunctive relief from the court.

Section 29. That § 9-14-42 be AMENDED:

9-14-42. ~~Each person over eighteen years of age~~ A municipality may require each individual seeking employment with a municipality ~~shall~~ to submit~~,~~ ~~subject to the discretion of the municipality,~~ to a state and federal criminal background investigation by means of fingerprint checks by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation. The municipality may submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee enters into service. Upon completion of the state and federal criminal background check, the Division of Criminal Investigation shall forward to the municipality all information obtained as a result of the check. Failure to submit to or cooperate with the criminal background investigation is grounds for denial of ~~an application~~ employment.

Section 30. That § 9-14-43 be AMENDED:

9-14-43. The hours of employment of full-time employees of ~~city~~ municipal fire departments are governed by ~~mutual agreements with the respective municipal corporations. The hours of employment for any such employee~~ municipal policy or contract, but may not exceed two hundred twelve hours during a twenty-eight-day work period or two hundred four hours during a twenty-seven-day work period, as determined by mutual agreement, unless the employee is paid additional compensation or is allowed compensatory time off.

Section 31. That § 9-18-2 be AMENDED:

9-18-2. ~~Every municipal officer shall keep a record of the official acts and proceedings of his office, and such record shall be open to public inspection during business hours under reasonable restrictions.~~Except as otherwise provided by law, records of the official acts and proceedings of municipal officers are subject to disclosure as provided in chapter 1-27.

Section 32. That § 9-18-3 be AMENDED:

9-18-3. ~~Copies of all papers filed in the office of the auditor or clerk and transcripts of all records of the governing body certified by him under the corporate seal are admissible in evidence the same as the originals thereof. Such original papers or records or such copies or transcripts thereof are prima facie evidence of the facts stated therein.~~The following documents, if certified by the municipal finance officer under the corporate seal, are admissible in evidence the same as the originals:

(1) Copies of all papers filed in the office of the municipal finance officer; and

(2) Transcripts of all records of the governing body.

These documents are prima facie evidence of the facts stated therein.

Section 33. That § 9-19-1 be AMENDED:

9-19-1. ~~The word "ordinance" as used in this title shall~~ Terms in this title mean:

(1) "Ordinance," a permanent legislative act of the governing body of a municipality ~~within the limits of its powers.~~

~~The word "resolution" as used in this title shall mean~~; and

(2) "Resolution," any determination, decision, ~~or direction of the governing body of a municipality~~ directive, or other act of a special or temporary character, of the governing body of a municipality, for the purpose of initiating, effecting, or carrying out ~~its~~ the body's administrative duties and functions under the laws and ordinances governing the municipality.

Section 34. That § 9-19-3 be AMENDED:

9-19-3. ~~Every municipality may enact, make, amend, revise, or repeal all such ordinances, resolutions, and regulations as may be proper and necessary to carry into effect the powers granted thereto, and to provide for the punishment of each violation thereof by a fine not to exceed the fine established by subdivision 22-6-2(2), by imprisonment not exceeding thirty days, or by both the fine and imprisonment.~~A municipality may amend, enact, repeal, or revise ordinances and resolutions to exercise the authorized powers of the municipality. The municipality may seek injunctive relief and establish penalties for violations of ordinances and resolutions, not exceeding those specified in subdivision 22-6-2(2).

Section 35. That § 9-19-3.1 be AMENDED:

9-19-3.1. In ~~the~~ a prosecution for the violation of any municipal ordinance ~~which~~ or resolution that authorizes a criminal penalty ~~of a jail sentence, the municipality must prove the defendant guilty of the violation of the ordinance beyond a reasonable doubt. The proceedings shall be commenced by complaint naming the first or second class municipality as plaintiff, and the response thereto shall be by either oral plea or written answer. The defendant shall be entitled, by making demand therefor at any time before the commencement of trial, to trial by jury in the event the defendant is subject to any jail sentence. Except as provided in this section the proceedings shall be governed by the rules of civil procedure,~~ the proceedings are governed by the procedures set forth in title 23A.

Section 36. That § 9-19-5 be AMENDED:

9-19-5. An ordinance ~~must embrace but~~ may only contain one subject ~~which shall~~, which must be expressed in ~~its~~ the title.

Section 37. That § 9-19-7 be AMENDED:

9-19-7. The title of ~~all ordinances shall~~ any ordinance must be read twice with at least five days intervening between the first and second reading. The ordinance ~~shall~~ must be ~~signed~~:

(1) Signed by the mayor ~~or~~, mayor pro tempore, acting mayor, or president of the ~~Board of Trustees, filed~~ board of trustees;

(2) Filed with the ~~auditor or clerk, and published once except that an ordinance incorporating and adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, or health regulations need not be published in a newspaper, but upon adoption of such an ordinance the auditor or clerk shall publish a notice of the fact of adoption once a week for two successive weeks in the official newspaper, and twenty days after the completed publication of such notice, unless the referendum shall have been invoked, such ordinance shall become effective~~ municipal finance officer; and

(3) Published once in the official newspaper.

Section 38. That § 9-19-8 be AMENDED:

9-19-8. Any resolution may be passed after one reading, and ~~shall~~ must be recorded ~~at length in the minutes of the meeting at which it is passed, with a statement of the number of votes for and against it. Such resolution shall be published in full either~~, entirely, together with the number of votes for and against the resolution, either as part of the minutes of the meeting at which the resolution passed, or separately.

Section 39. That § 9-19-9 be AMENDED:

9-19-9. The final vote ~~upon all ordinances upon the second reading and to pass the same over any veto shall~~ to adopt an ordinance must be taken ~~by yeas and nays and~~ orally or by roll call, with the results entered ~~upon~~ into the minutes of the meeting.

Section 40. That § 9-19-10 be AMENDED:

9-19-10. ~~The~~ Except as otherwise provided in this section, a mayor in any municipality ~~with a common council may veto any ordinance or resolution~~ operating under the aldermanic form pursuant to chapter 9-8 may exercise the veto power granted by § 9-8-3, by filing a written objection with the finance officer within ten days after its passage. ~~The veto may extend to any one or more items contained in an ordinance or resolution making an appropriation or to the entire ordinance or resolution. If the veto only extends to a part of such~~ If only part of an ordinance or resolution making an appropriation is vetoed, the remainder ~~shall~~ must take effect.

The mayor may not veto any ordinance or resolution necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government and its existing institutions if the ordinance or resolution:

(1) Is passed by a two-thirds vote of all the aldermen qualified to serve by election or appointment pursuant to chapter 9-13; and

(2) States on its face that the ordinance or resolution is necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government.

Section 41. That § 9-19-11 be AMENDED:

9-19-11. If ~~the~~ a mayor ~~vetoes any ordinance, resolution, or other item~~ exercises veto power pursuant to § 9-19-10, the municipal finance officer ~~shall~~ must present the ~~ordinance, resolution, or other~~ vetoed item, together with the mayor's written objection, for reconsideration at the next meeting of the common council ~~and it may be reconsidered~~. If at that meeting the ordinance or resolution is passed by a two-thirds vote of the aldermen ~~, it shall be~~ qualified to serve by election or appointment pursuant to chapter 9-13, the ordinance or resolution must:

(1) Be published, together with a statement of the votes for and against the ordinance or resolution; and ~~become~~

(2) Become effective, notwithstanding the mayor's ~~disapproval~~ veto, unless suspended by referendum.

Section 42. That § 9-19-12 be AMENDED:

9-19-12. If the mayor fails to sign any ordinance or resolution or file written objections ~~thereto~~ within ten days after its passage, the ordinance or resolution ~~shall~~:

(1) Must be published; and ~~become a~~

(2) Becomes law without the mayor's signature.

This section does not apply to any ordinance or resolution necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government and its existing institutions if the ordinance or resolution:

(1) Is passed by a two-thirds vote of all the aldermen qualified to serve by election or appointment pursuant to chapter 9-13; and

(2) States on its face that the ordinance or resolution is necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government.

Section 43. That § 9-19-13 be AMENDED:

9-19-13. ~~Except such resolutions or ordinances as may be necessary for the immediate preservation of the public peace, health, or safety, or support of the municipal government and its existing public institutions, or which provide for an election or for hearing on an improvement or assessment or which call for bids, which take effect upon the passage and publication thereof, every~~ Except as otherwise provided in this section, every resolution or ordinance passed by the governing body ~~shall take~~ takes effect on the twentieth day after its publication, unless suspended by operation of a referendum.

An ordinance or resolution may take effect immediately if it:

(1) Is necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government and its existing institutions;

(2) Is not subject to referendum pursuant to § 9-20-19; or

(3) Provides for an election or hearing on an improvement or assessment or calls for bids.

Section 44. That § 9-19-14 be AMENDED:

9-19-14. After an ordinance takes effect, the ~~auditor or clerk~~ municipal finance officer shall record the ~~same together with~~ ordinance and a certificate of the date of its publication in a book to be known as the ~~"Ordinance Book,"~~ "ordinance book," and file the affidavit of publication with the original ordinance.

Section 45. That § 9-19-14.1 be AMENDED:

9-19-14.1. If a municipality posts the ordinance book or any part of the book on the municipality's official website, the municipality ~~shall~~ must make reasonable efforts to ensure the most current version of the ordinance book or any part of the book is posted, provided that the official version of the municipality's ordinances is the ordinance book referenced in § 9-19-14.

Section 46. That § 9-19-15 be AMENDED:

9-19-15. ~~Every~~ A municipality may compile the municipal ordinances, without revision or amendment, for publication in ordinance book or codified form. The ~~compilation shall be~~ codification is effective without publication as required for ordinances.

~~The municipal auditor or clerk shall furnish a free copy of the book to the circuit clerk of court and the county law library of each county in which the municipality is situated.~~

Section 47. That § 9-19-16 be AMENDED:

9-19-16. ~~Every municipality shall have the power to revise the ordinances as provided herein.~~ The governing body of any municipality may, not ~~oftener~~ more than once every five years ~~may~~, appoint a committee ~~of one or more competent persons~~ to prepare and submit for its consideration an ordinance ~~in revision of~~ revising the ordinances of the municipality.

Section 48. That § 9-19-17 be AMENDED:

9-19-17. Upon the adoption of an ordinance ~~which revises~~ revising the ordinances of ~~the~~ a municipality by the governing body, the ~~auditor or clerk shall~~ municipal finance officer must publish a notice of the adoption of the revised ordinances once in the official newspaper. Twenty days after the completed publication of the notice, unless ~~the~~ referendum is invoked, the ordinance ~~shall become~~ becomes effective without publication of the revised ordinance book in a newspaper.

~~The governing body may publish the revised ordinances in book form. The auditor or clerk shall furnish a free copy of the book or the revised ordinances to the circuit clerk of court and the county law library of each county in which the municipality is situated.~~

Section 49. That § 9-19-18 be AMENDED:

9-19-18. An original ordinance or resolution, the record or a certified copy ~~thereof~~ of the record, or any compilation or revision of ordinances ~~purporting to be~~ printed under the authority of the municipality are admissible in evidence without further proof.

Section 50. That a NEW SECTION be added to chapter 9-19:

An ordinance incorporating and adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, or health regulations need not be published in its entirety in a newspaper. Upon adoption or amendment of the ordinance, the municipal finance officer must publish a notice of the fact of adoption or amendment once a week for two successive weeks in the official newspaper. The ordinance becomes effective twenty days after the completed publication of the notice, unless referendum is invoked. The publication procedures provided in this section apply whether or not a municipality has modified the comprehensive regulations or codes during the adoption or amendment process.

Section 51. That a NEW SECTION be added to chapter 9-19:

Upon request of the circuit clerk of court or law library of the county in which a municipality is situated, the municipal finance officer must choose one of the following forms to make available, for free, to the requesting clerk or library:

(1) A physical copy of the ordinance book;

(2) A link to the electronic compilation of the ordinance book; or

(3) An electronic copy of the codification.

Section 52. That § 10-33A-18 be AMENDED:

10-33A-18. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to the gross receipts tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected as provided by law.

If the responsible corporate officers, limited liability company member-managers, managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership ~~shall~~ must provide the department with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section ~~shall~~ must be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section does not apply to elected or appointed officials of a municipality, if bonded pursuant to §§ 9-14-6 ~~and 9-14-6.1~~.

Section 53. That § 10-45-55 be AMENDED:

10-45-55. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with

the responsibility of filing the returns or remitting tax payments ~~shall be~~ are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership ~~shall~~ must provide the Department of Revenue with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section ~~shall~~ must be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality, if bonded pursuant to ~~§§~~ 9-14-6 ~~and 9-14-6.1~~.

Section 54. That § 10-46-47.1 be AMENDED:

10-46-47.1. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments ~~shall be~~ are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership ~~shall~~ must provide the Department of Revenue with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section ~~shall~~ must be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials, if bonded pursuant to ~~§§~~ 9-14-6 ~~and 9-14-6.1~~.

Section 55. That § 10-46A-13 be AMENDED:

10-46A-13. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments ~~shall be~~ are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership ~~shall~~ must provide the Department of Revenue with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section ~~shall~~ must be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality, if bonded pursuant to ~~§~~§ 9-14-6 ~~and 9-14-6.1~~.

Section 56. That § 10-46B-11 be AMENDED:

10-46B-11. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships that control, supervise, or are charged with the responsibility of filing the returns or remitting tax payments ~~shall be~~ are personally liable for the failure. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership ~~shall~~ must provide the Department of Revenue with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section ~~shall~~ must be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to ~~§~~§ 9-14-6 ~~and 9-14-6.1~~.

Section 57. That § 23A-1-1 be AMENDED:

23A-1-1. This title ~~shall govern~~ governs the procedure to be used in the courts of this state in ~~all criminal proceedings and in all proceedings~~ any:

(1) Criminal proceeding; and

(2) Prosecution for ~~violations of ordinances and bylaws of units~~ the violation of an ordinance, resolution, or the bylaws of a unit of local government of this state, which authorizes a criminal penalty.

Section 58. That § 9-14-6.1 be REPEALED.

~~The amount of the bond of the municipal finance officer shall be annually established by the governing board in an amount equal to the maximum monetary total estimated to be on hand at any one time, but the amount of such bond required may not exceed two hundred fifty thousand dollars in municipalities of the first class or one hundred fifty thousand dollars in municipalities of the second or third class.~~

Section 59. That § 9-14-7 be REPEALED.

~~In third class municipalities the clerk, director of equalization, treasurer, and marshal, within ten days after the first meeting of the month following the election or appointment, shall take and subscribe an oath or affirmation of office in the form required by the Constitution and furnish an undertaking to be approved by the Board of Trustees in such sum as it shall direct.~~

Section 60. That § 9-14-18 be REPEALED.

~~The municipal finance officer shall keep regular books of account in which shall be entered all indebtedness of the municipality, and which shall at all times show the financial condition of the municipality, the amount of bonds, warrants, certificates, or other evidences of indebtedness issued by the governing body, and the amounts of all bonds, warrants, certificates, or other evidences of indebtedness which have been redeemed and the amount of each outstanding.~~

~~The finance officer shall countersign all bonds, warrants, or other evidences of indebtedness of the municipality and keep accurate accounts of each, stating to whom and for what purpose issued and the amount of the bond, warrant, or other evidence of indebtedness of the municipality. The finance officer shall keep an account with all receiving and disbursing officers of the municipality, showing the amount received from the different sources of revenue and the amount which was disbursed under the direction of the governing body. However, the finance officer may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.~~

Section 61. That § 9-14-19 be REPEALED.

~~The municipal finance officer shall supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit except that for those municipalities administered under the city manager form of government, the supervision is by the city manager.~~

Section 62. That § 9-14-20 be REPEALED.

~~The municipal finance officer shall keep a list of all certificates issued for work or any other purpose. Before the levy by the governing body of any special tax, the finance officer shall, unless that duty is performed by the engineer, report to the governing body a schedule of all lots that are subject to the proposed special tax or assessment and the amount of the special tax or assessment. The schedule shall be verified by the finance officer's affidavit.~~

Section 63. That § 9-14-21 be REPEALED.

~~The municipal finance officer shall examine all reports, books, papers, vouchers, and accounts of the treasurer; audit and adjust all claims and demands against the municipality before they are allowed by the governing body; and keep a record of the finance officer's acts and doings. The finance officer shall keep a book in which the finance officer shall enter all contracts. The book shall include an index to the contracts and shall be open to the inspection of all parties interested. The finance officer shall perform such other duties as may be required by ordinance, resolution, or direction of the governing body. However, the finance officer may destroy any record which the Records Destruction Board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.~~

Section 64. That § 9-14-31 be REPEALED.

~~The term "employee" is defined to include all persons who receive more than fifty percent of all compensation for personal services, rendered to the State of South Dakota, or to any of its governmental subdivisions, or to any of the several offices, boards, and departments thereof. The term "officer" is defined to include all appointive and elective officers of the municipalities of the State of South Dakota, or of the several offices, boards, and departments thereof, whose official duties, as such officers, require not less than one-half of their time.~~

Section 65. That § 9-14-32 be REPEALED.

~~Municipalities of the State of South Dakota are hereby authorized to appropriate the necessary funds for the cost of all or any portion of the insurance provided for by § 9-14-30.~~

Section 66. That § 9-19-22 be REPEALED.

~~A municipality may not adopt, enforce, or maintain an ordinance, order, or rule for the purpose of making payments to an individual under a guaranteed income program. If a municipality fails to comply with the order, the attorney general must bring an action in the name of the state for injunctive relief against a municipality that has adopted an ordinance, order, rule, or program in violation of this section.~~

~~For the purposes of this section, the term "guaranteed income program" means a plan funded or administered by the government under which an individual is provided with regular, unconditional cash payments to be used for any purpose by the individual. The term does not include a program under which an individual is required to seek reemployment as a condition of any payments, perform work, or attend training.~~

Signed March 4, 2026
